
**RESTATED
DECLARATION**

**Establishing Bay Village Condominium
Town of Irondequoit, New York,
Pursuant to Article 9-B of the Real Property Law of
the State of New York.**

NAME: BAY VILLAGE CONDOMINIUM

MADE BY:

DATED: April 3, 2002

2002 APR 24 PM 2:51
RONALD S. SHUBERT, ESQ.

RECEIVED

**Prepared by
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CERTIFICATE OF AMENDMENT
TO
DECLARATION OF CONDOMINIUM

Bay Village Condominium, a Condominium organized and existing pursuant to Article 9-B of the Real Property Law of the State of New York, has amended and restated the Declaration and By-Laws of Bay Village Condominium dated December 8, 1975 and recorded in the Monroe County Clerk's Office on December 12, 1975 in Liber 4949 of Deeds at Page 117, as amended by Declaration recorded in the Monroe County Clerk's Office on March 10, 1997 in Liber 5185 of Deeds at Page 554, and further amended.

This Amended and Restated Declaration and By-Laws were duly authorized and adopted as provided for in paragraph Tenth of the Declaration.

The Home Owners have met and discussed the proposed Restated Declaration and By-Laws, and voted thereon.

More than 80% of the Home Owners in number and common interest have consented to the Restated Declaration and By-Laws.

This Restated Declaration and By-Laws shall become effective upon its recording in the Office of the County Clerk of Monroe County.

IN WITNESS WHEREOF, the Bay Village Condominium has executed this Amendment, restating the Declaration and By-Laws this 3rd day of April, 2002.

BAY VILLAGE CONDOMINIUM

By Beverly Rouse
President

STATE OF NEW YORK)

)SS.:

COUNTY OF MONROE)

On the 3rd day of April in the year 2002, before me, the undersigned, a notary public in and for said state, personally appeared Beverly Rouse, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

1114593

M. Patricia Loftus
Notary Public

M. PATRICIA LOFTUS
Notary Public, State of New York
No. 4844815
Qualified in Monroe County
Commission Expires August 31, 2005

**DECLARATION OF
BAY VILLAGE CONDOMINIUM**

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**DECLARATION
ESTABLISHING
BAY VILLAGE CONDOMINIUM**

For the Premises Described on Schedule A attached hereto in the Town of Irondequoit, County of Monroe, New York, pursuant to Article 9-B of the Real Property Law of the State of New York, the Home Owners of Homes in Bay Village Condominium, created by Declaration ("Declaration") of Condominium recorded in the Monroe County Clerk's Office on December 12, 1975 in Liber 4949 of Deeds at Page 117, and amended by Declaration of Condominium recorded in the Monroe County Clerk's Office on March 10, 1977, in Liber 5185 of Deeds at Page 54, and further amended, do hereby amend and restate the Declaration and By-Laws of the Condominium, as follows:

ARTICLE I

SUBMISSION OF PROPERTY

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

ARTICLE II

DEFINITIONS

Section 2.01. Definitions.

"Board of Managers" shall mean and refer to that body of individuals elected or appointed pursuant to the By-Laws of the Condominium to administer the operation and maintenance of the Condominium Property.

"Building" shall mean and refer to the exterior walls and roof of a number of Homes all of which are constructed under a continuous roof.

"By-Laws" shall mean and refer to the framework and procedures pursuant to which the Condominium will be operated. The By-Laws are attached to this Declaration as Schedule C.

"Condominium" shall mean and refer to the Bay Village Condominium.

"Community" shall mean the Bay Village Condominium.

"Declaration" shall mean and refer to this Declaration of Condominium which, by being recorded in the Monroe County Clerk's Office, subjects the Property to the provisions of Article 9-B of the Real Property Law of the State of New York.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage on a Home who has requested the Board of Managers to notify them on any proposed action or any proposed modification, alteration, amendment or addition to the legal documents of the Condominium which requires the consent of mortgagees or Eligible Mortgage Holders.

"Home" shall mean and refer to a specific portion of a Building designed for separate occupancy as a dwelling by an individual or group of individuals. The term "Home" and "Home Owner" as used herein shall be construed to mean Unit and Unit Owner as defined in Section 339-e of Article 9-B of the Real Property Law of the State of New York.

"Home Owner" shall mean and refer to the record owner of a Home in the Condominium.

"Institutional Mortgagee" shall mean and refer to a bank, savings and loan association, life insurance company, pension trust, trust company which holds a first mortgage on a Home.

"Property" or Condominium Property" shall mean and refer to the land and all improvements thereon (including the "Homes", 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.

"Rules and Regulations" shall mean those guidelines relating to the use of the Property attached to the By-Laws of the Condominium as the same may be amended from time to time by the Board of Managers.

ARTICLE III

BUILDINGS

Section 3.01. Buildings. The "Buildings", as hereinafter referred to, are the four residential structures containing 129 Homes and three garage structures. The property on which the Buildings are located is more particularly described in Schedule A attached hereto.

ARTICLE IV

HOMES

Section 4.01. Number and Address of Homes. There are 129 Homes in the four (4) Buildings.

Each Home is designated by a Building Number and Home Number.

Section 4.02. Designations, Percentage Interest in Common Elements. Annexed hereto, and made a part hereof as Schedule B, is a list of all Homes in the Buildings, their Home designations, and percentage of interest in the "common elements" as hereinafter defined.

Section 4.03. Dimensions of Homes. Each Home includes the space as measured horizontally from the interior wallboard surface on all masonry exterior and party walls or the near surface of all wallboard on steel-stud party wall partitions to the interior wallboard surface on masonry exterior and party walls or the near surface of the wallboard on steel-stud party wall partitions opposite; and vertically from the upper surface of the concrete floor or subfloor lowermost in a Home to the lower surface of the ceiling wallboard uppermost in the Home.

Doors, windows and interior walls of Homes are part of the Home.

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

Section 4.05. Use of Homes.

Each Home shall:

- (1) be used for residential purposes only;
- (2) be resided in by not more persons (including children) than two (2) times the number of bedrooms in the Home, except that this shall not apply to persons who have a child after they have taken occupancy;
- (3) if resided in by three (3) or more persons (including children) such persons shall be members of the same family (or if the Home Owner or lessee is a partnership, a corporation or a trust, members of the family of a partner, director, shareholder, or employee of the corporation or of the beneficiary of the trust, as the case may be). "Same family" shall be defined as persons related to one another as husband, wife, mother, father, sister,

brother, stepsister, stepbrother, daughter, son, stepdaughter, stepson; together with their children. This restriction requiring three (3) or more residents to be members of the same family may be waived by written consent obtained from the Board of Managers prior to occupancy; and

- (4) not be leased or rented for an initial period of less than six (6) months.

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

ARTICLE V

COMMON ELEMENTS

Section 5.01. Definition of Common Elements. The common elements of the Community will consist of all of the Community, except the Homes, including, without limitation, outside walls and roofs of Homes, the land and improvements (other than the Homes) comprising the Community (including the land under the Homes and under the improvements), all utility or other pipes and material located outside of the Homes, outside parking area for automobiles, roadways, driveways, grass and landscaped areas and sidewalks.

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

The percentages of interest in the common elements for each Home has been determined in accordance with Section 339-i.1(ii) of the Real Property Law, based upon the approximate proportion that the square footage of each Home bears to the aggregate square footage of all Homes.

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

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

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

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

selected by the Board of Managers if the award is more than \$50,000.00 and to the Board of Managers if the award is \$50,000.00 or less. (This \$50,000.00 limit shall automatically increase each calendar year by 5% over the limit of the previous year.) The Board of Managers or the insurance trustee, as the case may be, shall arrange for the repair, restoration or replacement of such common elements to the extent reasonably possible, and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments.

If there shall be a surplus of such proceeds or if the Board of Managers or insurance trustee cannot reasonably repair, restore or replace the common elements taken, the proceeds shall be distributed among the Home Owners and the percentage interests in the common elements of the Condominium reallocated among the remaining Homes as the court shall have directed, or as provided in (e) below, if there was no direction by the court, taking into account the respective percentage interests in the common elements of the Homes affected thereby, the effect of the taking on each Home affected thereby after the completion of any repair, restoration or replacement by the Board of Managers or insurance trustee and any other relevant factors. Any court direction as to such distribution shall be final. Any Home Owner or tenant who wishes to contest a determination by the Board of Managers may do so by submitting the matter to the American Arbitration Association for a determination of a fair and proper distribution, or reallocation of percentage interests in the common elements, as the case may be, which shall be binding on the Board of Managers, and on all Home Owners and tenants. The cost of such arbitration shall be borne solely by the Home Owner or tenant submitting the matter for arbitration.

