

DECLARATION

Establishing a Plan for Condominium  
Ownership of Premises located at the street  
address 19 Great Wood Court, Fairport, New  
York, and shown as Lots on the  
Tax Rolls of the Town of Perinton, in the  
County of Monroe, State of New York,  
Pursuant to Article 9-B of the Real  
Property Law of the State of New York.

Name: WESTAGE AT HARTS WOODS  
19 Great Wood Court  
Fairport, New York 14450

Sponsor: WESTAGE HARTS WOODS ASSOCIATES  
1 Heritage Hills Drive  
Somers, New York 10589

Date of Declaration: 1986

HOFHEIMER GARTLIR GOTTLIEB and GROSS  
Attorneys for Sponsor  
633 Third Avenue  
New York, New York 10017

DECLARATION

of

WESTAGE AT HARTS WOODS

(Pursuant to Article 9-B of the Real Property  
Law of the State of New York)

WESTAGE HARTS WOODS ASSOCIATES, a New York general partnership maintaining an office at 1 Heritage Hills Drive, Somers, New York 10589 (hereinafter referred to as "Sponsor"), does hereby declare:

1. Submission of Property. Sponsor hereby submits the land hereinafter described, together with the buildings and other improvements erected thereon, (the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York (the "New York Condominium Act") and pursuant thereto does hereby establish a Condominium to be known as WESTAGE AT HARTS WOODS (the "Condominium").

2. The Land. The land (the "Land") has an area of approximately 15.83 acres and is located on Great Wood Court, off Route 250 (Mosley Road), with the street address 19 Great Wood Court, Fairport, New York 14450, in the Town of Perinton, Monroe County, New York. The Property consists of all that certain tract, plot, piece and parcel of land situate, lying and being in the Town of Perinton, County of Monroe and State of New York as more particularly bounded and described on Schedule A annexed hereto and made a part hereof. The Land is owned by the Sponsor in fee simple absolute.

3. The Buildings. There currently exist on the Property twenty-nine (29) buildings (the "Buildings") containing a total of two hundred thirty-two (232) units (the "Units"). The Units have either one or two bedrooms, with one three bedroom Unit. All Buildings are two stories plus a basement containing storage lockers and laundry rooms; many are bi-level and some are tri-level, because of the grade slope.

Open paved parking spaces are located between the Buildings, with parking for approximately 427 cars in nine-foot spaces.

The structural system of the Buildings consists of foundation walls of 12" concrete block, with above grade exterior walls constructed of wood studs (insulated), faced with either brick veneer or cedar shake shingles. Roofs are surfaced with asphalt shingles, and roof framing is wood. Gutters and downspouts are aluminum.

All second floor Units have wood cantilevered balconies. All first floor Units have concrete patios.

Each Building has two entrances, with vestibules. Entry doors from the outside to the front stairwells are self-closing ornamental metal doors with a side window. Apartment entrance doors and frames from stairwells are metal. Windows and screens are sliding with aluminium frames. Except for ceramic tile in bathrooms and vinyl tile in some kitchens, Unit floors are carpeted.

Domestic water piping in the Buildings is copper. Sanitary drains and vents above grade are PVC. The gas service

wallboard dividing the Unit from other Units including the wallboard. Vertically, each Unit consists of the space between the upper face of the subfloor and the unexposed upper face of the sheetrock ceiling including the ceiling.

The doors and windows which open from a Unit shall be deemed part of the Unit.

6. Common Elements. The Common Elements of the Condominium (the "Common Elements") consist of the entire Property, including all parts of the Buildings and improvements thereon other than the Units, and will include, without limitation, the following:

(a) The Land, including without limitation, the portions of the Land on which the Buildings are erected, all lawns, gardens, sitting areas, walks, streets, roads, driveways and all other improved and unimproved areas not within the Units together with all easements, rights and privileges appurtenant thereto (including an easement of ingress and egress over and across all streets, roads and walks);

(b) All foundations, columns, girders, beams, supports, bearing walls, those portions of the exterior walls beyond the outside face of the wallboard, those portions of the walls and partitions dividing the Units from other Units and corridors and stairs located beyond the unexposed face of the wallboard enclosing the Unit, those portions of the walls and partitions dividing Units located between the unexposed faces of both wallboard walls enclosing the Units, the subfloors, ceiling and floor joists, roof trusses, roofs, corridors, halls, stairs and stairways, basement, utility and storage areas and the entrances

line is a 1" steel pipe; after the gas regulator, the line becomes a 2" iron pipe with 1-1/4" iron pipe branch tees servicing each meter.

Heating is through gas-fired or electric furnaces located in a utility closet in each Unit and individually metered to the Unit. Each Unit has a separate air conditioner with an outside condenser.

There is a large concrete, kidney shaped swimming pool (69' x 30') at the center of the site, surrounded by a concrete deck and enclosed by a chain-link fence and gate.

4. The Units. Schedule B annexed hereto and made a part hereof sets forth the following data with respect to each Unit necessary for the proper identification thereof: Unit designation; tax lot number; approximate square foot area; location; number of rooms, and the percentage of interest in the Common Elements. The land area of the Property and the location of the Buildings are shown on a Site Plan made by Sear-Brown Associates, P.C., Architects, and filed in the Office of the County Clerk of Monroe County, simultaneously with the recording of the Declaration. The location of each Unit is shown on the Floor Plans of the Buildings (the "Floor Plans"), certified by Sear-Brown Associates, P.C., Architects, and also filed in the Office of the County Clerk of Monroe County simultaneously with the recording of the Declaration.

5. Dimensions of Units. Horizontally, each Unit consists of the area measured from the unexposed faces of the wallboard at the exterior walls of the Building to the unexposed face of the

wallboard dividing the Unit from other Units including the wallboard. Vertically, each Unit consists of the space between the upper face of the subfloor and the unexposed upper face of the sheetrock ceiling including the ceiling.

The doors and windows which open from a Unit shall be deemed part of the Unit.

6. Common Elements. The Common Elements of the Condominium (the "Common Elements") consist of the entire Property, including all parts of the Buildings and improvements thereon other than the Units, and will include, without limitation, the following:

(a) The Land, including without limitation, the portions of the Land on which the Buildings are erected, all lawns, gardens, sitting areas, walks, streets, roads, driveways and all other improved and unimproved areas not within the Units together with all easements, rights and privileges appurtenant thereto (including an easement of ingress and egress over and across all streets, roads and walks);

(b) All foundations, columns, girders, beams, supports, bearing walls, those portions of the exterior walls beyond the outside face of the wallboard, those portions of the walls and partitions dividing the Units from other Units and corridors and stairs located beyond the unexposed face of the wallboard enclosing the Unit, those portions of the walls and partitions dividing Units located between the unexposed faces of both wallboard walls enclosing the Units, the subfloors, ceiling and floor joists, roof trusses, roofs, corridors, halls, stairs and stairways, basement, utility and storage areas and the entrances

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to and exits from the Buildings, but not including air conditioning units and air conditioning sleeves within Units or for the use of individual Units;

(c) All installations outside the Units for services such as heat, power, light, telephone, television and water;

(d) All sewer pipes and drainage pipes and appurtenances thereto;

(e) All paved parking areas;

(f) The swimming pool, pool filter and pool heater;

(g) Storage lockers in the basements of Buildings, which are Limited Common Elements. The owner of each Unit having use of a designated storage locker shall have an easement for the exclusive use thereof;

(h) Patios and balconies, which are Limited Common Elements. The owner of each Unit have direct access to a patio or balcony shall have an easement for the exclusive use thereof; and

(i) All other apparatus and installations existing in the Buildings for common use or necessary or convenient to the existence, maintenance or safety of the Buildings.

7. Use of Buildings and Units. Each of the Units in the Buildings may be used only as a residence, except that any Unit may, in addition, be used as a professional office by a resident thereof subject, however, to applicable governmental regulations and ordinances and prior written permission of the Board of Managers. Notwithstanding the foregoing, the Sponsor may without the permission of the Board of Managers, retain ownership of one

or more Units for use as models, sales and/or production offices in connection with the sale or rental of the Units in this Condominium until such time as all such Units have been sold and conveyed to purchasers thereof.

8. Person to Receive Service. For the period during which Sponsor is in control of the Board of Managers, Westage Harts Woods Associates, having a place of business at 1 Heritage Hills Drive, Somers, New York 10589 is hereby designated to receive notice of process in any action which may be brought against the Condominium. After Sponsor relinquishes control of the Board of Managers, any person serving as a member of the Board of Managers and residing on the Property is hereby designated to receive service of process in any action which may be brought against the Condominium.

