

SCHEDULE 12

BY-LAWS

OF

VALLEY CREEK CONDOMINIUM

ARTICLE I

NAME AND LOCATION

These are the By-Laws of the Valley Creek Condominium, hereinafter called the Condominium. The principal office of the Condominium shall be located on Pittsford-Palmyra Road, Fairport, New York.

ARTICLE II

PURPOSES

This Condominium is formed under the provisions of Article 9-B of the Real Property Law of the State of New York, known as the Condominium Act, to serve as the means through which the unit owners may express their opinions, wishes, and take action with regard to the administration, management and operation of the Condominium and the Condominium property described in the Declaration.

ARTICLE III

UNIT OWNERS

Section 1. PLACE OF MEETINGS: The unit owners of the Condominium shall hold meetings at the principal office of the Condominium or at such place within the Town of Perinton, County of Monroe and State of New York as the

Board of Managers shall authorize.

Section 2. ANNUAL MEETING: The annual meeting of the unit owners of the Condominium shall be held at the principal office of the Condominium at 8:00 P.M. on the second Monday in February of each year, if not a legal holiday, or if that day be a legal holiday, then on the next business day following at the same hour, at which time the unit owners shall elect a Board of Managers of the Condominium, and may transact such other business as may properly come before the meeting. Within thirty (30) days after title to the last unit is conveyed by the Sponsor, but no later than August 1, 1974, the Sponsor shall call the first Annual Meeting of the unit owners.

Section 3. SPECIAL MEETINGS: Special meetings of the unit owners may be called by the President, Vice-President, Secretary, or by a majority of the Board of Managers and must be called by such officers upon receipt of a written request from ten or more of the unit owners. Such written request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

Section 4. FIXING RECORD DATE: For the purpose of determining the unit owners entitled to notice of any meeting of the Condominium, or any adjournment thereof, or for the purpose of any other action, the Board of Managers shall fix in advance, a date as the record date for such determination. Such date shall not be more than thirty nor less than ten days before the date of the

meeting. If no record date is fixed, then the date shall be determined in accordance with the provisions of law relating thereto.

Section 5. NOTICE OF MEETING: Notice of meetings of the unit owners of the Condominium shall be in writing. Notice of the meetings other than the annual meeting shall indicate and state that it is being issued by or at the direction of the person or persons calling the meeting. Such notice shall be mailed or delivered not less than five nor more than twenty days prior to the date of the meeting. Notice of all meetings at which disposition is to be made of assets, placing of liens, imposing assessments for major repair or improvement, granting of rights or easements in the Condominium property must also be given to the holders of the first mortgages on the units.

Section 6. WAIVER OF NOTICE: Notice of meetings need not be given to any unit owner who signs a waiver of notice either in person or by proxy whether before or after the meeting. The attendance of any unit owner at a meeting, in person or proxy, without protesting prior to the conclusion of the meeting the lack of proper notice of such meeting shall constitute a waiver of notice of the meeting by him.

Section 7. QUORUM OF UNIT OWNERS: A quorum of unit owners' meetings shall consist of persons holding thirty or more units, entitled to vote thereon. The subsequent joinder of a unit owner in the action taken at a meeting by signing

and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize the meeting it cannot be broken by the subsequent withdrawal of a unit owner or owners. The unit owners present may adjourn the meeting despite the absence of a quorum.

Section 8. VOTING: Each unit owner shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, the vote for such unit shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast with respect to any unit. Each unit owner shall be entitled to vote at all meetings of unit owners. Each vote shall be cast by the unit owner or by his proxy when filed with the Secretary of the Condominium. A unit which has been acquired by the Board of Managers in its own name or in the name of its agent, designee or nominee on behalf of all of the unit owners shall not be entitled to a vote so long as it continues to be so held.

Section 9. PROXIES: A vote may be cast in person or by proxy. To be valid, proxies must be duly signed and acknowledged by the unit owner and must be filed with the Secretary before the appointed time of the meeting. A proxy is valid only for the particular meeting designated therein. A proxy may be revoked by the unit owner by appearance in person at the meeting and there and then filing with the Secretary at that time notice of the revocation.

Section 10. ACTION OF THE UNIT OWNERS: A quorum being present, a vote of the majority of those present shall constitute

the action of the unit owners and be binding upon all unit owners except as to those matters where the law and Condominium documents require a different majority.

