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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

THIS DECLARATION made this 2nd day of May, 1988, by FABERCON DEVELOPMENT, a general partnership organized and existing under the laws of the State of New York, having its principal offices at 80 West Main Street, Rochester, New York 14614, hereinafter referred to as "Sponsor".

WITNESSETH

WHEREAS, the "Sponsor" is the owner of certain real property in the Town of Henrietta, Monroe County, New York, more particularly described in Schedule "A" annexed hereto and made a part hereof.

WHEREAS the "Sponsor" desires to develop as a residential community with residential lots and dwelling units to be individually owned and with certain open spaces and common facilities available for the benefit of said community, and

WHEREAS, the "Sponsor" desires to provide for maintenance of said common areas and for the preservation of the values and amenities in said common areas by the creation of an association which shall be empowered to maintain and administer the community property and facilities and which shall administer and enforce the covenants and restrictions and which shall collect and disburse the assessments and charges all as set forth herein, and

WHEREAS, the "Sponsor" has incorporated the Cross Creek Homeowners Association, Inc. pursuant to the Not-for-profit Corporation Laws of the State of New York for purposes of exercising the functions as set forth herein,

NOW THEREFORE, the "Sponsor" declares that the real property described in "Schedule A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions for purposes of protecting the value and desirability of said real property and which shall run with the real property and be binding on all parties having any right, title or interest in the property, their heirs, successors and assignments and shall inure to the benefit of each owner.

ARTICLE ONE - DEFINITIONS

Section 1.01 Definitions

The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall have the following meanings:

1. Association shall mean and refer to the Cross Creek Homeowners Association, Inc.
2. Common Areas shall mean and refer to all property owned by the Association now or hereafter for the common use and enjoyment of the homeowners.
3. Declaration shall mean and refer to this document of protective covenants, conditions, restrictions, easements, charges and liens as of from time to time may be supplemented, extended or amended.
4. Eligible Holder of Lot Mortgages shall mean and refer to the holder, insurer or guarantor of any lien of mortgage given by a lot owner covering his lot which is 1) a purchase money mortgage or 2) any mortgage taken or acquired by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
5. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the properties with the exception of the common area, and which plot is identifiable as a separate parcel according to the Town of Henrietta tax records.
6. Member shall mean and refer to each holder of a membership interest in the Cross Creek Homeowners Association, Inc.
7. Owner shall and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property.

8. Property shall mean and refer to all the properties as are subject to this Declaration and such additions as may hereafter be brought within the jurisdiction of the Association.

9. Sponsor shall mean and refer to FaberCon Development.

10. Townhome shall mean a single family dwelling on the property that is attached to at least one other townhome by means of a party wall or otherwise, and shall include the garage for that dwelling even if not attached thereto.

ARTICLE TWO - PROPERTIES SUBJECT TO THIS DECLARATION

Section 2.01 Initial Property

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Henrietta, County of Monroe, and State of New York and is more particularly described in "Schedule A" attached hereto and incorporated by reference herein, all of which property shall be referred to as initial property.

Section 2.02 Additional Property

The "Sponsor", its successors and assigns shall have the right to bring additional property within the scheme of this Declaration. The additions of property authorized under this article shall be made by filing and recording a Supplemental Declaration with respect to additional property and which shall extend the scheme of protective covenants, conditions, restrictions, easements, charges and liens contained in this Declaration to said additional properties and shall thereby subject such additions to assessment for the just share of Association expenses. This Supplemental Declaration may contain complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any of the added properties.

ARTICLE THREE - PROPERTY RIGHTS

Section 3.01 Owners Rights

Every owner shall have a right and easement of enjoyment in and to common

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areas which shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

1. The right of the Association pursuant to its bylaws to adopt rules and regulations governing the use of the common areas and facilities, and governing the personal conduct of Association members and their guests and to establish penalties for infraction of said rules and regulations.

2. The right of the Association to suspend an owners voting rights during any period in which an assessment against his lot remains unpaid and for any infraction of the Association's published rules and regulations.