9. Determination of Percentages in Common Elements. The percentage of interest of the respective Units in the Common Elements has been determined based upon the approximate proportion that the floor area of each Unit bears to the aggregate floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements.

10. Encroachments. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any encroachment shall occur hereafter as a result of (a) settling of the Buildings, or (b) alteration or repair to the Common Elements made by or with the consent of the Board of Managers, or



(c) repair or restoration of the Buildings (or any portion thereof) or a Unit after damage by fire or other casualty, or (d) condemnation or eminent domain proceedings, then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Buildings stand.

11. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units. Each Unit shall have an easement in common with all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board of Managers shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common Elements contained therein or elsewhere in the Buildings.

12. Powers of Attorney to Board of Managers. Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable power of attorney, coupled with an interest, to take all actions on behalf of the Condominium permitted under this Declaration and the By-Laws, to acquire title to or lease any Unit whose owner desires to surrender, sell or lease the same, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, and to convey, sell, lease, mortgage

(but not to vote the votes appurtenant thereto) or otherwise deal with any such Units so acquired or to sublease any Unit so leased by the Board of Managers.

13. Acquisition of Units by Board of Managers. In the event any Unit Owner shall surrender his Unit, together with: (i) the undivided interest in the Common Elements, general and limited, appurtenant thereto; (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium (hereinafter collectively called the "Appurtenant Interests"), pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or in the event the Board of Managers shall purchase from any Unit Owner who has elected to sell the same, a Unit, together with the Appurtenant Interests, or in the event the Board of Managers shall purchase at a foreclosure or other judicial sale, a Unit, together with the Appurtenant Interests, title to any such Units together with the Appurtenant Interests, shall be held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective common interests. The lease covering any Unit leased by the Board of Managers, or its designee, corporate or otherwise, shall be held by the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective common interests.

14. Additional Covenants, Restrictions and Conditions. Free passage and access shall at all times be provided over and across the streets, roads and walks now or hereafter constructed on the Land for the benefit of the respective owners and occupants of all or any part thereof, their guests, licensees and invitees, and no fence or other obstruction shall at any time be erected, maintained, placed or permitted which shall in any way interfere with such free passage or access. The Common Elements of the Condominium shall be repaired and maintained by and at the cost and expense of the Condominium.

The Sponsor does hereby reserve an easement for itself, its successors or assigns, to maintain a sales office and/or Model Units, to erect and maintain one or more free-standing and other selling, directional and informational signs as it deems necessary, and to have free passage and access over and use of the streets, roads, walks and parking areas on the Land for the purpose of offering for sale or lease Condominium Units in this Condominium until such time as all such units have been sold and conveyed to Purchasers thereof.

15. Units Subject to Declaration, By-Laws and Rules and Regulations. All provisions of this Declaration, the By-Laws and the Rules and Regulations annexed thereto, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and every part thereof and interest therein, and all of the provisions thereof shall be binding upon and inure to the benefit of the owner of all or any

part thereof, or interest therein, and his heirs, executors, administrators, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and Rules and Regulations and the Corporate Documents, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions, shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were stipulated at length in each and every deed and conveyance and lease thereof.

16. Rights of Mortgagees.

A. A first mortgagee shall, upon request, be entitled to written notification from the Board of Managers of any default by Unit Owners in the performance of his obligations under the Declaration or By-Laws, including but not limited to a default in payment of Common Charges.

B. Any first mortgagee who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for

unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit)

C. Unless at least 75% of the first mortgagees (based upon one vote for each mortgage owned) of Units have given their prior written approval, the Board of Managers shall not be entitled to:

(1) by act or omission seek to abandon or terminate the Condominium;

(2) change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the common elements;

(3) partition or subdivide any Unit;

(4) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause;

(5) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to common

elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium;

(6) make alterations, additions or improvements in or to any Common Elements which would cost in excess of \$30,000 in the aggregate in any calendar year; or

(7) modify or amend the By-Laws of the Condominium.

D. First mortgagees shall have the right to examine the books and records of the Condominium.

E. First mortgagees shall receive written notice from the Board of Managers of any loss to, or taking of, the common elements of the Condominium project if such loss or taking exceeds \$30,000.

F. If written request therefor is received by the Board, first mortgagees shall receive duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, at least ten (10) days prior to expiration of the then current policies.

17. Amendment of Declaration. This Declaration may be amended by the vote of at least 66-2/3% in number and in common interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, or in lieu of a meeting, any amendment may be approved in writing by 66-2/3% in number and in common interest of all Unit Owners, provided, however, that no amendment which shall

adversely affect the lien of any mortgage may be made without the written consent of the mortgagee.

The Sponsor hereby reserves the right to amend or (on request of Sponsor or its designee) to require the Board of Managers to duly execute and record in the County Clerk's office and elsewhere an Amendment to this Declaration at any time without the requirement of a vote and without the approval or consent of any Unit Owners or mortgagees for the sole purpose of filing the Floor Plans required by the New York Real Property Law Section 339-p for the Building and appurtenances for which the Floor Plans may be incomplete at the time the Declaration is recorded and filing along with said amendment to the Declaration and the Floor Plans the verified statement of a registered architect or licensed professional engineer certifying that the plans being filed simultaneously with such amendment, fully and fairly depict the layout, location, unit designations and approximate dimensions of the particular Unit or Units as built, as provided in said Section 339-p.

No such amendment shall be effective until recorded in the office of the County Clerk of Monroe County.

The provisions of this Section may not be amended or deleted in whole or in part without the consent of the Sponsor, so long as Sponsor or its designee owns any Unit.

18. Invalidity. The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this







SCHEDULE A

All that tract or parcel of land situate in the Town of Perinton, County of Monroe and State of New York, being part of Town Lot 45, Township 12, Range 4, and more particularly described as follows:

Beginning at a point in the west right of way line of Mosley Road, said point being south 830.52 feet from the intersection of the west right of way line of Mosley Road and the southerly right of way line of Hulbert Avenue; thence (1) west a distance of 170.0 feet to a point; thence (2) north  $78^{\circ} 00' 00''$  west, a distance of 75 feet to a point; thence (3) north  $88^{\circ} 00' 41''$  west a distance of 606.47 feet to a point; thence (4) north  $00^{\circ} 14' 18''$  east, a distance of 798.34 feet to a point in the southerly right of way line of Hulbert Avenue; thence (5) south  $89^{\circ} 41' 55''$  east, along the southerly right of way line of Hulbert Avenue, a distance of 846.16 feet to a point in the west right of way line of Mosley Road; thence (6) south 830.52 feet along the west right of way line of Mosley Road to the point and place of Beginning.

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BY-LAWS  
OF  
WESTAGE AT HARTS WOODS

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New York, New York 10017

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ARTICLE I

GENERAL

Section 1. Unit Ownership. The property consisting of approximately 15.83 acres located on Great Wood Court, off Route 250 (Mosley Road), in the Town of Perinton, Monroe County, State of New York (hereinafter called the "Property") has been submitted by Westage Harts Woods Associates (the "Sponsor") to the provisions of Article 9-B of the Real Property Law of the State of New York by the Declaration recorded in the Office of the County Clerk of Monroe County, simultaneously herewith. The Condominium thereby created shall hereinafter be known as WESTAGE AT HARTS WOODS (hereinafter called the "Condominium"). Unless otherwise provided herein, all terms used in these By-Laws shall have the same meaning as ascribed thereto in the Declaration.

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the Buildings and all other improvements thereon (including the Units and the Common Elements), owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Article 9-B of the Real Property Law of the State of New York.

Section 3. Application. All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations.

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

Section 4. Office. The office of the Condominium and of the Board of Managers shall be located at the Condominium or at such other place, reasonably convenient thereto, as may be designated from time to time by the Board of Managers.

## ARTICLE II

### BOARD OF MANAGERS

Section 1. Number and Term. The affairs of the Condominium shall be governed by the Board of Managers. The number of Managers which shall constitute the whole Board shall not be less than three (3) and not more than nine (9). Until succeeded by the Managers elected at the first annual meeting of Unit Owners, the Board of Managers shall consist of three (3) persons designated by the Sponsor, none of whom shall be a Unit Owner, plus one member to be designated by the Unit Owners as hereinafter provided in Section 5 of this Article II.

Thereafter, all Managers shall be Unit Owners or spouses of Unit Owners, and no Member shall continue to serve on the Board after he or she ceases to qualify as herein provided. Notwithstanding the foregoing, Members of the Board of Managers designated by the Sponsor or its designee need not be Unit Owners and shall serve for a term of one (1) year.