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

- (e) Partial or Total Taking of Homes. Subject to the direction of any court as described in (d) above, if an entire Home is so taken, or if part of a Home is taken such that the remaining portion may not be practically or lawfully used for any purpose permitted by this Declaration, that Home's entire interest in the common elements shall be automatically reallocated to the remaining Homes in proportion to the respective common element interests of those Homes before the taking. If part of a Home is so taken, such that the remaining portion may be practically and lawfully used for a purpose permitted by this Declaration, that Home's interest in the common elements shall be reduced in proportion to the reduction and size of the Home in a

manner consistent with the manner in which common element interests were originally determined under Section 5.02 above; the portion of the interest in the common elements so divested shall be automatically reallocated to that Home and to the remaining Homes in proportion to the respective common element interests of those Homes before the taking, with the partially-taken Home participating in the reallocation on the basis of its reduced interest in the common elements.

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

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

Section 5.05. Abandonment, Encumbrance, Conveyance or Transfer of Common Elements. The common elements shall not be abandoned, encumbered, conveyed or transferred without the consent of all the Home Owners, who shall vote upon written ballot which shall be sent to every Home Owner not less than 30 days nor more than 50 days in advance of the date or initial date of the canvass for voting on the proposed abandonment, encumbrance, conveyance or transfer. No such abandonment, encumbrance, conveyance or transfer shall be made if Eligible Mortgage Holders, as defined in Section 2.01 above, of 51 % or more of those Homes subject to mortgages held by Eligible Mortgage Holders advise the Board of Managers in writing, prior to the date set for voting on the proposed abandonment, encumbrance, conveyance or transfer that they are opposed to such abandonment, encumbrance, conveyance or transfer which opposition shall not be unreasonable. Written notice of any such proposed abandonment, encumbrance, conveyance or transfer, shall be sent to all Eligible Mortgage Holders not less than 30 days nor more than 50 days prior to the date set for voting on the proposed abandonment, encumbrance, conveyance or transfer.

Notwithstanding the foregoing, the Condominium Board of Managers shall have the power to grant easements, rights of way or licenses for utilities or other similar services (e.g., cable television) across the common elements, with or without consideration.

Section 5.06. Restricted or Limited Common Elements. Certain portions of the common elements are irrevocably restricted in use to specified Home Owners, subject to the right of the Board of Managers to enter upon any restricted area for maintenance, repair or improvement of a Home or common element and subject to the rules of the Board of Managers (see Article VII of the By-Laws attached hereto as Schedule C). Any portion of the common elements which is not restricted in use may be used by any Home Owner. The common elements

are not subject to partition nor are they severable from the Homes, except in accordance with the Real Property Law. Following are detailed descriptions of the irrevocably restricted common elements:

1. The covered parking spaces located on the plot plan in garages #1, #2, and #3 are designated by numbers 102 through 481 and, as such, are restricted in use so that each parking space consisting of an area being approximately 10 feet wide by 22 feet long is included as part of each Home and irrevocably restricted in use to the Homes bearing such numbers.
2. Balconies, terraces and patios having direct access from a Home are restricted in use to the owner of such Home.

The Home Owner cannot change the landscaping of the land adjoining his Home nor can a fence be erected any place in the Community without the prior consent of the Board of Managers.

ARTICLE VI

ALTERATION OF HOMES OR COMMON ELEMENTS

Section 6.01. Increases and Decreases in Size and Number of Homes. Any Home Owner or Owners shall have the right to divide or combine Homes owned by such Home Owner or Owners, so long as: (i) the combined or divided Home is no less than 1056 square feet after the combination or division; (ii) the common interest appurtenant to such Homes, after such division or combination, shall equal in total the common interest applicable to the Home or Homes divided or combined prior to combination; (iii) the written consent of the Board of Managers is obtained pursuant to Sections 6.04 through 6.08 of this Declaration; (iv) such proposed division or combination is in all respects lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the division or combination; and (v) such combination is in compliance with all governmental laws, codes, ordinances and regulations. Among the factors to be considered by the Board of Managers in determining whether or not to consent to such combination are adequacy of the size, shape and location of all Homes after such combination, the structural soundness of the Building during and after the performance of the necessary improvements, and any other factors which may affect the appearance or value of the Building, or which are set forth in Section 6.04 hereof. The cost of any such division or combination shall be the sole responsibility of the Owner or Owners of the Homes being combined. Any such combination shall become effective upon the recording in the Monroe County Clerk's Office of an amendment to this Declaration (which amendment shall include, as appropriate, any necessary changes to the text of this Declaration and to any plot plan attached hereto), executed by the Board of Managers and by the Owners and mortgagees of the Home or Homes so combined, together with the filing of floor plans of the Home or Homes as combined with the certification by tax authorities of tax lot numbers conforming to the new Home.

Section 6.02. No Other Additions or Structural Alterations to Homes. No structural alterations shall be made to a Home which would impair the structural soundness of any Home or Building or which would cause an adverse material effect on the exterior appearance or value of the Building in which the Home is located without the written approval of the Board of Managers, obtained as provided in Sections 6.04 through 6.08 of this Declaration.

Section 6.03. Alteration and Improvement of Common Elements.

- (a) By Board of Managers: The Board of Managers shall have the right, at its option, to make or cause to be made such alterations and improvements to the common elements as, in its opinion, may be beneficial or necessary or which are requested in writing by a Home Owner(s) and the holders of first mortgages thereon, subject, however to the requirement that, if the alteration or improvement shall cost more than 5% of the then current estimated annual budget (including reserves of the Condominium), such alteration or improvement shall be approved by more than two-thirds ($\frac{2}{3}$) in number and in common interest of the Home Owners, voting at a meeting duly called pursuant to the By-Laws. Such expenses shall constitute common expenses. Alterations or improvements costing 5% or less of the Condominium's then current estimated annual budget may be made by the Board of Managers and the cost thereof shall constitute a part of the common expenses. Before undertaking such work, the Board may require the consent in writing of such Home Owners and the Eligible Mortgage Holders of such Homes, holders of first mortgages thereon, whose rights, in the sole opinion of the Board, may be prejudiced by such alteration or improvement. In all cases of alteration or improvement, the Board of Managers shall comply fully with all governmental codes, laws, ordinances and regulations, including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the proposed alteration or improvement.

The Board of Managers may also elect to convert from common utility services, heat and/or hot water systems to individual utility services, furnaces and/or water heaters for each Home, subject, however, to the requirement that such conversion shall be approved by more than two-thirds ($\frac{2}{3}$) in number and in common interest of the Home Owners, voting at a meeting duly called pursuant to the By-Laws. The expenses for such conversion shall constitute common expenses.

- (b) By Home Owners: No Home Owner shall install any appliance or major appliance in the common elements or make any addition, alteration or improvement to the common elements: (i) which would in any way violate

any governmental law, code, ordinance or regulation (including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the alteration or improvement); or (ii) without the prior written consent of any Home Owners directly affected, and of the Board of Managers, obtained pursuant to Sections 6.04 through 6.08 of this Declaration. When the alteration or improvement to the common elements is pursuant to a combination of Homes requested by a Home Owner(s) it shall be governed by Section 6.01 of this Declaration.

Section 6.04. Submission of Plans to Board of Managers; Approval.

Any addition, alteration or improvement to the Homes or common elements proposed by a Home Owner pursuant to Sections 6.01 through 6.03 above shall require that a plan or plans therefor, in such form as the Board of Managers may require, be submitted to, reviewed and approved by the Board of Managers. The Board of Managers may charge and collect a reasonable fee for the examination of plans submitted for approval, including any fees which may be charged by architects, engineers or attorneys retained by the Board of Managers in connection with the review of such plans.

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

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

- (a) failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration, By-Laws, Rules or Regulations;
- (b) failure to include information in such plans as requested;
- (c) objection to the exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture;
- (d) incompatibility of proposed improvements or use of proposed improvements with existing improvements;
- (e) failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations, including the Real Property Law of the State of New York;
- (f) any other matter which in the judgment and sole discretion of the Board of Managers would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the

Condominium, including any possible adverse impact on the use and enjoyment of the Property by any other Home Owner(s).