Section 3.02 Sponsor's Rights

NOTWITHSTANDING any other provisions herein contained: The "Sponsor" reserves the right to operate a Sales Center and to maintain model units. Prospective purchasers and others shall be allowed to visit the Sales Center and model units until the marketing and sale of all townhomes are complete, including additional phases of development. The "Sponsor" shall also have the right to use portions of the common elements for sales promotions including parking spaces, and to erect and maintain on the common area advertising direction and signs for Sponsors sales and marketing.

ARTICLE FOUR - EASEMENTS

Section 4.01 Easements for Utilities

"Sponsor" reserves the right to grant easements, both temporary and permanent, to all public authorities and public and private utility companies over any part of the common areas described herein.

Section 4.02 Easements for Encroachments

If any portion of the common areas encroach upon the lot, or if any lot encroaches upon any other lot or upon any portion of the common areas, as a result of the construction of any building or as a result of settling or shifting of any building, or as a result of alterations or refurbishing of the common areas, or one

or more lots made by or with the consent of the Board of Director's, a valid easement for the encroachment and for the maintenance of the same so long as the building or buildings stand shall exist. In the event any building, townhome, any adjoining townhome or any adjoining common areas, shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceeding, and then rebuilt, encroachments of parts of the common areas upon any townhome or any lot or townhome upon any other lot or townhome, or upon any portion of the common areas, due to such rebuilding, shall be permitted, and valid easements for such encroachments and maintenance thereof shall exist so long as the building or buildings shall stand.

Section 4.03 Additional Easements

There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewers, gas, telephone, electricity and the master television antenna system. This easement shall permit the erection and maintenance of necessary poles and other equipment on property and shall permit the placement and maintenance of electrical or telephone wires and conduits, sewer and water lines, on, above or below any residential land owned by any owner. An easement is hereby granted to the Cross Creek Homeowners Association, Inc., its officers, agents, employees and employees of any Management Company having a contract with the Association over all of the common areas and to enter any residence and/or any garage to perform the duties of maintenance and repair of the residences or common areas, to maintain any utilities for which an easement has been granted and to prevent damage to any other residence and/or garage. In addition, the Association shall have the right to grant permits, licenses and easements over common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

Section 4.04 Easement in Favor of the "Sponsor"

The "Sponsor" and any persons it may select shall have the right of ingress and egress over, upon and across the common areas, or any additional land which may be hereafter added to the property and the right to store materials thereon and

make such other use thereof as may be reasonably necessary incident to construction, development and sales of the townhomes, operation of the association and maintenance of the common areas and to perform any operations as in the sole opinion of the "Sponsor" may be reasonably required, convenient or incidental to the construction and sale of residences.

ARTICLE FIVE - PARTY WALLS

Section 5.01 Party Walls

Each wall built as part of the original construction of a townhome and placed on the dividing line between the lots shall constitute a party wall.

Section 5.02 Repair and Maintenance of Party Walls

The costs of reasonable repair and maintenance of a party wall shall be shared by the owners of said wall, each townhome owner being responsible for the ordinary maintenance and repair of their respective sides of said party wall. As it shall become necessary to make substantial repairs or rebuild a party wall, the costs of such repairing or rebuilding shall be born equally by the two townhome owners.

Section 5.03 Exposure of Wall

Notwithstanding any other provision of this article, any owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing necessary protection against such elements and the necessary repair caused by such elements. The Association shall have an easement to enter upon any townhome in order to effect the necessary repairs or maintenance of said party wall, and charge the cost of such repair to the responsible party or parties. If any party wall is repaired or rebuilt it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 5.04 Party Wall Rights Run With the Land

The rights of support, quiet enjoyment, entry to repair or restore and contribution for the costs of same as described in this article shall run with the land and be binding upon all heirs, successors and assigns of each townhome owner.

Section 5.05 Arbitration

In the event any dispute arises concerning a party wall each owner shall choose from a list of arbitrators provided by the Board of Directors of the Association one arbitrator and such arbitrator shall choose one additional arbitrator and the decision shall be by a majority of all the arbitrators.