Within the limits above specified, the number of Managers shall be determined by the Unit Owners at their annual meetings. All other Members of the Board of Managers shall be elected at the annual meeting of the Unit Owners. At the first annual meeting of the Unit Owners at which the Sponsor may no longer designate a majority of the members of the Board of Managers, the term of office of one third (1/3) of the Managers shall be fixed for three (3) years. The term of office of one third (1/3) of the Managers shall be fixed at two (2) years, and the term of office of one third (1/3) of the Managers shall be fixed at one (1) year. The longest terms shall be awarded to the Managers elected by the most votes. At the expiration of the initial term of office of each respective Manager, his successor shall be elected to serve a term of three (3) years. The Managers shall hold office until their successors have been elected and hold their first meeting. But, in any event, at least one-third of the terms of the Members of the Board of Managers shall expire annually.

Section 2. Powers and Duties. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all acts and things on

behalf of the Condominium except those which by law or by the Declaration or by these By-Laws may not be delegated to the Board of Managers by the Unit Owners. The powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the Common Elements.

① ✕ (b) Determination of the common charges required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Property.

(c) Collection of the common charges from the Unit Owners, and imposition and collection of reasonable late charges for late payment thereof.

(d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements.

✕ (e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the Property subject to a right of the Unit Owners to overrule the Board (see Article VI, Section 16).

✕ (f) Maintaining bank accounts on behalf of the Condominium and designating the signatories required therefor.

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

✕ (h) Purchasing of Units at foreclosure or other judicial



sale in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners.

*D\** (i) Selling, leasing, mortgaging (but not voting the votes appurtenant to), or otherwise dealing with Units acquired by, and subleasing Units leased by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners.

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

(k) Obtaining and reviewing of insurance for the Property, including the Units, pursuant to the provisions of Article VI, Section 2 hereof.

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

\* (m) Enforcing obligations of the Unit Owners, allocating profits and expenses and doing anything and everything else necessary and proper for the sound management of the Condominium.

\* (n) Levying fines against the Unit Owners for violations of the Rules and Regulations established by it to govern the conduct of the Unit Owners as provided in Article VI Section 19 of these By-Laws, and such fines may be collected as if they were common charges owed by the Unit Owner against whom such fines were levied.

*\* Not deleg to Manage Repl  
Exec Com*

\* (o) Adjusting and settling claims under insurance policies obtained pursuant to Article VI Section 2 and executing and delivering releases on settlement of such claims on behalf of all Unit Owners, all holders of mortgages or other liens on the Units and all owners of any other interest in the Property.

\* (p) Reviewing tax assessments of Units, and challenging same when necessary on behalf of Unit Owners.

\* (q) Except as limited in Subparagraph (r) of this Section, borrowing money on behalf of the Condominium when required in connection with the operation, care and upkeep of the Common Elements.

\* (r) Provided the prior consent of at least 66 2/3% in number and in common interest of all Unit Owners is obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, the Board of Managers shall have the power to: (i) convert general Common Elements to Limited Common Elements or to convert Limited Common Elements to general Common Elements, (ii) lease Common Elements, general or limited, and (iii) borrow a sum in excess of \$30,000.

Notwithstanding anything to the contrary contained in these By-Laws, so long as the Sponsor or its designee shall continue to own fifty-eight (58) or more Units, but not more than three (3) years from the first closing of title to a Unit, the Board of Managers may not, without the Sponsor's prior written consent, (i) make any addition, alteration or improvement to the Common Elements or to any Unit except those required by law or (ii) assess any common charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus

fund in excess of the contingency fund set forth in the Schedule of Estimated Receipts and Expenses for First Year of Operation set forth in the Offering Plan for the Condominium, or (iii) hire any employees in addition to the employees referred to in the Plan or (iv) enter into any service or maintenance contract for work not required by law or provided for in the Plan or (iv) borrow money on behalf of the Condominium.

Section 3. Managing Agent and Manager. The Board of Managers may employ for the Condominium a managing agent and/or a manager at a compensation established by the Board of Managers, to perform such duties and services as the Board of Managers shall authorize, including, but not limited to the duties listed in subdivisions (a), (c), (d), (k) and (l) of Section 2 of this Article II. The Board of Managers may delegate to the manager or managing agent, all of the powers granted to the Board of Managers by these By-Laws other than the powers set forth in subdivisions (b), (e), (f), (g), (h), (i), (j), (m), (n), (o), (p), (q) and (r) of Section 2 of this Article II. The compensation for the managing agent and/or manager will be at a competitive rate.

Any agreement with a manager or managing agent shall be for a term not to exceed three years and shall provide for termination with or without cause after two (2) years on no less than thirty (30) days prior written notice. Any such agreement shall provide that the books and records of the Condominium shall be returned to the Board of Managers by the manager or managing agent upon demand.

Section 4. Action By Board of Managers Requiring Mortgagees' Consent. Unless at least 75% of the first mortgagees (based upon one vote for each mortgage owned) of Units have given their prior written approval, the Board of Managers shall not be entitled to:

(a) by act or omission seek to abandon or terminate the Condominium;

(b) change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(c) partition or subdivide any Unit;

(d) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.

(e) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium.

Section 5. First Board of Managers and Sponsor's Representation. The first Board of Managers shall consist of three (3) persons designated by the Sponsor, who shall hold office and exercise all powers of the Board of Managers until the first annual meeting of Unit Owners, plus a Unit Owner to be

( elected by a majority of Unit Owners other than the Sponsor within sixty (60) days of the closing of title to the first Unit. At the first annual meeting of Unit Owners, the member elected by the Unit Owners shall resign and a new election shall be held. The first annual meeting of Unit Owners shall be held within thirty (30) days after either the closing of title to all the Units or one (1) year from the closing of title to the first Unit, whichever first occurs. If at the time of such meeting the Sponsor owns Units representing 51% or more of the common interests, the Sponsor may control the Board for a second year. Thereafter, the Sponsor must relinquish control.

( Notwithstanding anything to the contrary contained in these By-Laws, a special meeting of the Unit Owners shall be held on fifteen (15) days written notice, within thirty (30) days after either the second anniversary of the date of the first closing of title to a Unit or the sale of Units representing, in the aggregate, 51% of the common interest, whichever occurs first. At such meeting, all Members of the Board of Managers shall resign and a new Board shall be elected by the Unit Owners.

( After the Sponsor has turned over control of the Board to the Unit Owners, and assuming a nine (9) Member Board of Managers, so long as the Sponsor or its designee owns 100 or more Units, the Sponsor or its designee shall be entitled to designate 4 of the Members of the Board of Managers. If the Sponsor or its designee owns 75 or more Units but fewer than 100, the Sponsor or its designee shall be entitled to designate 3 of the Members of the Board of Managers. If the Sponsor or its designee owns 50 or more Units but less than 75, Sponsor or its designee shall be

entitled to designate 2 of the Members of the Board of Managers. If the Sponsor or its designee owns fewer than 50 Units but at least 5 Units, the Sponsor or its designee shall be entitled to designate 1 representative as a Member of the Board of Managers. If the Board of Managers shall consist of less than nine (9) Members, the representation of the Sponsor shall be reduced proportionately. Any or all of said Managers shall be subject to replacement in the event of resignation or death in the manner set forth in Section 6 of this Article.

Section 6. Removal. Subject to the provisions of Section 1 of this Article II, at any regular or special meeting of Unit Owners, any Member of the Board of Managers, except for those Members designated by the Sponsor or its designee, may be removed with or without cause by an affirmative vote of a majority of the Unit Owners other than the Sponsor or its designee. No Member of the Board shall continue to serve on the Board if, during his term of office, he shall cease to be a Unit Owner or the spouse of a Unit Owner.

Section 7. Vacancies. Vacancies in the Board of Managers caused by any reason other than the removal of a Member thereof by a vote of the Unit Owners shall be filled by vote of a majority of the remaining Members at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the Members present at such meeting may constitute less than a quorum, and each person so elected shall be a Member of the Board of Managers until a successor shall be elected at the next annual meeting of the Unit Owners to serve the remaining term. Notwithstanding the

foregoing, vacancies of Managers designated by the Sponsor or its designee shall be filled only by the Sponsor or said designee.

Section 8. Organization Meeting. The first meeting of the Board of Managers following the annual meeting of the Unit Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by a majority of the Members of the Board of Managers, and no notice shall be necessary to the newly elected Members of the Board of Managers in order legally to constitute such meeting, provided that a majority of the whole Board of Managers shall be present thereat.