Upon approval or qualified approval by the Board of Managers of any plans submitted pursuant to this Section, the Board of Managers shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or disqualified approval. Approval of any such plans relating to the common elements or to any Home shall be final as to such alterations, modifications or improvements and such approval may not be revoked or rescinded thereafter provided: (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration, By-Laws or Rules and Regulations; and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulations, zoning, building, health or other code or ordinance, including the Real Property Law of the State of New York. Approval of any such plans shall not be deemed a waiver of the right of the Board of Managers to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use by other Home Owner(s).

Section 6.05. Written Notification of Disapproval. In any case where the Board of Managers disapproves any plans submitted hereunder, the Board of Managers shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based. In any such case, the Board of Managers shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 6.06. Failure of Board to Act. If any applicant has not received notice from the Board of Managers, approving or disapproving any plans within 60 days after submission thereof, said applicant may notify the Board in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board 15 days after the date of receipt of such second notice, if no decision is rendered by the Board within said 15 day period.

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

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

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

Section 6.09. Liability of Board of Managers. No action taken by the Board of Managers or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Building or other portion of the Property. Neither the Condominium, nor the Board of Managers, nor any member, subcommittee, employee or agent thereof shall be liable to anyone submitting plans to them for approval or to any Home Owner, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or misfeasance. Every person or other entity submitting plans to the Board of Managers agrees, by submission of such plans, that no action or suit will be brought against the Condominium or the Board of Managers (or any member, subcommittee, employee or agent thereof) in connection with such submission.

ARTICLE VII

EASEMENTS

Section 7.01. Home Owner's Access to Home. Each Home Owner shall have a right of ingress and egress over the common element areas to such Owner's Home subject only to the reasonable rules and regulations which the Board of Managers of the Condominium may impose from time to time.

Section 7.02. Utilities, Pipes and Conduits. Each Home Owner shall have such easement of access to other Homes and to the common elements, and each Home shall be subject to such easements, as is reasonably necessary for such Home Owner to maintain, repair and replace, as necessary, such Owner's Home including, if any, pipes, wires and conduits running from the meters or equipment servicing such Home to the Home. Each Home Owner shall also have an easement in common with the Owners of all other Homes to use, in accordance with present use and present available facilities, all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other Homes and serving the Home or Homes of such Home Owner. Each Home shall be subject to an easement in favor of the Owners of all other Homes to use in accordance with present use and present available facilities the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other Homes and located in such Home.

Section 7.03. Access of Board of Managers. The Board of Managers, its agents, contractors and employees, shall have an easement and right of access to each Home to inspect the same, to remove violations therefrom and for installation, maintenance, repair or improvements to any pipes, ducts, wires, cables, chutes, conduits, connections, fittings and public utility lines located or to be located in any Home and servicing any other Home, or to make repairs to the Home to prevent damage to the common elements or to any other Home. Said easement and right of access shall be exercised (unless in an emergency) at reasonable hours and upon reasonable notice to the Home Owner involved. The cost of such maintenance, repairs, improvements or replacements shall be a common expense, except as provided in Section 7.02 of the By-Laws. The Board of Managers shall have a right of access to all common elements (irrespective of the restricted nature of such common elements) to remove violations and for inspection, maintenance, repair or improvement.

Section 7.04. Right of Board of Managers to Grant Easements, Licenses and Permits. Notwithstanding anything to the contrary which may be contained in this Declaration, the Board of Managers shall have the right to grant permits, licenses, easements and rights of way over the common element areas for: (i) utilities and other services (including, but not necessarily limited to, water, gas, electric, telephone, storm sewer, sanitary sewer, drainage and cable television), roadways, walkways and other purposes which the Board of Managers deems necessary or appropriate; and (ii) the placement of air conditioner compressors to service individual Homes in the Condominium.

Section 7.05. Easement for Encroachments. If any portion of a Home or the common elements (whether restricted in use to an individual Home Owner or not) encroaches or shall hereinafter encroach upon another Home or the common elements as a result of: (i) the original construction or settling or shifting of the Building; or (ii) any repair or restoration by the Board of Managers of a Building, any Home or the common elements; or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall and does exist. Such easements as provided in this Section shall exist so long as the Building in which any such encroachment exists shall stand.

Section 7.06. Easement of Necessity. Each Home shall have and each Home shall be subject to all easements of necessity in favor of such Home or in favor of other Homes and the common elements.

ARTICLE VIII

VOTING RIGHTS

Section 8.01. Voting Rights Based on Interest in Common Elements. The Owner of each Home shall be entitled to vote on all matters put to a vote at all meetings of Home Owners in accordance with the percentage interest of the Home owned in the common elements of the Condominium.

ARTICLE IX

COMMON CHARGES - ALLOCATION, LIEN AND LIABILITY

Section 9.01. Allocation and Commencement of Common Charges. Except as otherwise permitted in this Article or the By-Laws, the common expenses shall be charged by the Board of Managers to the Home Owners according to their respective percentage interests in the common elements. The common profits of the Property, after offsetting the common expenses relating to the common elements and making due allowance for the retention of a reserve to cover future common expenses, shall be distributed among the Home Owners in the same manner. Notwithstanding the foregoing, the Board of Managers may elect to specifically allocate and apportion expenses between the Owners of Homes, based upon the special or exclusive availability or use or control thereof by such Home Owners of the common elements to which such expenses have been applied. Common charges shall commence on the date of recording of the first deed transferring title to a Home.

Section 9.02. Common Charges Are Lien on Home and Personal Obligation of Home Owner. The common charges shall be paid when due. No Home Owner may be exempted from liability for payment of common charges assessed against such Owner's Home by waiver of the use or enjoyment of any of the common elements or by the abandonment of the Home. All sums assessed as common charges by the Board of Managers of the Condominium, but unpaid, together with any accelerated installments, late charges as may be established by the Condominium By-Laws, interest thereon at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law, and attorneys' fees and other costs and expenses incurred in efforts to collect such past due assessments, shall be the personal obligation of the Home Owner and, to the extent permitted by law, shall constitute a lien upon the Home prior to all other liens except: (i) tax or assessment liens on the Home by the taxing subdivision of any governmental authority, including but not limited to State, County, Town and School District taxing agencies; and (ii) all sums unpaid on any mortgage of record encumbering the Home and which is held by an Institutional Mortgagee as defined in Section 2.01 of this Declaration.

A purchaser of a Home shall be liable for the payment of unpaid common charges assessed against such Home prior to such purchaser's acquisition, except that a mortgagee or other purchaser who acquires title at a foreclosure sale, or an Institutional Mortgagee who acquires title to a Home by a deed in lieu of foreclosure, shall not be liable for, and such Home shall not be subject to, a lien for the payment of common charges assessed against such Home, and which became due prior to such acquisition of title. In such event, the unpaid balance of common charges shall be charged to all other Home Owners as a common expense.

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

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

ARTICLE X

BOARD OF MANAGERS

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

Section 10.02. Administration. Subject to the right of assignment as provided in Section 11.08 of this Declaration, the administration of the Condominium Property, including the Buildings and land (the Property) described herein shall be in accordance with the provisions of this Declaration and with the provisions of the Condominium By-Laws.

Section 10.03. Power of Attorney to Board of Managers. Each Home Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable Power of Attorney, coupled with an interest, to acquire title to or lease any Home whose owner desires to surrender, sell or lease the same, or which may be the subject of a foreclosure or other judicial sale, or any other Home, in the name of the Board of Managers or its designee, corporate

or otherwise, on behalf of all Home Owners, and to convey, sell, lease, mortgage, vote the votes appurtenant thereto or otherwise deal with any such Home so acquired or to sublease any Home so leased by the Board of Managers.

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

Section 10.05. Right to Grant Permits, Licenses and Easements. Notwithstanding anything to the contrary which may be contained in this Declaration, the Board of Managers shall have the right to grant permits, licenses and easements over the common element areas for utilities, roads, and other purposes necessary for the proper operation of the Property.

ARTICLE XI

OBLIGATIONS, RESPONSIBILITIES, COVENANTS, AND RESTRICTIONS

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

Section 11.02. Homes to be Properly Maintained. Home Owners shall maintain their Homes and any balcony, terrace or patio in good order and overall appearance.