Section 11. WRITTEN CONSENT OF UNIT OWNERS: APPROVAL OR DISAPPROVAL: Any action that may be taken by a vote may be taken without a meeting on written consent duly acknowledged setting forth the action so taken or to be taken of the unit owners holding in interest the majority of the shares entitled to vote thereon in accordance with Section 8 hereof. Approval or disapproval of a unit owner on any matter whether or not the subject of a meeting shall be by the person holding title to the unit on the books of the Condominium at the time of the execution of the instrument, if no meeting is being held, or by the person owning the unit on the record date, if such record date has been fixed and a meeting is to be held.

Section 12. ORDER OF BUSINESS: The order of business at the annual meeting of the unit owners of the Condominium shall be:

- (a) Election of chairman of the meeting.
- (b) Calling the roll and certifying the proxies.
- (c) Proof of notice of the meeting or certification as to waivers.
- (d) Reading and disposal of unapproved minutes.
- (e) Reports of the officers of the Condominium.
- (f) Reports of the Board of Managers of the Condominium.
- (g) Reports of Committees.
- (h) Selection and appointment of inspectors of election.

- (i) Election of Board of Managers of the Condominium.
- (j) Unfinished Business.
- (k) New business.
- (l) Adjournment.

Section 13. The order of business at all other meetings of the unit owners shall, as far as practical, conform to the order of business at the annual meeting insofar as the special purpose of the meeting will permit.

ARTICLE IV

MANAGERS

Section 1. BOARD: The Condominium shall be managed by a Board of Managers, each of whom shall be over the age of twenty-one years. They need not be unit owners.

Section 2. NUMBER AND TERM OF OFFICE: The Board of Managers shall consist of five persons. At the first election, two members shall be elected to serve a term of one year, three members to serve a term of two years. At all subsequent elections members of the Board shall be elected for a term of two years. The Board may be enlarged in multiples of two but in no event shall the Board consist of more than nine.

Section 3. NOMINATION AND ELECTION:

A. At least two months preceding the annual meeting of the Condominium, there shall be appointed by the President, a nominating committee of seven; two of whom shall be members of the Board whose term of office does not expire at the time of the ensuing annual election, if there be such members of the Board; two of whom shall be unit

owners holding no office in the Condominium; three of whom shall be the nominees of the Declarant while it holds ten or more units. The President shall have power to increase the nominating committee to include the nominee of the holder of any ten units or more in the Condominium. The nominating committee shall meet with speed and after considering the qualifications of persons and consulting the Declarant while it holds ten units or more, shall select a person or persons to be elected members of the Board of Managers at the forthcoming annual meeting of the Condominium. No member of the nominating committee shall be eligible for any nomination by said committee at such election. Such committee shall report its nominees by notice sent by mail to the unit owners at least one month prior to the date of the annual meeting. The names of the nominees shall be either typed or printed upon a ballot as candidates for the Board.

B. Any ten unit owners in good standing, or the owner of ten or more units, may nominate candidates to the Board of Managers by presenting such nominations in writing, signed by them, to the chairman of the nominating committee or to the secretary of the Condominium and thereupon the names of such candidates shall also be typed or printed on the official ballot with a special note as to the rights of any of the nominators. Such petition shall be presented not less than two weeks before the annual meeting.

C. The officers and members of the Board of Managers appointed by the Declarant shall retain their office for

the term for which they were appointed until the first annual meeting of the unit owners after the adoption of these By-Laws.

D. Before balloting for an officer or manager, the President of the Condominium shall appoint three inspectors of election who shall collect, receive, canvass and report the votes cast at such election. The inspectors shall not be candidates.

E. A typed or printed ballot shall be prepared by the nominating committee and mailed to each unit owner at least five days before the annual meeting. Where there is more than one candidate for any one office such names shall be arranged in alphabetical order.

F. The candidates receiving a plurality (a number of votes cast that is greater than the number cast for any other candidate) of the votes cast for the office shall be declared elected. In the case of members of the Board of Managers, those receiving the greater number of votes out of the number to be elected shall be declared elected and in case of a tie vote as to the last place to be filled, a new ballot shall be cast in order to determine the last successful candidate excluding those with a smaller number of votes who shall be declared defeated.