Section 9. Regular Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the Members of the Board of Managers, but at least six such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each Member of the Board of Managers, by personal delivery, mail or telegram, at least three (3) business days prior to the day named for such meeting. The Board of Managers shall have the discretion to determine which regular meetings are open meetings which may be attended by Unit Owners.

Section 10. Special Meetings. Special meetings of the Board of Managers may be called by the President on three (3) business days' notice to each Member of the Board of Managers, given by personal delivery, mail or telegram, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Managers shall be called by the

President or Secretary in like manner and on like notice on the written request of at least three (3) members of the Board of Managers. Special meetings are closed meetings which may not be attended by Unit Owners unless otherwise specifically provided.

Section 11. Waiver of Notice. Any Member of the Board of Managers may at any time waive notice of any meeting of the Board of Managers in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member of the Board of Managers at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the Members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum of Board of Managers. At all meetings of the Board of Managers, a majority of the Members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the Members of the Board of Managers present at a meeting at which a quorum is present shall constitute the decision of the Board of Managers. If at any meeting of the Board of Managers there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice. Any action required or permitted to be taken by the Board of Managers or any committee thereof may be taken without a meeting if all members of the Board or the



committee consent in writing to the adoption of a resolution authorizing such action, and the writing or writings are filed with the proceedings of the Board or the committee.

Section 13. Compensation. No member of the Board of Managers shall receive any compensation from the Condominium for acting as such.

Section 14. Liability of the Board of Managers. The Members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the Members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the Members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium (except as Unit Owners). It is understood and permissible for the original Board of Managers, who may be members of or be employed by the Sponsor, to contract with the Sponsor and affiliated corporations and entities without incurring any liability for self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the Members of the Board of Managers shall be limited to such proportion of the total liability thereunder as his

interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the managing agent or by the manager on behalf of the Condominium shall provide that the members of the Board of Managers, or the managing agent, or the manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

Section 15. Executive Committee. The Board of Managers may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Managers, at least one of whom shall be a member designated by the Sponsor or Sponsor-affiliate so long as the Sponsor or Sponsor-affiliate has the right to designate a member of the Board. Such Executive Committee shall have and may exercise all the powers of the Board of Managers in the management of the business and affairs of the Condominium during the intervals between the meetings of the Board of Managers insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the common charges and expenses required for the affairs of the Condominium, (b) to determine the common charges payable by the Unit Owners to meet the common expenses of the Condominium, (c) to adopt or amend the Rules and Regulations covering the details of the operation and use of the

Property or (d) to exercise any of the powers set forth in subdivisions (g), (h), (i), (p) and (q) of Section 2 of Article II.

Section 16. Other Committees. The Board of Managers may by resolution create such other committees as it shall deem appropriate and such committees shall have such powers and authority as the Board of Managers shall vest therein. The members of any such committee, at least one of whom shall be designated by the Sponsor or a Sponsor-affiliate so long as the Sponsor or Sponsor-affiliate has the right to designate a member of the Board, shall be appointed by the President of the Condominium. Such committee shall not have power to do any act which the Executive Committee may not do under subsections (a)-(d) of Section 15 of Article II.

### ARTICLE III

#### UNIT OWNERS

Section 1. Annual Meetings. Within thirty (30) days after either the closing of title to all of the Units or one (1) year from the conveyance of title to the first Unit, whichever first occurs, or at such earlier time as Sponsor deems to be in the best interests of the parties, the Sponsor shall call the first annual Unit Owners' meeting. At such meeting, the Board of Managers shall resign, and a new Board shall be elected by the Unit Owners, or the Sponsor shall continue to control the Board, as hereinbefore provided in Article II, Section 5 of these By-Laws. Thereafter, annual meetings shall be held on or about

the anniversary of the date of such special meeting each succeeding year. At such meetings there shall be elected by ballot of the Unit Owners a Board of Managers in accordance with the requirements of Article II of these By-Laws. The Unit Owners may also transact such other business of the Condominium as may properly come before them.

Prior to the actual meeting at which the Unit Owners elect the Board of Managers as herein provided, the Sponsor may call, at its discretion, meetings of Unit Owners so that the Board of Managers designated by the Sponsor can report to the Unit Owners or for such other purpose as the Board determines.

Section 2. Place of Meetings. Meetings of the Unit Owners shall be held at the principal office of the Condominium or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Managers.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Unit Owners if so directed by resolution of the Board of Managers or upon a petition signed by a majority in common interest of the Unit Owners and presented to the Secretary.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at least five (5) but not more than thirty (30) days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

Section 5. Adjournment of Meetings. If any meeting of Unit Owners cannot be held because a quorum has not attended, a majority of the Unit Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 6. Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

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

Section 7. Title to Units. Title to Units may be taken in the name of an individual, in the names of two (2) or more persons, as tenants in common, joint tenants or tenants by the entirety, or in the name of a corporation or partnership or in the name of a fiduciary.

Section 8. Voting. The Owner or Owners of each Unit, or some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner, shall be

entitled to cast the votes appurtenant to such Unit at all meetings of Unit Owners. The designation of any such proxy shall be made in writing to the Secretary, and shall be revocable at any time by written notice to the Secretary by the Owner or Owners so designating. Any or all of such Owners may be present at any meeting of the Unit Owners and (those constituting a group acting unanimously), may vote or take any other action as a Unit Owner either in person or by proxy. The owners of each Unit (including the Sponsor, if the Sponsor shall then own one or more Units) shall be entitled to cast one vote for each .01% of interest in the common elements attributable to the Unit or Units owned by him on all matters put to a vote at all meetings of Unit Owners. A fiduciary shall be the voting member with respect to any Unit in a fiduciary capacity. Any Unit or Units owned by the Board of Managers or its designee shall not be entitled to a vote.

Section 9. Majority of Unit Owners. As used in these By-Laws the term "majority of Unit Owners" shall mean those Unit Owners having greater than 50% of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, determined in accordance with the provisions of Section 8 of this Article III.

Section 10. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of Unit Owners shall constitute a quorum at all meetings of the Unit Owners.

Section 11. Majority Vote. The vote of a majority of the votes, present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where in the Declaration or these By-Laws or by law, a higher percentage vote is required.

#### ARTICLE IV

##### OFFICERS

Section 1. Designation. The principal officers of the Condominium shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary. The President and Vice President, but no other officers, need be Members of the Board of Managers.

Section 2. Election of Officers. The officers of the Condominium shall be elected annually by the Board of Managers at the organization meeting of each new Board of Managers and shall hold office at the pleasure of the Board of Managers and until their successors are elected.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the Members of the Board of Managers, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Managers, or at any special meeting of the Board of Managers called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Unit Owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Managers or by the President.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; he shall have charge of such books and papers as the Board of Managers may direct; and he shall in general perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.



Section 7. Treasurer. The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements necessary for the preparation of all required financial data. He shall be responsible for the deposit of all funds and other securities in the name of the Board of Managers, or the managing agent, in such depositories as may from time to time be designated by the Board of Managers, and he shall, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York.

Section 8. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by any two (2) officers of the Condominium or by such other person or persons as may be designated by the Board of Managers.

Section 9. Compensation of Officers. No officer shall receive any compensation from the Condominium for acting as such.

#### ARTICLE V

#### NOTICES

Section 1. Notices. All notices required or desired to be given hereunder shall be sent by registered or certified mail (return receipt requested) to the Board of Managers c/o the managing agent, or if there be no managing agent, to the office of the Board of Managers or to such other address as the Board of Managers may hereafter designate from time to time, by notice in

writing to all Unit Owners and to all mortgagees of Units. All notices to any Unit Owner shall be sent by registered or certified mail (return receipt requested) to the Property address of such Unit Owner or to such other address as may have been designated by him from time to time, in writing, to the Board of Managers. All notices to mortgagees of Units shall be sent by registered or certified mail (return receipt requested) to their respective addresses, as designated by them from time to time, in writing to the Board of Managers. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of change of address which shall be deemed to have been given when received.

Section 2. Waiver of Service of Notice. 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.