Section 11.03. Mortgages on Homes. Any Home Owner who mortgages such Owner's Home shall promptly provide the Board of Managers with the name and address of the mortgagee.

Section 11.04. Notice to Mortgagees. The Board of Managers shall give written notice to the holders of mortgages encumbering Homes which notice is required by various provisions of this Declaration and the Condominium By-Laws to those mortgagees which have notified the Board of Managers of their name and address or who have caused the mortgagor/Home Owner to give such notice.

Section 11.05. No Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents.

Section 11.06. No Immoral or Unlawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 11.07. Obligation to Maintain Utility Service. Regardless of whether the Home is occupied, the owner thereof shall be obligated to maintain sufficient utility service to prevent damage to other Homes or to the common elements. If such service is not maintained by the Owner, the Board of Managers shall have the right to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances and without notice in emergency situations. If such service must be arranged by the Board of Managers, any costs incurred shall be collectible in the same manner as common charges and shall constitute a lien on the Home involved and a personal obligation of the Home Owner(s).

Section 11.08. Rules and Regulations. Rules and regulations promulgated by the Board of Managers concerning the use of the Property shall be observed by the Home Owners, provided however, that copies of such rules and regulations are furnished to each Home Owner prior to the time the said rules and regulations become effective.

ARTICLE XII

AMENDMENT AND TERMINATION

Section 12.01. Amendment. Except as otherwise provided in this Declaration, this Declaration may be modified, altered, amended or added to at, or pursuant to a vote taken during a specified canvass period after any duly called meeting of Home Owners provided that:

- (a) A notice of the meeting containing a full statement of the proposed modification, alteration, amendment or addition has been sent to all Home

Owners and all Eligible Mortgage Holders as listed on the books and records of the Condominium at least 30 days and not more than 50 days prior to the date set for said meeting; and

- (b) 67% or more in number and in common interest of all Home Owners approve the change; and
- (c) The Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from Eligible Mortgage Holders of 51% or more of the number of Homes subject to mortgages held by Eligible Mortgage Holders; and
- (d) An instrument evidencing the change is duly recorded in the Office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Home Owners, but shall contain a certification by the Board of Managers of the Condominium that the consents required by this Section 12.01 for such change have been received and filed with the Board of Managers.

Section 12.02. Amendment by Board of Managers to Correct Errors. Notwithstanding Section 12.01 above, the Board of Managers may make amendments to this Declaration, consistent with the current provisions of the Condominium Act and this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Home Owner or Eligible Mortgage Holder without the written permission of such Home Owner or Eligible Mortgage Holder. Such amendment(s) need only be signed by the Board of Managers.

Section 12.03. Termination. The Condominium shall not be terminated or abandoned except as provided for by law. In addition to any requirements of law, termination shall require: (1) the consent of at least 80% of all Home Owners in number; and (2) in common interest and the approval of Eligible Mortgage Holders of (i) at least 67% in number and common interest of all Homes subject to mortgages held by Eligible Mortgage Holders except that where the termination is because of substantial destruction or condemnation of the Condominium Property, such termination shall require the approval of only 51% in number and common interest of all Homes subject to mortgages held by Eligible Mortgage Holders.

ARTICLE XIII

GENERAL

Section 13.01. Service of Process. Service of process on the Home Owners in any action with relation to the common elements shall be made upon: Board of Managers of the Bay Village or on the Secretary of State as agent of the Board of Managers by personally delivering

to and leaving with him or her or his or her deputy, or with any person authorized by the Secretary of State to receive such service, at the office of the Department of State in the City of Albany, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. The Condominium's Board of Managers shall also file with the Secretary of State the name and post office address within or without this State to which the Secretary of State shall mail a copy of any process against it served upon the Secretary of State and shall update the filing as necessary.

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

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

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

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

RSSen
BFLO Doc # 1064413.1

SCHEDULE A

DESCRIPTION OF CONDOMINIUM PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in Town Lot 8, Bay Village Tract, Township 14, Range 7, Town of Irondequoit, County of Monroe, State of New York, known and described as Lot RA as shown on a map entitled "Resubdivision of Part of Town Lot No. 8" made by Lewis E. Kohl, Inc. and filed in the Monroe County Clerk's Office in Liber 192 of Maps, at Page 4, which lot is more particularly described as follows:

Commencing at an iron pin set in the south line of Bay View Road which pin is situated 717.36 feet easterly from the center line of Clearbrook Drive as measured along the south line of Bay View Road, thence (1) S 32°23'55" W at an interior angle of 85°17'20" a distance of 79.58 feet to a point, thence (2) easterly S 48°17'03" E at an interior angle of 99°19'02" with the last described course a distance of 345.46 feet to a point, thence (3) southerly S 14°58'58" W at an exterior angle of 116°43'59" with the last described course a distance of 649.11 feet, thence (4) easterly S 60°22'55" E at an interior angle of 104°38'07" with the last described course a distance of 499.39 feet to a point, thence (5) northerly N 32°37'05" E at an interior angle of 93° with the last described course a distance of 178± feet to a point on the west shore line of Irondequoit Bay, thence, (6) northerly along the west shore line of Irondequoit Bay to a point in the south line of Bay View Road, thence (7) westerly N 74°06'06" W along the south line of Bay View Road a distance of 35± feet to an iron pin, thence (8) westerly N 74°06'06" W continuing along the south line of Bay View Road a distance of 285.00 feet to an iron pin, thence (9) westerly N 56°34'58" W along the south line of Bay View Road at an interior angle of 197°31'08" with the last described course a distance of 104.64 feet to an iron pin, thence (10) westerly N 56°07'16" W along the south line of Bay View Road at an interior angle of 180°27'42" with the last described course a distance of 69.20 feet to an iron pin, thence (11) westerly N 52°31'25" W along the south line of Bay View Road at an interior angle of 182°13'51" with the last described course a distance of 294.25 feet to the point and place of beginning.

And also All that tract or parcel of land, situate in Lots 7 and 8 of the Bay Village Tract, Town of Irondequoit, Monroe County, New York, described as follows: Beginning at a point in the Lot line between Lots 7 and 8 of the Bay Village Tract, 222.79 feet easterly measured along said division line from the northeasterly corner of the first described parcel conveyed to Barbara Griebel by Glenhaven Improvement Company, recorded in Liber 988 of Deeds, at page 474; thence northerly and making an interior angle of 87° a distance of 169.3 feet to an iron pin; thence continuing northerly on the same course a distance of ten (10) feet, to the water line of Irondequoit Bay; thence easterly along the water line of Irondequoit Bay to a point; thence southerly a distance of 131 feet to an iron pin set in the aforesaid division line between Lots 7 and 8; thence westerly making an interior angle of 122°37' along the aforesaid division line, a distance of 252 feet to the point and place of beginning.

Together with a 50 foot easement adjoining the southwesterly corner of the premises above described and extending westerly along the southerly line of Lot 8 and southerly along the easterly line of the premises so conveyed to Barbara Griebel by deed recorded in Liber 988 of Deeds, page 474, to Glen Haven Road; the southerly and easterly line of said 50 foot easement is more particularly described as follows: Beginning at the southwesterly corner of the premises above described; thence westerly along the division line of Lots No. 7 and 8, a distance of 222.79 feet to a point, said point being the northeasterly corner of the premises conveyed to Barbara Griebel by deed recorded in Liber 988 of Deeds, page 474; thence southerly along the easterly line of premises so conveyed to Barbara Griebel and making an exterior angle of $89^{\circ}01'$ a distance of 345.52 feet to a point; thence continuing southerly and making an exterior angle of $171^{\circ}49'$ a distance of 65 feet to the northerly line of Glen Haven Road.

And also ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Irondequoit, Monroe County, New York, being part of Town Lot No. 8, Bay Village tract, Township 14, Range 7, more particularly bounded and described as follows: Commencing at a point of the approximate shoreline of Irondequoit Bay where the same is intersected by the north line of Lot RA as shown on a map filed in Monroe County Clerk's Office in Liber 192 of Maps, Page 4; thence (1) north $74^{\circ}06'06''$ west through an iron pin set approximately 35 feet from the water's edge and continuing on said course for a total distance of approximately 197 feet to a point; thence (2) at an approximate right angle to the last course a distance of approximately 49.5 feet to a point which is the southwest corner of lands now or formerly owned by Charles A. Knapp conveyed by deed recorded in Monroe County Clerk's Office in Liber 3984 of Deeds, Page 385 (tax account No. 7062-900), said point also being on the easterly right-of-way line of Bay Shore Boulevard; thence (3) northeasterly along said south line of premises now or formerly owned by said Charles A. Knapp, and forming an interior angle of $81^{\circ}58'$, a distance of 196.64 feet to an iron pipe or pin at or near the water line of Irondequoit Bay; thence (4) southerly along the shore of the Bay approximately 49.5 feet to the point and place of beginning.