G. No unit owner who has failed to pay his common expenses and charges and against whom a lien therefor is being prosecuted shall be eligible for election as an officer or as a member of the Board of Managers.

H. Members of the Board of Managers and the officers

of the Condominium shall be installed at the next meeting of the Board after their election.

I. Managers to be elected to fill any vacancies due to death, resignation or removal shall serve for the remaining unexpired term of the manager they replace. Managers are elected otherwise to serve for three years.

J. If the number of managers shall have been increased, they shall be elected at a special meeting called for that purpose in the manner prescribed therein.

K. For so long as the ownership of twenty or more units remains in O'Brien Homes, Inc., but not later than August 1, 1974, it may select a majority of the Board of Managers. After August 1, 1974, for so long as the ownership of twenty or more units remains in O'Brien Homes, Inc., it may select one member of the Board of Managers. Such members so selected need not be residents in any of the said units.

Section 4. REMOVAL AND RESIGNATIONS: A. For so long as the ownership of twenty or more units remains in O'Brien Homes, Inc., it may demand, and it shall be entitled to receive, the resignations of a member or members of the Board of Managers.

B. A manager may be removed for cause by vote or action taken by the Board of Managers or by the unit owners at a special meeting called for that purpose. A demand for the resignation of a member or members of the Board of Managers made pursuant to the provisions of Subdivision A hereof shall be deemed to be a demand for removal with cause.

C. Managers may not be removed without cause unless notice of the request for their removal and their resignation has been given to them and a special meeting has been called for that purpose.

D. A manager may resign at any time by giving written notice to the Board of Managers the President or the Secretary. Unless otherwise specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the Board of Managers or by the officers designated to receive the same and acceptance of the resignation shall not be necessary to make it effective. A resignation will not relieve the manager resigning from his liability by reason of malfeasance or negligence while in office.

Section 5. QUORUM: A majority of the Board of Managers shall constitute a quorum for the transaction of business or for any specific item of business. If at any meeting there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At an adjourned meeting any business which could have been transacted at the meeting originally called may be transacted without further notice. The joinder of a manager in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such manager for the purpose of determining the presence of a quorum.

Section 6. ACTION OF THE BOARD: A quorum being present, a vote of the majority of those present shall

constitute the action of the Board of Managers except as to those matters where the law and Condominium documents require a different majority.

Section 7. VACANCIES IN THE BOARD: Vacancies in the Board may be filled until the date of the next annual meeting of the unit owners by the remaining members of the Board where the period between such appointment and the date of annual meeting is three months or less. Where the period remaining before the date of the annual meeting is more than three months a special meeting of the unit owners is required to fill the vacancy. The Board of Managers shall not fill a vacancy in the Board unless such appointment is required by law or the Condominium documents to properly function as a Board.

Section 8. TIME AND PLACE OF BOARD MEETINGS: The Board of Managers shall meet regularly at least once a month on the second Monday of each month or on such other day as the Board may fix. It may hold its meetings at the office of the Condominium or at such other places within the Town of Perinton, County of Monroe and State of New York as it may determine. The annual meeting of the Board shall be held immediately following the annual meeting of the unit owners at the place where such annual meeting of the unit owners is held. A special meeting of the Board of Managers may be called by the President or Vice-President on two days notice given either in writing, in person, by telephone, or by wire to each manager. Such special meeting must be called

on the demand or request of two members of the Board.

Section 9. NOTICE OF MEETINGS AND WAIVERS: Regular meetings once established may thereafter be held without notice at the time and at the place agreed upon by the Board. If the time or the place of a regular meeting be changed by circumstances beyond the control of the Board notice of the change shall be given in the same manner as for a special meeting. Notice of a meeting need not be given to any manager who submits a waiver of notice, whether such waiver be before or after the meeting. Attendance at the meeting shall be deemed to be a waiver of notice thereof.

Section 10. PRESIDING OFFICER: The President, or in his absence the Vice President, or if both be absent, then a Chairman selected and chosen by the Board shall preside.

Section 11. FEES: The fees or other compensation, if any, of all officers of the Condominium and of the members of the Board shall be determined by the unit owners at a meeting.