## ARTICLE VI

### OPERATION OF THE PROPERTY

Section 1. Determination of Common Expenses and Fixing of Common Charges. The Board of Managers shall from time to time, at least annually, prepare a budget for the Condominium, determine the amount of the common charges payable by the Unit Owners to meet the common expenses of the Condominium and allocate and assess such common charges among the Unit Owners according to their respective common interests. The common

expenses shall include, without limitation, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of Section 2 of this Article VI and the fees and disbursements of the Insurance Trustee. The common expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, electric costs for the common areas, water and sewer charges for service to the Units and the Common Elements, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year. The common expenses may also include such amounts as the Board of Managers may deem necessary for customary or extraordinary legal expenses incurred with respect to the Condominium Property. Until title to all Units has been conveyed, the Board of Managers can reduce the amount of common charges allocated to the Units and payable by Unit Owners (including the Sponsor as owner of unsold Units). Any such reduction shall be in proportion to each Unit Owner's percentage of interest in the Common Elements. The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, of any Unit whose owner has elected to sell or lease such Unit or of any Unit which is to be sold at a foreclosure or other judicial sale. The Board of Managers shall advise all Unit Owners, promptly, in writing, of the amount

of common charges payable by each of them as determined by the Board of Managers as aforesaid and shall furnish copies of such budget on which such common charges are based to all Unit Owners.

Section 2. Insurance. The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: (1) fire insurance with extended coverage, vandalism and malicious mischief endorsements insuring the Building (including all of the Units but not including furniture, furnishings, or other personal property), together with all service machinery contained therein and covering the interests of the Condominium, the Board of Managers and all Unit Owners and their mortgagees, as interest may appear, in an amount equal to the full replacement value of the Buildings (exclusive of foundations), without deduction for depreciation, as determined by the Board of Managers and approved by 75% of first mortgagees of Units (based on one vote for each said mortgage owned); each of said policies shall contain a Condominium Property Endorsement and a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee, as herein provided; (2) workmen's compensation insurance; (3) disability benefits insurance; (4) Officers and Directors liability insurance; (5) a fidelity bond or bonds in sufficient amounts, to fully protect the interest of the Condominium, to be carried on each member of the Board of Managers, officers of the

Condominium, managing agent and managers including any person or persons handling or responsible for funds of the Condominium; and (6) such other insurance as the Board of Managers may determine. All such policies shall provide that adjustment of loss shall be made by the Board of Managers with the approval of the Insurance Trustee (if over \$15,000), and that the net proceeds thereof, if \$15,000.00 or less, shall be payable to the Board of Managers and if more than \$15,000.00, shall be payable to the Insurance Trustee, to be applied for the purpose of repairing, restoring or rebuilding the Building unless otherwise determined by the Unit Owners.

All policies of physical damage insurance shall contain waivers of subrogation and of any defense based on co-insurance or reduction of pro-rata liability of the insurer as a result of any insurance carried by Unit Owners, or of invalidity arising from any acts of the insured or any Unit Owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of Units. The standard mortgagee loss payable clause shall be attached to all policies. If written request therefor is received by the Board, duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies.

The Board of Managers shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in

such limits as the Board of Managers may from time to time determine, covering each Member of the Board of Managers, the managing agent, the manager, if any, and each Unit Owner, for claims for bodily injury or property damage arising out of any one occurrence in the Common Elements. Such public liability coverage shall also cover cross liability claims of one insured against another, but shall not cover the liability of a Unit Owner arising from occurrences within his own Unit.

Unit Owners are encouraged to carry other insurance for their own benefit provided that all such policies shall contain waivers of subrogation against the Condominium and the Board of Managers and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Such policies shall be so endorsed as to state that they will in no way conflict with any insurance carried by the Board of Managers.

Section 3. Repair or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of the Buildings as a result of fire or other casualty, unless 75% or more of all Buildings are destroyed or substantially damaged and 75% or more in number and common interest of the Unit Owners do not duly and promptly resolve to proceed with repair or restoration, the Board of Managers shall arrange for the prompt repair and restoration of the Buildings (including any damaged Units, but not including any wall, ceiling, or floor decorations or coverings or other furniture, furnishings, fixtures or other

personal property or equipment), and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies in appropriate progress payments to the contractors engaged in such repairs and restoration. Any cost of such repair and restoration in excess of the net insurance proceeds shall constitute a common expense and the Board of Managers shall assess all the Unit Owners for such deficit as part of the common charges.

In the event of a repair or restoration pursuant to the first paragraph of this Section 3 and in the event that the net proceeds of insurance received by or payable to the Board of Managers or the Insurance Trustee, as the case may be, shall exceed the cost of such repair or restoration, then the excess of such insurance proceeds shall be paid by the Board of Managers or the Insurance Trustee, as the case may be, to all Unit Owners in proportion to their respective interests in the Common Elements after first paying out of the share due each Unit Owner such amounts as may be required to reduce unpaid liens on any Unit in the order of priority of such liens.

If 75% or more of the Buildings are destroyed or substantially damaged and 75% or more in number and in common interest of the Unit Owners do not duly and promptly resolve to proceed with repair or restoration, the Property will not be repaired and shall be subject to an action for partition at the suit of any Unit Owner or lienor, as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies shall be divided by the Board of Managers or the

Insurance Trustee, as the case may be, among all the Unit Owners in proportion to their respective common interests, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

Whenever in this Section the words "promptly repair" are used it shall mean repairs are to begin not more than sixty days from the date the Insurance Trustee notifies the Board of Managers and the Unit Owner or Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated costs of such work, or not more than ninety days from the date the Insurance Trustee notifies the Board of Managers and Unit Owner or Owners that such proceeds of insurance are insufficient to pay said estimated costs of such work or, in the event the proceeds of insurance are payable to the Board of Managers, not more than sixty days from the date of receipt by the Board of Managers of proceeds of insurance on account of such damage or destruction, whether or not sufficient to pay the estimated costs of such work. Whenever the words "promptly resolve" are used it shall also mean not more than sixty days from the date the Insurance Trustee or the Board of Managers, as the case may be, notifies the Unit Owners that it holds proceeds of insurance on account of such damage or destruction and that such proceeds are or are not sufficient to pay the estimated costs of the work (as the case may be).

In the event of any loss to the common elements in excess of



\$10,000, the Board of Managers shall promptly notify all mortgagees of Units of such loss.

Section 4. Payment of Common Charges. All Unit Owners shall be obligated to pay the common charges assessed by the Board of Managers pursuant to the provisions of Section 1 of this Article VI at such time or times as the Board of Managers shall determine. The Board of Managers shall have the authority to impose a reasonable late charge for late payment of common charges.

No Unit Owner shall be liable for the payment of any part of the common charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of Section 1 of Article VIII of these By-Laws) of such Unit, together with the "Appurtenant Interests", as defined in Section 1 of Article VIII hereof. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his Unit is free and clear of liens and encumbrances other than permissible mortgages and the statutory lien for unpaid common charges, convey his Unit, together with the Appurtenant Interests to the Board of Managers, or its designee, corporate or otherwise, on behalf of all other Unit Owners, and in such event be exempt from common charges thereafter accruing. A purchaser of a Unit shall be liable for the payment of common charges assessed and unpaid against such Unit prior to the acquisition by him of such Unit, except that, to the extent permitted by law, a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall not be liable

for, and such Unit shall not be subject to a lien for, the payment of common charges assessed prior to the foreclosure sale. Each purchaser of a Unit, other than those purchasers who were in occupancy of apartments at the Building on the date the Sponsor filed an Offering Plan for the establishment of the Condominium and their assigns, shall at the closing of title to his Unit pay to the Condominium a sum equal to twice the monthly Common Charges then being assessed against said Unit.

Section 5. Assessment Roll and Collection of Assessments. An assessment roll shall be maintained in a set of accounting books duly approved by a certified public accountant in which there shall be an account for each Unit.

The Board of Managers shall take prompt action to collect any common charge due from any Unit Owner which remains unpaid for more than 30 days after the due date for payment thereof.

Section 6. Default in Payment of Common Charges. In the event any Unit Owner shall fail to make prompt payment of his common charges, such Unit Owner shall be obligated to pay interest at the highest legal rate on such unpaid common charges computed from the due date thereof, together with all expenses, including attorneys' fees, paid or incurred by the Board of Managers in any proceeding brought to collect such unpaid common charges or in an action to foreclose the lien on such Unit arising from said unpaid Common Charges. The Board of Managers shall have the right and obligation to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to

recover the same brought against such Unit owner, or by foreclosure of the lien on such Unit granted by Section 339-z of the Real Property Law of the State of New York, in the manner provided in Section 339-aa thereof.

Section 7. Foreclosure of Liens for Unpaid Common Charges. In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of all Unit owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant to), convey or otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

In the event the net proceeds received on such foreclosure (after deduction of all legal fees, advertising costs, brokerage commissions and other costs and expenses incurred in connection therewith) shall be insufficient to satisfy the defaulting Unit Owner's obligation to the Condominium, then such Unit Owner shall remain liable for the deficit.