Together with any and all right, title and interest of grantor to the low water mark of Irondequoit Bay.

Being and intending to describe a portion of the premises conveyed to Leon K. Whitehouse and Irene Whitehouse, his wife, by deed dated October 30, 1941, and recorded on December 18, 1941, in Monroe County Clerk's Office in Liber 2062 of Deeds, Page 59.

SCHEDULE B

**HOME DESIGNATIONS/PERCENTAGE INTERESTS
IN COMMON ELEMENTS/ACCESS TO COMMON ELEMENTS**

<u>Bldg. No. 1</u>		<u>% of</u>	<u>Bldg. No. 2</u>		<u>% of</u>
<u>Home No.</u>	<u>Home Model</u>	<u>Commons</u>	<u>Home No.</u>	<u>Home Model</u>	<u>Commons</u>
<u>Level 1</u>			<u>Level 1</u>		
102	Newport	0.00807	202	Villager II	0.00807
104	Villager I	"	204	"	"
106	"	"	206	"	"
108	"	"	208	"	"
110	"	"	210	"	"
112	"	"	212	"	"
114	"	"	214	"	"
116	"	"	216	"	"
118	"	"			
120	Newport	"			
<u>Level 2</u>			<u>Level 2</u>		
152	Villager I	0.00807	252	Villager II	0.00807
154	"	"	254	"	"
156	"	"	256	"	"
158	"	"	258	"	"
160	"	"	260	"	"
162	"	"	262	"	"
164	"	"	264	"	"
166	"	"	266	"	"
<u>Levels 3&4</u>			<u>Levels 3&4</u>		
151	Newport	0.00807	251	Newport	0.00807
153	Newport	"	253	Glen Haven	"
155	Glen Haven	"	255	Newport	"
157	Glen Haven	"	257	Glen Haven	"
159	Newport	"	259	Newport	"
161	Glen Haven	"	261	Glen Haven	"
163	Newport	"	263	Newport	"
165	Glen Haven	"	265	Glen Haven	"
167	Newport	"	267	Newport	"
169	Glen Haven	"	269	Glen Haven	"
171	Newport	"	271	Newport	"
173	Glen Haven	"	273	Glen Haven	"
175	Newport	"	275	Newport	"
177	Glen Haven	"	277	Glen Haven	"
179	Newport	"	279	Newport	"
181	Glen Haven	"	281	Newport	"
183	Newport	"			
185	Newport	"			

Bldg. No. 3			Bldg. No. 4		
Home No.	Home Model	% of Commons	Home No.	Home Model	% of Commons
<u>Levels 1&2</u>			<u>Level 1</u>		
302	Glen Haven	0.00807	402	Glen Haven	0.00807
304	Newport	"	404	Bay View II	0.00605
306	Glen Haven	"	406	Bay View IV	"
308	Newport	"	408	Bay View I	"
310	Glen Haven	"	410	Bay View III	"
312	Newport	"	412	Bay View II	"
314	Glen Haven	"	414	Bay View IV	"
316	Newport	"	416	Bay View I	"
318	Glen Haven	"	418	Bay View III	"
320	Newport	"	420	Bay View II	"
322	Glen Haven	"	422	Bay View IV	"
324	Newport	"			
<u>Levels 3&4</u>			<u>Level 2</u>		
351	Newport	0.00807	452	Bay View II	0.00605
353	Newport	"	454	Bay View IV	"
355	Glen Haven	"	456	Bay View I	"
357	Newport	"	458	Bay View III	"
359	Glen Haven	"	460	Bay View II	"
361	Newport	"	462	Bay View IV	"
363	Glen Haven	"	464	Bay View I	"
365	Newport	"	466	Bay View III	"
367	Glen Haven	"	468	Bay View II	"
369	Newport	"	470	Bay View IV	"
371	Glen Haven	"	<u>Levels 3&4</u>		
373	Newport	"	451	Newport	.00807
			453	Glen Haven	"
			455	Newport	"
			457	Glen Haven	"
			459	Newport	"
			461	Glen Haven	"
			463	Newport III	.00962
			465	Glen Haven II	.00651
			467	Newport	.00807
			469	Glen Haven	"
			471	Newport	"
			473	Glen Haven	"
			475	Newport	"
			477	Glen Haven	"
			479	Newport	"
			481	Newport	"

Each Home has access to each other Home, or to any other portion of the Community, or to a street upon which the Community abuts, by means of a concrete walk or grass area which forms a part of the common elements of the Community.

SCHEDULE C
TO
DECLARATION OF CONDOMINIUM

BY-LAWS
OF
BAY VILLAGE CONDOMINIUM

Prepared by
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716-847-5491

**BY-LAWS OF
BAY VILLAGE CONDOMINIUM**

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**BY-LAWS OF
BAY VILLAGE CONDOMINIUM**

**ARTICLE I
PLAN OF HOME OWNERSHIP**

1.01. Definitions.

"Board of Managers" shall mean and refer to that body of individual elected or appointed pursuant to these By-Laws to administer the operation and maintenance of the Condominium Property.

"Building" shall mean and refer to as the exterior walls and roof of a number of Homes all of which are constructed under a continuous roof or the entire interior and exterior of any building or structure which shall form a portion of the Property but which does not contain any of the Homes.

"Condominium" shall mean and refer to the Bay Village Condominium.

"Declaration" shall mean and refer the Declaration of Condominium which will be recorded in the Monroe County Clerk's Office and pursuant to which the Property will be subjected to the provisions of Article 9-B of the Real Property Law of the State of New York.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage on a Home who has requested the Board of Managers to notify them on any proposed action or any proposed modification, alteration, amendment or addition to the legal documents of the Condominium which requires the consent of mortgagees or Eligible Mortgage Holders.

"Home" shall mean and refer to a specific portion of a Building designed for separate occupancy as a dwelling by an individual or group of individuals.

"Home Owner" shall mean and refer to the record owner of a Home in the Condominium.

"Property" shall mean and refer to the land and all improvements thereon (including the Homes, hereinafter referred to as the "Homes", 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.

"Rules and Regulations" those guidelines relating to the use of the Property as the same may be amended from time to time by the Board of Managers.

1.02. Home Ownership. The land described in Schedule A of the Declaration, recorded or to be recorded in the Office of the Clerk of the County of Monroe, New York, and the appurtenances thereof, including the buildings and other improvements constructed on said land (hereinafter collectively called the "Property"), which have been submitted to the provisions of Article 9-B of the Real Property Law of the State of New York by the Declaration and shall be known as the "Bay Village Condominium" (hereinafter called the "Condominium").

1.03. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Condominium Property as described in the Declaration and to the use and occupancy thereof.

1.04. Personal Application. All present and future owners (hereinafter referred to as "Home Owners") mortgagees, lessees, and occupants of Homes 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 Home shall constitute an agreement that these By-Laws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

ARTICLE II HOME OWNERS-VOTING RIGHT AND MEETINGS

2.01. Voting. Each Owner of a Home (including the Board of Managers, if the Board of Managers shall then own or hold title to one or more Homes) shall be entitled to vote at all meetings of Home Owners for each Home owned by such Home Owner, but the Board of Managers shall not cast any of its votes for the election of any member to the Board. The vote of each Home shall be equal. If a Home is owned by more than one person, as joint tenants, tenants by the entirety or as tenants in common, the persons owning such Home shall reach agreement as to the matter voted upon and cast their vote for their Home. A fiduciary shall be the voting member with respect to any Home owned in a fiduciary capacity. Notwithstanding anything to the contrary which may be contained in these By-Laws or in the Declaration, if a mortgage lender whose name appears on the records of the Condominium: (i) holds a mortgage on a Home which, by its terms, prohibits the mortgagor from voting contrary to the interest of the mortgagee; and (ii) notifies the Board of Managers prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Home Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

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

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

2.04. Annual Meetings. Annual meetings of the Home Owners shall be held on the 1st Monday of August each year at 7:00 p.m. or on such other date and such other time and at such place convenient to the Home Owners as shall be designated by the Board of Managers. At such meetings, the Board of Managers shall be elected by ballot of the Home Owners in accordance with the requirements of Section 3.04 of these By-Laws. All other members of the Board of Managers shall be elected by the Home Owners and shall serve for the terms prescribed by these By-Laws. The Home Owners may transact such other business at such meeting as may properly come before them.