Section 12. POWERS AND DUTIES OF THE BOARD: The Board shall have power and may exercise all of the powers granted to it under the Condominium documents. The Board of Managers shall exercise its powers and duties in accordance with the provisions of the Declaration and said Board shall have power:

A. To make, levy, and assess common charges against

the unit owners for the purpose set forth in the Declaration and to use the same in the exercise of its power and duties.

B. To maintain, repair, replace and operate the Condominium property and in case of casualty to reconstruct and re-establish the property and to make improvements therein.

C. To contract for the management of the property; to enforce by legal means all of the provisions of the Condominium documents, these By-Laws, the Rules and Regulations of the Condominium, the resolutions and decisions rendered in pursuance of the By-Laws.

D. To prevent loss or damage to the Condominium by paying taxes, assessments or water rents or other liens against any part of the Condominium common interest and to assess the same against the unit or units subject to such liens.

E. To fix and assess charges for use of recreation facilities for special occasions as provided in the Declaration.

F. To temporarily close public places in the Condominium when required for a special use.

G. To make or amend rules and regulations respecting the use and operation of the property but not inconsistent with the Declaration.

H. To pay the cost of all power, water, sewer, or other utility services rendered to the Condominium which cannot be separately billed to the unit owners.

I. To enforce the provisions of the Condominium documents by legal action if necessary and to employ legal, accounting, maintenance or other personnel for reasonable compensation to perform the service required for the proper administration of the Condominium.

J. To purchase in its own name or in the name of its agent, designee or nominee either at foreclosure sale or from a defaulting unit owner in lieu thereof and to hold, mortgage or lease any unit.

K. To accept a deed in its own name or in the name of its agent, designee or nominee from a unit owner who desires to relieve himself from the payment of future common charges.

L. To take possession of any abandoned unit to prevent damage to the other units or to the common elements.

M. To hire and discharge persons employed for the operation of the property on such terms and conditions as the Board in its sole discretion may deem advisable.

N. To do any and all things which prudent operation of the Condominium would require.

ARTICLE V

OFFICERS

Section 1. At the annual meeting of the Board of Managers of the Condominium there shall be elected, in the same manner as provided herein for the election of managers, a President, Secretary, Treasurer and such Vice Presidents to assist the President as may be required

but not exceeding three. These officers shall all serve for a term of one year, and they shall be members of the Board of Managers.

Section 2. PRESIDENT: Shall be the Chief Executive officer of the Condominium and he shall have all of the powers and duties usually vested in a President of the Condominium, including the power to appoint committees as he may, with the consent of the Board of Managers, deem appropriate. He shall exercise such other powers and duties as shall be prescribed by the Board. He shall see that all orders and resolutions of the Board shall be carried into effect. He may delegate some of his duties to Vice Presidents.

Section 3. VICE PRESIDENTS: The Vice Presidents shall perform all duties as shall be delegated to him by the President. He shall serve as chairman of the respective committees which the Board of Managers shall deem appropriate. If there is more than one Vice President, they shall exercise the powers and perform the duties of the President in his absence or disability in the order of their appointment.

Section 4. SECRETARY: The Secretary shall keep a record of all actions of the Board and all meetings of the unit owners. He shall attend to the giving of all notices to the unit owners and/or managers and shall supervise the service thereof. He shall have custody of the seal of the Condominium and shall affix the same

to such instruments as may require a seal when duly signed. He shall prepare and have available at each meeting of the unit owners a certified list in alphabetical order of the names of the unit owners and of their common interest and certify which of them are entitled to vote. He shall perform all other duties incident to the office of Secretary of the Condominium as may be required by the President or the Board of Managers.

Section 5. TREASURER: The Treasurer shall keep the financial records of the Condominium and shall keep books of account and shall have custody of all the common property of the Condominium including all funds, securities and evidences of indebtedness. He shall keep the assessment roll and the accounts of the unit owners. He shall perform all other duties incident to a Treasurer of a Condominium as prescribed by the Board. He shall deposit all moneys and other valuables in the name of and to the credit of the Condominium in such depositories as shall be designated by the Board. He shall disburse the funds of the Condominium as may be ordered and authorized by the Board and shall preserve proper vouchers for such disbursements. He shall render an annual report at the annual meeting of the unit owners. The Treasurer and the President shall, as prescribed by the Board, report on the operation of the Condominium property and the payment of common expenses and the termination and collection of the common charges.