Section 8. Statement of Common Charges. The Board of Managers shall promptly provide any Unit Owner so requesting the same in writing, with a written statement of all unpaid common charges due from such Unit Owner.

Section 9. Maintenance and Repairs. (a) All maintenance, repairs and replacements in and to any Unit, ordinary or extraordinary, and to the doors (except painting exterior side of Unit entrance doors), windows, electrical (except Common Elements), plumbing (except Common Elements), heating fixtures such as individual furnaces and hot water baseboards, and air conditioning units and condensers within the Unit or belonging to the Unit Owner shall be at the Unit Owner's expense, except as otherwise specifically provided herein.

(b) All maintenance, repairs and replacements to the Common Elements as defined in the Declaration (except as otherwise provided with respect to the Limited Common Elements), and the painting and decorating of the exterior side of Unit entrance doors shall be made by the Board of Managers and be charged to all the Unit Owners as a common expense, except to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner as additional common charges.

Section 10. (a) Patios and Balconies. A patio or balcony to which there is direct access from the interior of a Unit, shall be for the exclusive use of the Owner of such Unit. Any such patio or balcony shall be kept free and clear of snow, ice and any other accumulation by the Owner of such Unit at his expense. He shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All other repairs in, to or with respect to patios and balconies shall be made by the Board of Managers, as a common expense.

(b) Storage Lockers. Basement storage lockers specifically allocated to Units shall be for the exclusive use of the Owner of such Unit. All maintenance, repairs and replacements to the interior of such storage areas shall be the responsibility of the Unit Owner. He shall also be responsible for repairs to the common area portion of such area necessitated by his negligence, misuse or neglect.

Section 11. Restrictions on Use of Units. In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

(a) The Units shall be used only as a residence, with not more than two adults or one family occupying a Unit at one time, except that they may also be used as a professional office by a resident thereof provided such professional use does not violate zoning regulations and provided further that the prior consent of the Board of Managers to such professional use is obtained. Notwithstanding the foregoing, the Sponsor (or its designee) may without the permission of the Board of Managers, retain ownership of one or more Units for use as models, sales and/or business offices in connection with the sale or rental of Units in this Condominium.

(b) The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

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

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

(e) No portion of a Unit (other than the entire Unit) may be rented, and no transient tenants may be accommodated therein.

Section 12. Addition Alterations or Improvements by Board of Managers. All alterations, additions or improvements in or to any Common Elements shall be made either by the Board or Unit Owner required to maintain such Common Element and the cost and expense thereof shall be charged either to all Unit Owners as a common expense or to the Unit Owner responsible therefor, as the case may be. Whenever in the judgment of the Board of Managers the Common Elements shall require additions, alterations or improvements costing in excess of \$30,000.00 in the aggregate in any calendar year, and the making of such additions,

alterations or improvements shall have been approved by a majority of the Unit Owners present and voting at a meeting at which a quorum is present and by 75% of first mortgagees of Units (based upon one vote for each mortgage owned), the Board of Managers shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a common charge. Any additions, alterations or improvements costing in the aggregate \$30,000.00 or less in any calendar year may be made by the Board of Managers without approval of the Unit Owners or said mortgagees and the cost thereof shall constitute part of the common expenses.

Notwithstanding the foregoing, so long as the Sponsor or its designee shall own at least fifty-eight (58) Units, but not more than three (3) years from the date of the first closing of title to a Unit, no additions, alterations or improvements shall be made to the Common Elements, regardless of the cost thereof, unless the consent of Sponsor or its designee, is first obtained pursuant to Article II Section 2, unless such action is required by law or provided for in the budget.

Section 13. Additions, Alterations or Improvements by Unit Owners. No Unit Owner shall make any structural addition, alteration, or improvement in or to his Unit, without the prior written consent thereto of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit within thirty (30) days after such request is received and

failure to do so within the stipulated time shall constitute a denial by the Board of Managers to the proposed addition, alteration or improvement. Any application to any department of the Town of Perinton or to any other governmental authority for a permit to make an addition, alteration or improvement in or to any Unit which has been approved by the Board of Managers shall be executed by the Board of Managers, without, however, incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The Unit Owner making or causing to be made any structural additions, alterations or improvements agrees, and shall be deemed to have agreed, to hold the Board of Managers and all other Unit Owners harmless from any liability arising therefrom. The provisions of this Section 13 shall not apply to Units owned by the Sponsor or its designee until such Units shall have been initially sold and conveyed.

Section 14. Use of Common Elements. No furniture, packages or objects of any kind shall be placed on the grounds, walks, or other public areas, or any other part of the Common Elements other than the areas, if any, designated as storage areas. The grounds, walks and other public areas shall be used only for the purposes established by the Board of Managers from time to time. The provisions of this Section 14 shall not apply to the Sponsor or its designee until such time as all Units have been initially sold and conveyed by the Sponsor or its designee;



however, Sponsor or its designee shall not use the Common Elements in such a manner as will unreasonably interfere with the use of the other Units for residential purposes.

Section 15. Right of Access. A Unit Owner shall grant a right of access to his Unit to the Board of Managers, the manager and/or the managing agent and/or any other person authorized by the Board of Managers, for the purpose of making inspections to determine if there exist conditions threatening another Unit or a Common Element, or violations of the By-Laws or Rules and Regulations of the Condominium or any State or Municipal ordinances, or for the purpose of correcting any conditions originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Building, provided that requests for such entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not. In the event of the exercise of the right of access provided in this Section 15, any costs for repairs shall be borne in accordance with the provisions of Section 9 of this Article VI.

Section 16. Rules and Regulations. Rules and regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board of Managers. A majority vote of Unit Owners at a meeting may overrule the

Board. Copies of such rules and regulations shall be furnished by the Board of Managers to each Unit Owner prior to time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers are annexed hereto and made a part hereof as Exhibit A.

Section 17. Water Charges and Sewer Rents. Water shall be supplied to all of the Units and the Common Elements through one or more building meters and the Board of Managers shall pay, as a common expense, all charges for water consumed on the Property, including the Units, together with all related sewer rents arising therefrom, promptly after the bills for the same shall have been rendered. In the event of a proposed sale of a Unit by the Owner thereof, the Board of Managers, on request of the selling Unit Owner shall execute and deliver to the purchaser of such Unit or to the purchaser's title insurance company, a letter agreeing to pay all charges for water and sewer rents affecting the Property as of the date of closing of title to such Unit promptly after such charges shall have been billed.

Section 18. Electricity and Gas. Electricity for appliances, cooking, air conditioning and in some Buildings heating, and gas for heating the remainder of the Building, shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for electricity and gas consumed or used in his Unit. The electricity serving the Common Elements, and electricity or gas for the laundry facilities and

for hot water shall be separately metered, and the Board of Managers shall pay all bills for such gas and electricity as a common expense.

Section 19. Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Board of Managers, or the breach of any By- Law contained herein, or the breach of any provision of the Declaration, shall give the Board of Managers the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. Additionally, should any Unit Owners, members of their families, their employees, guests, lessees or other invitees fail to comply with any rules and regulations set forth in the Declaration and/or the By-Laws and Rules and Regulations promulgated by the Board of Managers from time to time, the following procedures may be followed to obtain compliance:

(a) A committee of three (3) people, consisting of a member of the Board of Managers (excepting the President) who is the liaison on the Board of Managers to the Rules and Regulations Committee shall be appointed by the Board of Managers and designated to the Compliance Committee to serve at the pleasure of the Board of Managers.

(b) The Compliance Committee shall first undertake to obtain compliance with the Rules and Regulations, informally, by discussing violations of the same with the persons violating

them, and seeking to obtain future compliance, or corrections of the ongoing violations.

(c) Should this informal procedure prove unsatisfactory or not secure future compliance, the Compliance Committee shall then send a written notice to the person violating a rule or regulation, notifying him or her of the claimed violation, and requesting, as the case may require, either a correction of the violation, or an assurance that similar violations will not occur in the future. Such notice shall establish a date for compliance.

(d) Should such notice obtain the requested compliance, that will dispose of the matter, unless the same or a similar violation of any Rule or Regulation thereafter re-occurs.