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

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

2.07. Notice of Meetings. It shall be the duty of the Secretary to mail by first-class postage a notice of each annual or special meeting of the Home Owners at least 10 but not more than 30 days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Home Owner of record, at the Building in which such Owner's Home is located or at such other address as such Home Owner shall have designated by notice in writing to the Secretary, and to all mortgagees of Homes who have requested the same. If the purpose of any meeting shall be to act upon a proposed amendment to the Declaration or these By-Laws, the notice of meeting shall be mailed at least 30 days and not more than 50 days prior to such meeting. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

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

2.09. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Home Owners having 51% of the total authorized votes of all Home Owners shall constitute a quorum at all meetings of the Home Owners. If any meeting of Home Owners cannot

be held because a quorum has not attended, a majority in common interest of the Home Owners who are present at such meeting, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present or represented. The quorum required for each reconvened meeting shall be one-half (½) of the quorum required for the previous meeting provided, however, that the quorum in no event shall be less than 10% of the total authorized votes of all Home Owners.

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

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

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

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

- (a) Roll call.
- (b) Proof of notice of meetings.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Board of Managers.

- (f) Reports of committees.
- (g) Appointment of Inspectors of Election (when so required).
- (h) Election of members of the Board of Managers (when so required).
- (i) Unfinished business.
- (j) New business.

ARTICLE III BOARD OF MANAGERS

3.01. Number and Qualification. The affairs of the Condominium shall be governed by a Board of Managers. The Board of Managers shall be composed of not less than five (5) persons or more than nine (9), all of whom shall be Owners or spouses of Owners or mortgagees of Homes or, in the case of partnership Owners or mortgagees, shall be members or employees of such partnership, or, in the case of corporate Owners or mortgagees, shall be officers, directors, shareholders, employees or agents of such corporations or, in the case of fiduciary Owners or mortgagees, shall be the fiduciaries or officers, agents or employees of such fiduciaries. Only one (1) Home Owner, or Home Owners' spouse may serve on the Board at the same time.

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

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

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

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

d. Making of repairs, additions and improvements to or alterations of the Property and making of repairs to and restoration of the Property in accordance with the other provisions of

these By-Laws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

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

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

g. Obtaining and maintaining insurance for the Property, including the Homes, pursuant to the provisions of Section 8.01 of these By-Laws.

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

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

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

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

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

m. Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however that: (i) the consent of at least 67% in number and in common interest of all Home Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of 25% of the amount of the then current annual budget of the Condominium; and (ii) no lien to secure repayment of any sum borrowed may be created on any Home or its appurtenant interest in the common elements without the consent of the Home Owner.

If any sum borrowed by the Board of Managers on behalf of the Condominium pursuant to the authority contained in this paragraph (m) is not repaid by the Board, a Home Owner who

pays to the creditor such proportion thereof as his interest in the common elements bears to the interest of all the Home Owners in the common elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against the Home Owner's Home.

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

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

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

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

r. Complying with any change in New York law as it may affect the Condominium.

s. Assigning, in its discretion, the use of mailboxes.

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

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

3.03. Committees Acting on Behalf of Board of Managers. Except as limited by this Section 3.03, the Board of Managers may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of such committee to consist of at least three (3) Home Owners, at least one of whom shall be a member of the Board of Managers, which to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Managers in the management of the business and affairs of the Condominium, and may have power to sign all papers which may be required, provided the said resolution or resolutions, shall specifically so provide. However, no such committee shall have or be given the

power to: (a) determine the common charges and expenses required for the affairs of the Condominium; (b) determine the common charges payable by the Home Owners to meet the common charges and expenses of the Condominium; or (c) adopt or amend the rules and regulations covering the details of the operation and use of the Property. Such committee or committees shall have such name or names as may be determined from time to time by resolution of the Board of Managers. Committees established by resolution of the Board of Managers shall keep regular minutes of their proceedings and shall report the same to the Board as required.

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

The term of office of $\frac{1}{3}$ of the Board shall be fixed for three (3) years, the term of office of $\frac{1}{3}$ of the Board shall be fixed at two (2) years, and the term of office of $\frac{1}{3}$ of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Board member, his/her successor shall be elected to serve a term of three (3) years. The Board members 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.

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

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

3.07. Vacancies. Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by a vote of the Home Owners, shall be filled by vote of a majority of the remaining members at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member

of the Board of Managers until the next annual meeting of the Home Owners or until a successor is elected.

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

- a. Organizational Meeting - The first meeting of each Board newly elected by the Home Owners shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter at such date, time and place, as may be practicable.
- b. Regular Meetings - Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Managers, but at least four (4) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each member of the Board of Managers personally, by mail or by telegram, at least two (2) days prior to the day set for such meeting.
- c. Special Meetings - Special meetings of the Board of Managers may be called by the President on two (2) days' notice to each member of the Board of Managers either personally or by mail, e-mail, or telegram, which notice shall state the time, place and purpose of the meeting. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) members of the Board of Managers.

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

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

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

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

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

Any decision to discontinue such independent and professional management and establish self-management for those duties and services previously delegated to said managing agent and/or manager shall require the prior written consent of Owners of Homes having a 67% interest in the common elements voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Home Owners at least 40 days in advance and shall set forth the purpose of said meeting. No such decision shall be made if Eligible Mortgage Holders holding mortgages on Homes having a 51% or more interest in the common elements advise the Condominium in writing prior to the date set for voting on the proposed change that they are opposed to such change, which opposition shall not be unreasonable. Written notice of any such proposed change to self-management shall be sent to all lending institution first mortgagees of Homes whose names appear on the records of the Condominium at least 40 days prior to said meeting.

ARTICLE IV OFFICERS

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

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

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

4.04. President. The President shall be the chief executive officer of the Condominium. The President shall preside at all meetings of the Home Owners and of the Board of Managers. The President 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 Home Owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

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

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

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

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

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

**ARTICLE V
COMMON CHARGES AND ASSESSMENTS-
DETERMINATION, PAYMENT AND COLLECTION**

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

5.02. Collection of Common Charges and Assessments. The liability of a Home Owner for common charges is set forth in the Declaration. If a common charge or assessment or any

installment thereof is not paid within 10 days after the due date, the Board of Managers may impose a late charge or charges on such amount or amounts as the Board of Managers deems reasonable not to exceed 5% of the amount of such overdue common charge or assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the common charge or assessment or installment thereof is not paid within 30 days after the due date: (i) the common charge or assessment shall bear interest from the due date at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Board of Managers may accelerate the remaining installments, if any, of such common charges or assessments upon notice thereof to the Home Owners, which notice shall afford the Home Owner not less than 10 days to pay such installments of common charges; and (iii) the Board of Managers may bring legal action against the Home Owner personally obligated to pay the same or foreclose the lien on such Home pursuant to, and in the manner provided by New York State Law. If the common charge or assessment or installment thereof is not paid within 60 days after the due date, the Board of Managers, if it has not previously done so, shall furnish prompt written notice of such delinquency, if requested, to any holder, insurer or guarantor of the mortgage on the Home for which the payment of common charges or assessments is delinquent.

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

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

5.04. Statement of Common Charges. Upon the written request of a Home Owner, lessee or mortgagee with respect to the Home owned by such Owner, leased by such lessee or upon which such mortgagee holds a mortgage, or any prospective purchaser, lessee, mortgagee or title insurer of such Home, the Board of Managers, the Manager or the managing agent, shall promptly furnish a certificate in writing setting forth with respect to such Home as of the date of such certificate: (i) whether or not the common charges due have been paid; (ii) the amount of

such common charges, including interest and costs, if any, due and payable; and (iii) whether any other amounts or charges are owing to the Condominium, i.e., for a special assessment for the cost of extinguishing a violation of the Declaration or Rules and Regulations. A reasonable charge, as determined by the Board of Managers, may be made for the issuance of this certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Board of Managers and any bona fide purchaser or lessee of, or lender on, or title insurer of, the Home with respect to which the request was made.