Section 6. All employees as such of the Condominium

may be removed peremptorily by the Board. The officers may be removed in the same manner as a manager can be removed as provided in Section 4 of Article IV.

ARTICLE VI

FISCAL MANAGEMENT

Section 1. The provisions for fiscal management of the Condominium as set forth in the Declaration shall be supplemented as follows:

A. The assessment roll shall be maintained in a set of accounting books in which there shall be an account of each unit. Such account shall designate the name and address of the owner or owners, the amount of each assessment against the owner, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments. In making up the assessment roll the unit is treated as such and no division shall be made because the unit is held by more than one person.

B. The Board of Managers shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the various functions of the Condominium and shall include among its items:

1. Common expense budget:
 - a. Maintenance and operation of common elements, including landscaping.
 - b. Utility services.
 - c. Casualty insurance.
 - d. Liability insurance.

e. Administration.

f. Any other item which the Board finds necessary to include therein.

2. The proposed assessment against each unit owner.

Section 2. Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 1st of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned.

Section 3. The depository of the Condominium shall be such bank or banks as shall be designated from time to time by the Board of Managers. The moneys of the Condominium shall be deposited therein. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Board of Managers.

Section 4. An audit of the accounts of the Condominium shall be made annually by a certified public accountant and a copy of the report shall be furnished to each member not later than ninety days after the end of the year for which the report is made.

Section 5. FIDELITY BONDS: Bonds may be required by the Board of Managers from all officers and employees of the Condominium. The amounts of such bonds shall be determined by the Board. The premium on such bonds shall be paid by the Condominium.

ARTICLE VII

PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern

the conduct of proceedings except where the Declaration or the laws of the State of New York require a different method of procedure.

ARTICLE VIII

AMENDMENTS

Section 1. Amendments to the By-Laws shall be proposed by either a majority of the Board of Managers or by ten unit owners of the Condominium. The proposed amendment must be reduced to writing and must be accompanied by the opinion of legal counsel as to whether the amendment is permitted under the Declaration and Article 9-B of the Real Property Law of the State of New York. It shall be included in the notice of any meeting at which action is to be taken thereon.

Section 2. A resolution adopting a proposed amendment may be proposed by a member of the Board of Managers or by a unit owner at a meeting called for this purpose, and after being proposed and approved by either of such bodies, must be approved by the other. Managers and unit owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by not less than seventy-five (75%) percent of the Managers and by seventy-five (75%) percent in number of all the unit owners who in the aggregate own not less than seventy-five (75%) percent of the common interest.

Section 3. An amendment when adopted shall become

effective only after being recorded with the recording officer in the same place where the Condominium documents are recorded.

ARTICLE IX

MEMBERSHIP LIST

Section 1. Each unit owner shall have his name and address set forth on the membership list of the Condominium. Upon presentation of satisfactory proof of the change of ownership of the unit to the Secretary of the Condominium, the membership list shall be changed to set forth the new owner's name and address.

Section 2. In the determination of the record date for the purpose of voting, the ownership of the unit upon the membership list of the Condominium shall control.

Section 3. The Board shall have the power to close the membership list for ten days preceding any special or annual meeting of the unit holders.

ARTICLE X

FISCAL YEAR

The fiscal year shall begin on the 1st day of January in each year or as the Board of Managers shall establish at their first meeting. Once established the date of commencement of the fiscal year shall not be changed.

ARTICLE XI

EXECUTION OF INSTRUMENTS

All instruments of the Condominium shall be signed, executed and acknowledged under seal by such officer or officers as the Board of Managers shall designate.

ARTICLE XII

RULES AND REGULATIONS

The Rules and Regulations of the Condominium are intended to govern the details of the operation and the use of the common elements and the restrictions and requirements for the use and maintenance of the unit. They are designed to prevent unreasonable use of their respective units and the common elements by other unit owners. The Rules and Regulations may be amended from time to time by the Board of Managers.

The foregoing By-Laws are hereby declared to be the By-Laws of the Condominium until the first meeting of the Board.

The foregoing By-Laws have been duly adopted by the Board of Managers and these By-Laws were declared by said Board to be placed in operation at its first meeting held on the day of , 197 .

Secretary

Approved:

Treasurer