(e) Should such notice not obtain the requested compliance within the time requested, the Compliance Committee shall then be authorized, at its discretion, to establish a monetary and/or non-monetary penalty, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar violations in the future by the same or any other person. Such fine shall become a binding personal obligation of the violator. Failure to correct the condition or situation which leads to the first fine, for a period of twenty (20) days after the initial fine becomes finally due and payable, shall constitute a second offense. Notice of the imposition of such fine or fines shall be mailed to the violator, and shall be paid by him or her to the Condominium within ten (10) days

thereafter, unless the violator requests the right to arbitrate the matter within ten (10) days, as hereafter set forth, before the Arbitration Committee. Should he or she not pay the fine, or request the right to arbitrate it, and if the violator is a Unit Owner, or a family member, tenant, guest, employee or other invitee of said Unit Owner, the amount of the fine shall be added to the violator's common charges on the first of the month following the termination of the ten (10) day period above set forth, and shall be lien upon the Owner's Unit if not paid.

(f) The Arbitration Committee shall consist of the President of the Board of Managers, as Chairperson of the Committee, and two (2) other members. The two (2) additional members of the Board of Managers who will sit on the Arbitration Committee shall be appointed by the Board of Managers to serve at the pleasure of the Board of Managers.

(g) Should the violator request the right to arbitrate imposition or extent of a fine, as above set forth, he shall do so in writing, directed to the Board of Managers, within ten (10) days of his receipt of notice of the imposition of said fine. The Board of Managers shall promptly forward the same to the Arbitration Committee, which shall meet within twenty (20) days thereafter, on notice to the alleged violator, to hear and dispose of the matter. At such hearing, the alleged violator and one or more members of the Compliance Committee may be present and be heard. A decision on the matter shall be made by the

Arbitration Committee, by a majority vote, within ten (10) days following said hearing, and shall be promptly communicated to the alleged violator. If their decision is to uphold the determination of the Compliance Committee, the provisions relating to the payment and enforcement thereof, set forth in subparagraph (e) above shall apply. If their decision is in favor of the alleged violator, no fine will be imposed.

(h) In the event the violator is a person other than a Unit Owner or a member of such Unit Owner's immediate family, copies of all notices required to be given to violators under this Rule shall also be given to the Owner of the Unit occupied by such violator.

The violation or breach of any of the provisions of these By-Laws, the Rules and Regulations, or the Declaration with respect to any rights, easements, privileges or licenses granted to the Sponsor or its designee shall give to Sponsor, or its designee, as the case may be, the right, in addition to any other rights set forth in these By-Laws or the Declaration, to enjoin, abate or remedy by appropriate legal proceedings either in law or in equity, the continuance of any such violation or breach.

Section 20. No Right of Partition. As provided in Section 339-i 3. of the Real Property Law, the Common Elements shall remain undivided and no right shall exist to partition or divide any thereof, except as otherwise specifically provided therein (and described in this Article VI), as in the event of condemnation, destruction of more than 75% of the Building or termination of the Condominium.

Section 21. Furnishing of Services to Non-Purchasing Tenants. A Unit Owner who acquires a Unit occupied by a non-purchasing tenant will be required, at closing, to designate the Managing Agent as his or her agent to provide to such non-purchasing tenant all services and facilities required by law.

Such non-occupant Unit Owner will also be required to deposit with the Managing Agent at closing a sum not less than an amount equal to two (2) months Common Charges and real estate taxes, to be used as working capital to furnish services required under the non-purchasing tenant's lease. He or she will replenish this fund within twenty (20) days after notice from the Managing Agent that it has used all or part of such fund for the furnishing of the services required. Failure of the Unit Owner to replenish the fund within said twenty (20) day period shall result in the Board of Managers, on behalf of all Unit Owners, having a lien against the Unit. Any interest earned on this fund shall be the property of the Unit Owner.

#### ARTICLE VII

#### MORTGAGES

Section 1. Notice to Board of Managers. A Unit Owner is free to mortgage his Unit, provided that the Unit Owner notifies the Board of Managers of the name and address of his mortgagee and files a conformed copy of the note and mortgage with the Board of Managers. A conformed copy of the Satisfaction of any such mortgage shall also be filed with the Board of Managers.

Section 2. Notice of Unpaid Common Charges. The Board of Managers, when so requested in writing by a mortgagee of a Unit, shall give written notification to such mortgagee of a Unit of such Unit Owner's default, including non-payment of common charges, in the obligations of such Unit Owner under the Declaration, By-Laws, Rules and Regulations, as the same are amended from time to time, or in any order of the Board of Managers issued with respect thereto.

Section 3. Notice of Default. The Board of Managers, when giving notice to a Unit Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has heretofore been furnished to the Board of Managers.

Section 4. Examination of Books. Each Unit owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days.

#### ARTICLE VIII

##### SALES, LEASES AND MORTGAGES OF UNITS

Section 1. Sales and Leases. Unit Owners are free to sell or lease their Units or any interest therein, without restriction, to any person or persons, corporation, partnership or fiduciary.

Section 2. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interests, it being the intention to prevent any



severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest or interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

Section 3. Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift or to devise his Unit by will, or to pass the same by intestacy, without restriction.

Section 4. Waiver of Right of Partition with Respect to such Units as Are Acquired by the Board of Managers or Its Designee, on Behalf of All Unit Owners as Tenants in Common. In the event that any Unit shall be acquired by the Board of Managers, or its designee, on behalf of all Unit Owners as tenants in common, all such Unit Owners shall be deemed to have waived all rights of partition with respect to such Unit.

Section 5. Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have paid in full to the Board of Managers all unpaid common charges theretofore assessed by the Board of Managers against his Unit and until he

shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

Section 6. Mortgaging of Units. Subject to the preceding Section 5, each Unit Owner shall have the right to mortgage his Unit without restriction, provided that any such mortgage shall be substantially in the form of the New York statutory form of mortgage, except for such changes or additions as may be required in order to permit a particular bank, trust company, insurance company, savings and loan association or other institutional or non-institutional lender to make the mortgage loan.

Section 7. Notice of Change in Ownership. Non-purchasing tenants will be notified of changes in ownership of the Units in which they reside. Such notice will be given by regular mail within fifteen (15) days after the closing of title to the Unit.

Section 8. Financing of Purchase of Units by Board of Managers. Acquisition of Units by the Board of Managers, or its designee, on behalf of all Unit owners, may be made from the working capital and common charges in the hands of the Board of Managers, or if such funds are insufficient, the Board of Managers may levy an assessment against each Unit Owner in proportion to his interest in the Common Elements, as a common charge, which assessment shall be enforceable in the same manner as provided in Section 6 and 7 of Article VI, and/or the Board of Managers, in its discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing

may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Board of Managers.

ARTICLE IX  
CONDEMNATION

Section 1. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award for such taking shall be payable to the Board of Managers if the award does not exceed \$15,000 and shall be payable to the Insurance Trustee if it exceeds \$15,000. If 75% in number and in common interest of the Unit Owners duly and promptly approve the repair and restoration of such Common Elements, the Board of Managers shall arrange for the repair and restoration of such Common Elements, and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that 75% in number and in common interest of Unit Owners do not duly and promptly approve the repair and restoration of such Common Element, the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Section 3 of Article VI of these By-Laws. As used in this Section, the words "promptly approve" shall mean not more than sixty (60) days from the date of such taking.

In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements and the loss to the Common Elements is in excess of \$10,000, then the Board of Managers shall promptly notify all mortgagees of Units of such taking and loss.

## ARTICLE X

### RECORDS

Section 1. Records and Audits. The Board of Managers or the managing agent shall keep detailed records of the actions of the Board of Managers and the managing agent, minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall contain the amount of each assessment of common charges against each Unit, the date when due, the amounts paid thereon, and the balance, if any, remaining unpaid. In addition, an annual report of the receipts and expenditures of the Condominium, certified by an independent certified public accountant, shall be submitted by the Board of Managers to all Unit Owners within three and one-half (3 1/2) months after the end of each fiscal year. The cost of such report shall be paid by the Board of Managers as a common expense.

The books and records of the Condominium shall at all times, during reasonable business hours, be subject to inspection by Unit Owners and by first mortgagees of Units.

ARTICLE XI

MISCELLANEOUS

Section 1. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 2. 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 hereof.

Section 3. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 4. Waiver. 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.

ARTICLE XII

AMENDMENTS TO BY-LAWS

Section 1. Amendments to By-Laws. Except as otherwise provided herein and in the Declaration, these By-Laws may be modified or amended by the vote of 66 2/3% in number and in common interest of all Unit Owners cast in person or by proxy at a meeting of Unit Owners duly held for such purpose, or in lieu of a meeting by written amendment, but only with the written

approval of 75% of first mortgagees of Units (based upon one vote for each mortgage owned).