5.05. Adjustment of Common Charges and Special Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Home, common charges, and any special assessments which: (i) may be payable in installments; or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Managers of the Condominium in the adoption: (i) a special assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installment due dates; and (ii) a special assessment payable in a single installment shall be the sole responsibility of the Owner of the Home on the date which such assessment is initially due.

5.06. Home Services and Utilities Funded Through Common Charges. Electricity for the common elements and water and trash removal for the Homes shall be a common expense, except that the Board of Managers may, at its option, in accordance with Section 5.01 above, allocate and apportion expenses among Home Owners based on the special or exclusive availability of use of such services by one or more Home Owners.

5.07. Operating Account. There shall be established and maintained a cash deposit account to be known as the "Operating Account", into which shall be deposited the operation portion of all common charges and special assessments as fixed and determined for all Homes. Disbursements from said account shall be for the general needs of the operation including, but not limited to wages, repairs, betterments, maintenance and other operating expenses of the common elements and for the purchase, lease, sale or other expenses resulting from the purchase or lease of Homes.

5.08. Capital Reserve Account. The Board of Managers shall establish and maintain an adequate reserve account for the replacement of those common element improvements which the Board of Managers is obligated to maintain. Such reserve account shall be funded from common charges. Any funds collected or designated by the Board of Managers as reserves for the

replacement of capital items shall be segregated from all other funds of the Condominium in one or more separate accounts. This shall not preclude the Board of Managers from segregating other portions of the Condominium funds in separate accounts for a specific purpose (e.g., reserves for non-capital items) or otherwise. At least two (2) members of the Board of Managers shall be required to sign any checks written on this reserve account, unless this provision is waived by the Board. No manager or managing agent shall have authority to draw checks on or to transfer funds from this reserve account. The bank in which such funds are deposited shall send copies of all statements directly to the Board of Managers.

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

ARTICLE VI RECORDS AND AUDITS

6.01. Records and Audits. The Board of Managers or the managing agent shall keep detailed records of the actions of the Board of Managers and the managing agent, minutes of the meetings of the Board of Managers, minutes of the meetings of the Home 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 Home which, among other things, shall contain the amount of each assessment of common charges against such Home, the dates when installments are due, the amounts paid thereon, and the balance remaining unpaid.

6.02. Annual Statement. Promptly after the end of each fiscal year, a full and correct statement of the financial affairs of the Condominium, including a balance sheet and a financial statement of operation for the preceding fiscal year prepared and signed by a public or certified public accountant to the effect that the financial statement presents fairly the financial position of the Condominium and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as specified therein, shall be distributed to all Home Owners and to all mortgagees of Homes who have requested the same. Taking into consideration the cost of an audit vs. a review, the complexity and volume of the Condominium's financial affairs, and such other factors the Board of Managers deems relevant, the Board of Managers of the Condominium shall determine each year whether such statement shall be in the form of an audit or review, except that: (i) an audit, at the expense of the Condominium shall be required if authorized in writing by at least two-thirds ($\frac{2}{3}$) of all Home Owners, or, if the holder, insurer or guarantor of any first mortgage that is secured by a Home in the Condominium submits a written request for such an audit to the Board of Managers; and (ii) any Home Owner or mortgage holder shall be entitled to obtain an audited statement at such Home Owner's or mortgagee's own expense.

6.03. Availability of Records and Legal Documents. The Board of Managers shall make available for inspection upon reasonable notice and during normal business hours, to existing and

prospective purchasers, tenants, mortgagees, mortgage insurers and mortgage guarantors, current copies of the Condominium's Declaration, By-Laws, Rules and Regulations, budget, schedule of assessments and any other books, records and financial statements of the Condominium. The Board may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

**ARTICLE VII
THE CONDOMINIUM PROPERTY - USE, OPERATION,
PRESERVATION, MAINTENANCE AND REPAIR**

7.01. Repairs and Maintenance Which Are the Responsibility of the Board of Managers. Unless: (i) otherwise provided in the Condominium Declaration or these By-Laws; or (ii) performed by any governmental entity or independent authority, all maintenance, repairs and replacement to the common elements of the Property including but not limited to landscaped areas, parking areas, driveways, exterior walls, roof and roof members, walks and fences, as well as all maintenance, repairs and replacements to any pipes, wires, conduits and other utility lines as are located in the common elements but serve two (2) or more Homes, shall be made by the Board of Managers. The cost of all such maintenance, repairs and replacements shall be common expense unless occasioned by a negligent or willful act or omission as provided in Section 7.02 below.

7.02. Repairs and Maintenance Which Are the Responsibility of the Home Owners. All maintenance (including painting and decorating of the Homes), repairs, and replacements to the Homes including windows (including all glass breakage), doors (except painting of the exterior surface of windows and doors which open from a Home, which painting is the responsibility of the Board of Managers), patio or balcony carpeting, and maintenance and repairs to lines, pipes, ducts, wires, cables, chutes, conduits, connections and fittings which service only one Home shall be made by the respective Home Owners at their own expense.

All irrevocably restricted common elements shall be maintained and repaired by the Home Owner to whom such common element is restricted in use.

The Owner(s) of any Home having a fireplace shall be responsible for the maintenance and repair of the chimney serving each fireplace in such Owner's Home. The individual chimney flue serving each fireplace located within the Home is deemed to be a part of the Home in which such fireplace is located. Each such Home Owner is obligated, at such Owner's sole cost and expense, to have each fireplace chimney flue so owned, serviced and cleaned at least once annually by a contractor approved by the Board of Managers. Each such Home Owner must also provide the Board with written proof that such annual service and cleaning has been performed.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 7.01 above, but which is occasioned by a negligent or

willful act or omission of a Home Owner, (including any family member, or tenant, or employee of such Home Owner, or any guest or invitee of such Home Owner, member of such Home Owner's family or tenant of such Home Owner) shall be made at the cost and expense of such Home Owner. If such maintenance, repair or replacement is the responsibility of the Board of Managers, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Home and such cost shall be added to that Home Owner's common charges and, as part of those common charges, shall constitute a lien on the Home to secure the payment thereof.

In the event that a Home Owner fails to make any maintenance or repair, which maintenance or repair is necessary to protect any of the common elements or any other Home, the Board of Managers shall have the right to make such maintenance or repair (after the failure of the Home Owner to do so, weather permitting, after reasonable notice, except that, in the event of an emergency situation, e.g., to prevent immediate damage to the Home, other Homes or the common elements, no notice), and to charge the Home Owner for the cost of all such repairs and/or maintenance. In the event that the Board of Managers charges a Home Owner for repairs or maintenance to such Home Owner's Home or for repairs to any common element and which the Home Owner is obligated to maintain pursuant to these By-Laws or the Declaration or Rules and Regulations, and the Home Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon, and, in such event, the Home Owners shall be liable for the attorney's fees and costs of such suit or proceeding together with interest on all sums due.

7.03. Quality of Maintenance and Repairs. All repairs, painting and maintenance, whether made by the Home Owner or by the Board of Managers to the doors, windows, balconies, or the exterior surface of any Building, including roofs, or to any generally visible portion of the common elements shall be carried out in such manner so as to conform to the materials, style and color shall be compatible with the architectural design of the Building(s).

7.04. Right of Access. The Board of Managers and/or the managing agent and/or any other person authorized by the Board of Managers, the manager or the managing agent, shall have a right of access to the Homes and common elements, for the purpose of correcting any condition originating in a Home and threatening another Home 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 a Home or elsewhere in the Building, or to correct any condition which violates the provisions of any mortgage covering another Home, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Home Owner, except that, in case of an emergency, e.g., to prevent immediate damage to the Home, other Homes or the common elements, such right of entry may be immediate, without notice and without regard to whether the Home Owner is present at the time or not.

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

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

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

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

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

d. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, ordinances, 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 Home Owners or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.

7.06. No Obstruction of Common Elements and Facilities. A Home Owner shall not obstruct the common elements. The common elements and facilities shall be used only for those purposes for which they are reasonably suited and capable. Common halls and stairways in a Building shall be used for no purpose other than normal transit through them or for uses reasonably related to occupancy of and access to the Homes.