For as long as Sponsor or its designee remains the Owner of one or more Units, these By-Laws, the Rules and Regulations and the Declaration may not be modified, added to or amended so as to eliminate, change, or impair any rights, privileges, easements, licenses or exemptions granted therein or herein to Sponsor or said designee, or otherwise adversely affect Sponsor or such designee without Sponsor's or such designee's prior written consent. Notwithstanding anything to the contrary contained herein, no provision of these By-Laws, the Rules and Regulations or the Declaration relating to the use of the Units or the percentage interest of a Unit in the Common Elements may be amended without the consent of every Unit Owner affected by such amendment.

#### ARTICLE XIII

#### CONFLICTS

Section 1. Conflicts. These By-Laws and the Rules and Regulations are intended to comply with the requirements of Article 9-B of the Real Property Law of the State of New York and all other applicable laws. In case any of these By-Laws or any provision of the Rules and Regulations conflict with the provisions of said statute, the Declaration or any other applicable law, the provisions of said statute, the Declaration, or such other applicable law, as the case may be, shall control.

SCHEDULE A  
RULES AND REGULATIONS FOR  
WESTAGE AT HARTS WOODS CONDOMINIUM

1. The Units shall be used for residences only, except that they may be used as professional offices by a resident thereof provided such professional use does not violate zoning regulations and provided further that the prior consent of the Board of Managers to such professional use is obtained, and except that Sponsor (or its designee) may retain ownership of one or more Units for use as models, sales and/or production offices until such time as all the Units in this Condominium have been sold and conveyed to Purchasers thereof.

2. Except to the extent permitted or otherwise expressly authorized herein or in the By-Laws, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained or permitted on any part of the Property, nor shall any "For Sale", "For Rent" or "For Lease" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Unit therein nor shall any Unit be used or rented for transient, hotel or motel purposes. The right is reserved by the Sponsor (or its designee) and the Board of Managers, or its agent, to place, "For Sale", "For Rent" or "For Lease" signs on any unsold or unoccupied Units, and to maintain such free-standing and other selling, directional and informational signs as are deemed necessary to sell or lease

Units. The right is hereby given to any mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such mortgagee, but in no event will any such sign be larger than one (1') foot by two (2') feet. Notwithstanding this provision or any other provisions to the contrary, Units may be used as a professional office by a person who also resides on the premises. Said professional use is subject to applicable governmental regulations and the prior written permission of the Board of Managers. However, no illuminated or other sign may be used in connection with said use excepting only a professional shingle, non-illuminated, not larger than the size permitted by the Board of Managers.

3. Nothing shall be done or kept in any Unit or the Common Elements which will increase the rate of insurance on the Buildings, or contents thereof, without the prior written consent of the Board of Managers. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Buildings, or contents thereof, or which would be in violation of any law. No Unit Owner or occupant or any of his agents, servants, employees, licensees or visitors shall at any time bring into or keep in his Unit any flammable, combustible or explosive fluid, material, chemical or substance. No waste shall be committed in the Common Elements or Limited Common Elements.

4. All radio, television or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements or



recommendations of the New York Board of Fire Underwriters and the Public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Unit.

No radio or television aerial or other similar device shall be erected on a roof or exterior walls of the Buildings, without obtaining in each instance the written consent of the Board of Managers. Any aerial so installed without such required consent shall be subject to removal without notice at any time.

5. Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of any Building or which would structurally change any Building.

6. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board of Managers.

7. No animals or reptiles of any kind shall be raised, bred, or kept in any Unit or in the Common Elements.

8. No noxious or offensive activity shall be carried on in any Unit, or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

9. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Board of Managers, except as hereinafter expressly provided.

10. Except in recreational or storage areas designated as such by the Board of Managers, there shall be no playing, lounging, or parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements. Storage by Unit Owners in areas designated by the Board of Managers shall be at the Unit Owner's risk.

11. No clothes, sheets, blankets, laundry or any kind or other articles shall be hung out of a Unit or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials. Nor shall any rugs or mops be shaken or hung from or on any of the windows or doors. Nor shall a Unit Owner sweep or throw or permit to be swept or thrown therefrom any dirt or other substance.

12. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness and each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit in accordance with the provisions of the By-Laws.

13. No patios or balconies shall be decorated, enclosed or covered by any awning or otherwise altered without the consent in writing of the Board of Managers.

14. All floors of a Unit having a Unit below it shall always be covered with carpet (except baths and kitchen) to reduce transmission of impact sound.

15. No washing of automobiles shall take place on any of the Property, nor shall the parking areas be used for any purpose other than to park automobiles, excluding specifically, trucks, commercial vehicles or trailers or boats unless express

permission therefor is obtained from the Board of Managers.  
These restrictions do not apply to the Sponsor or its designee.

16. The agents of the Board of Managers or the managing agent, and any contractor or workman authorized by the Board of Managers or the managing agent, may enter any room or Unit in the Buildings at any reasonable hour of the day for the purpose of inspecting such Unit for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests.

17. If any key or keys are entrusted by a Unit Owner or occupant or by his agent, servant, employees, licensee or visitor to any employee of the Board of Managers, whether for such Unit or an automobile, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner or occupant, and the Board of Managers shall not be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.

18. Any consent or approval given under these Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board of Managers.



GENERAL BUSINESS LAW §352-e 2-a. (a) For the purposes of this subdivision the following words shall have the following meanings:

(i) "Plan". Every offering statement or prospectus submitted to the department of law for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership, other than a plan governed by the provisions of either section three hundred fifty-two-eee or three hundred fifty-two-eeee of this chapter, or a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(ii) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(iii) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of of this subdivision; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(iv) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such

election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit for the shares allocated thereto on the terms then offered to tenants in occupancy.

(b) The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of this section has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless the plan provides that:

(i) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(ii) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(iii) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(iv) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the

attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(c) The provisions of this subdivision shall be applicable in any city, town or village not covered by the provisions of section three hundred fifty-two-eeee of this chapter, or which has not elected to be covered by section three hundred fifty-two-eeee of this chapter, or which has not elected to be covered by section three hundred fifty-two-eee of this chapter, provided the local legislative body elects, by majority vote to adopt by resolution, coverage provided by this section. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.





1. Part 19 is amended by adding a new Section 19.8 to read as follows:

Section 19.8 Determinations of elections by eligible senior citizens and eligible handicapped persons.

(a) Election.

Subject to the other provisions of this section, a person seeking exemption as an eligible senior citizen or an eligible handicapped person as defined in General Business Law Section 352-eee or Section 352-eeee by completing the relevant form SH-1, SH-2 or SH-3 promulgated by the Department of Law and included in the offering plan, and returning the form to the sponsor or his designated agent within sixty days of the date the Department of Law files the plan. The form must be served on the sponsor or his designated agent by personal service or certified or registered mail, return receipt requested. The sponsor or agent shall acknowledge receipt of the form and return an acknowledged copy to the person making the election.

(b) Determination of disputed elections

(1) A sponsor who disputes the election by a person seeking exemption as an eligible senior citizen or eligible handicapped person must apply [to] the Department of Law within thirty days of the receipt of the election form for a determination by the Department of Law of such person's eligibility.

(2) The application shall be in the form of an affidavit sworn to by a person having knowledge of the facts and shall set forth the following:

(i) A statement that the application is made within thirty days of receipt of the election form;

(ii) The specific grounds for challenging the exemption;

(iii) The basis for the affiant's belief that the person making the election is not an eligible senior citizen or eligible handicapped person; and

(iv) All supporting information and documentation in the possession of the affiant bearing on the above.

(3) If the sponsor does not file a timely application, the Department of Law shall determine that the person making the election is an eligible senior citizen or eligible handicapped person.

(4) Upon receipt of an application and supporting documentation timely filed, the Department of Law shall inform the person making the election that an application disputing his or her eligibility has been received and shall request the person to submit an answer to the application on forms prescribed by the Department of Law supported by all relevant documentation in his or her possession within seven business days. Failure to answer the application shall not preclude the Department of Law from determining the eligibility of such person. The Department of Law may, in its discretion, request the appearance of any witness for the purpose of obtaining oral testimony on the issue or issues presented in the dispute. Such person shall be notified that he or she may be represented by counsel.

(5) On the basis of the information contained in the election form, the sponsor's application, the answer, if any, and oral testimony, if any, the Department of Law shall issue its determination of eligibility.

## 2. Applicability.

This section shall be applicable to all offering plans accepted by the Department of Law for filing after the effective date, and to all applications to the Department of Law for determinations pursuant to General Business Law Sections 352-eee(4) or 352-eee(4) not yet determined as of the effective date.