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

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

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

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

7.10. Penalties and Fines. In addition, or as an alternative to an action at law or suit in equity, the Board of Managers may, with respect to any violation of the Declaration or of these By-Laws or of any rules and regulations of the Condominium or of any committee of the Condominium, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Home Owner or occupant shall be deemed an assessment against the Home of such Owner and, as such, shall be a charge and continuing lien upon such Home, shall constitute a personal obligation of the Home Owner, and shall be collectible in the same manner as common charges and special assessments under these By-Laws and the Declaration.

7.11. Owner Responsible for Tenants. Any lease of a Home shall be for an initial term of not less than six (6) months and shall be in such format and on such lease form, if any, as

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

ARTICLE VIII INSURANCE AND INSURANCE TRUSTEE

8.01. Insurance. The Board of Managers shall obtain and maintain, to the extent obtainable: (1) fire and casualty insurance, (2) liability insurance, (3) directors' and officers' liability insurance, (4) a fidelity bond, (5) workers' compensation insurance and (6) flood insurance. Such coverages shall be sufficient to comply with the reasonable requirements of holders, insurers and guarantors of individual Home mortgages. In the event of any lapse, cancellation or material modification of any of such coverages, timely written notice of same shall be given to all Home Owners and all holders, insurers and guarantors of mortgages on Homes who have requested such notice.

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

Subject to the foregoing, coverages shall be as follows:

1. Fire and Casualty. The policies shall cover the interests of the Condominium, the Board of Managers and all Home Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value of the Homes and other improvements (without deduction for depreciation) under the "single entity" concept, i.e., covering the Homes as initially sold and including all machinery servicing the Homes and common facilities, and the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings (including paint) in the Home as initially sold excluding the land, foundations, and the personal property of Home Owners and occupants in the Home. At the option of the Board of Managers, such insurance coverage shall also include any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by present or prior Home Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; (ii) "agreed amount" (unless not

obtainable) and inflation guard; (iii) coverage for loss of common charges from Home Owners forced to vacate because of fire or other insured against casualty; (iv) waiver of any right to claim by way of subrogation against individual Home Owners and the members of their households and families, the Condominium, the members of the Board of Managers, the officers of the Condominium, and the managing agent, if any, for the Condominium, and waiver of any defenses based on co-insurance or any invalidity based on acts of the insured; (v) an exclusion from the "no other insurance" clause of individual Home Owners' policies, so that the insurance purchased by the Board of Managers on behalf of the Condominium shall be deemed primary coverage and any policy obtained by the individual Home Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Managers on behalf of the Condominium shall in no event be brought into "contribution" with insurance purchased by individual Home Owners or mortgagees; (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the conduct or neglect of someone over whom the Condominium Board of Managers has no control, or because of any failure to comply with any warranty or condition in the policy regarding any portion of the premises over which the Board of Managers has no control; (vii) cross-liability giving the Home Owners the right to sue the Board of Managers and vice-versa with the insuring company agreeing to defend the defendant; (viii) a provision that the policy may not be cancelled (including cancellation for nonpayment of premium) or substantially modified without at least 30 days' prior written notice to all of the insured, including all known mortgagees of Homes; (ix) a provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage; and (x) a provision that adjustment of loss shall be made by the Board of Managers. Any deductible provision shall apply only to each occurrence rather than to each item of damage.

Prior to obtaining any new fire and casualty insurance policy, the Board of Managers shall obtain an appraisal from an insurance company or from such other source as the Board of Managers shall determine to be acceptable as to the full replacement value (exclusive of land, foundations and improvements made by present or prior Home Owners or occupants) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

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

supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Each Home Owner and such Home Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Duplicate originals of the policy and of all renewals of the policy, together with proof of payment of premiums, shall be furnished to all known institutional mortgagees of Homes requesting the same.

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

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

The Board of Managers shall review such coverage at least once each year. Until the first meeting of the Board of Managers elected by the Home Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

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

4. Fidelity Bond. The fidelity bond shall name the Condominium as obligee and shall cover all members of the Board of Managers, officers and employees of the Condominium and of the Condominium's managing agent, if any, who handle Condominium funds. The bond shall be in an amount not less than the estimated maximum amount of funds, including reserves, in the custody of the Condominium or managing agent at any given time, but in no event less than a sum equal to three (3) months' aggregate common charges on all Homes, plus reserves. It shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and shall provide that the bond shall not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice to the Board of Managers, Insurance Trustee, if any, and all institutional first mortgagees of Homes as listed on the books and records of the Condominium.

Notwithstanding the limitation set forth herein, the Board of Managers shall, upon the request of any Home Owner, Home mortgagee, or prospective Home Owner or mortgagee increase the amount of such bond to meet the reasonable requirements of any existing or proposed purchaser or insurer of any mortgage made or to be made on any Home.

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

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

Deductible Amounts.

In the event of damage or destruction of any Unit or common elements as a result of fire or other casualty covered by insurance obtained by or through the Board of Managers, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the damage is from a cause which emanates from the common elements, the Condominium shall be responsible for the deductible amount, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount;
2. If the property is damaged from a cause which emanates from or within a Unit (other than from a utility line or conduit which passes through the Unit and which services two (2) or more Units) including from any utility line, conduit, terrace or patio

which services only such Unit, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount. The Condominium may pay the deductible portion for which a Unit Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorneys' fees) shall be a charge and continuing lien upon the Unit involved, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and assessments under the Declaration and these By-Laws.

Home Owners' Insurance. Home Owners shall be required to obtain and maintain H.O.6. or equivalent coverage, and not be prohibited from carrying other insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Home Owner.

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

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

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

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

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

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

Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built. Any proposed substantial deviation therefrom shall require the written consent of Eligible Mortgage Holders holding mortgages on 51% or more of the Homes subject to mortgages held by Eligible Mortgage Holders.

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

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

ARTICLE IX SELLING, MORTGAGING AND LEASING HOMES

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

Any lease or rental of a Home shall be for a minimum of six (6) months and shall provide for full compliance by the tenants with the Declaration, By-Laws and Rules and Regulations of the Condominium. The Owner shall be responsible for violations by such Owner's tenant and shall be subject to actions by the Board of Managers in accordance with Section 7.11 of these By-Laws.

9.02 Multiple Leasing of Homes. No Home Owner, including other persons owning Homes who are related to or acting in combination with or on behalf of the Home Owner, such that the Homes are constructively owned by the Home Owner, shall lease more than two (2) Homes in total at any one time.

9.03. Mortgaging of Homes and Notice to Board of Managers. Each Home Owner shall have the right to mortgage his Home without restriction. Either the Home Owner who mortgages his Home or the mortgagee shall notify the Board of Managers in writing of the name and address of the mortgagee. The Board of Managers shall maintain such information in a book entitled "Mortgagees of Homes." No Home Owner shall mortgage, pledge or hypothecate his Home unless and until all unpaid common charges assessed against his Home have been paid to the Board of Managers.

9.04. No Severance of Ownership. No Home Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to such Home Owner's Home without including therein the appurtenant common interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned

or described therein. No part of the appurtenant common interest of any Home may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Home to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the appurtenant common interests of all Homes.

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

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

ARTICLE X AMENDMENT

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

- a. a notice of the meeting containing a full statement of the proposed modification, alteration, amendment or addition, and the canvass period, if any, for voting on the amendment, has been sent at least 30 and not more than 50 days prior to the date set for said meeting, to all Home Owners and to all Eligible Mortgage Holders; and
- b. owners of 67% or more of the Homes in number and in common interest approve the change; and
- c. the Board of Managers does not, prior to the first date established for voting on the proposed change, receive written notification of opposition to the change from Eligible Mortgage Holders of 51% or more of the number of Homes subject to first mortgages held by Eligible Mortgage Holders; and
- d. the change is set forth as an amendment to the Declaration duly recorded in the Monroe County Clerk's Office.

Notwithstanding the above, the Board of Managers during the time it owns any Home, may make amendments to these By-Laws consistent with the current provisions of the

Condominium Act, the Declaration and these By-Laws to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Home Owner or Eligible Mortgage Holder without the written permission of such Home Owner or Eligible Mortgage Holder. Such amendments need only be signed by the Board of Managers.

ARTICLE XI MISCELLANEOUS

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

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

11.03. No Waiver for Failure to Enforce. No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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

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

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

SCHEDULE A

**BAY VILLAGE
CONDOMINIUM**

HOUSE RULES