ARTICLE SIX - ASSOCIATION MEMBERSHIP, VOTING RIGHTS, AND DIRECTORS

Section 6.01 Formation

Pursuant to the Not-For-Profit Corporation Laws of the State of New York, the "Sponsor" has formed the Association to own, operate and maintain the Association property and to enforce the protective covenants, conditions or restrictions set forth in this Declaration and in the certificate of incorporation and by-laws of the Association, and as they may be amended from time to time.

Section 6.02 Membership

Every owner of a lot subject to assessment shall be a member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 6.03 Voting

The Association shall have one (1) class of voting membership and each member including the "Sponsor" shall be entitled to no more than, nor less than, one (1) vote.

Section 6.04 Election of Directors

The nomination and election of directors and the filling of vacancies on the Board of Directors shall be governed by the by-laws of the Association.

Section 6.05 Powers and Duties of the Board of Directors

The powers and duties of the Board of Directors shall be as set forth in the by-laws of the Association.

Section 6.06 Indemnification of Officers and Directors

Every director and officer of the Association shall be and is hereby indemnified by the Association against any expenses or liabilities, including counsel fees reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party or in which such officer or director may become involved by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time when such expenses are incurred except in the case where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties.

ARTICLE SEVEN - ASSESSMENTS

Section 7.01 Creation of a Lien and Personal Obligation of Assessment

Each lot owner, by accepting a deed therefore, whether or not such deed or any other instrument pursuant to which title is obtained so expressly provides, shall be deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges for maintenance and operation of Association property (common areas), including payment of property tax assessments for all real property taxes on the common areas and for all casualty and liability insurance covering Association property obtained pursuant to Article "13" of this declaration. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common areas.

2. Special assessments.

3. Working Capital assessments.

The assessments shall be fixed, established and collected from time to time as hereinafter provided. Each assessment together with such interests thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the lot against which the assessment is made and shall also be the personal obligation of each owner of such lot at the time the assessment falls due.

The sponsor will not be obligated for association charges including supplemental charges on all unsold townhomes or lots. Sponsor will be obligated for the difference between the actual association expenses including reserves applicable to completed improvements as provided for in the Association's budget, and the Association charges levied on owners who have closed title to their homes or lots.

Section 7.02 Purpose of Maintenance Assessment

The maintenance assessment shall be used to fund maintenance, preservation, operation and improvement of Association Property and for the promotion of recreation, safety and welfare of the members of the Association. The assessment funds shall be used for the payment of taxes on Association property, utility services to property which is commonly metered or billed, refuse collection, snow removal, vehicles and equipment used in maintenance, management, legal and accounting fees, all casualty, liability and other insurance covering association property, maintenance, repair and replacement of all facilities commonly serving the Association members both on and off the lots including landscaped areas, parking areas, patios, fences and townhome exteriors as more fully set forth in Article "10". This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common area which the Association is obligated to maintain.

Section 7.03 Commencement and Notice of Assessment

Assessments shall commence on the day in which the first lot is transferred from the "Sponsor" to an owner or on such other date as may be determined by the "Sponsor". The first assessment shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors. Thereafter, assessments shall be fixed on a full year basis. The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. The assessment shall be due and payable on a monthly basis unless the Board of Directors establishes other periods for payment.

Section 7.04 Basis for Maintenance Assessment

The maintenance assessment shall be assessed equally among all lot owners.

The following items shall be considered common expenses and shall be included in the maintenance assessment for all townhomes: Maintenance and operation, including grounds maintenance-supplies, refuse collection, snow removal, reserves (including parking area resurfacing, sealing of parking areas, walkways, roofs, staining and miscellaneous) vehicle and equipment, utilities, insurance, real estate taxes, management, legal and accounting and miscellaneous.

Section 7.05 Change in Basis of Assessments

The Association may change the basis of determining the maintenance assessment provided for above by obtaining the consent of not less than two thirds (2/3) of the total votes of members voting in person or by proxy in a meeting called for this purpose. Written notice of the meeting for this purpose shall be given at least thirty (30) days in advance to all voting members. No change in the basis of maintenance assessments which adversely affects the interest of the sponsor with respect to unsold lots shall be valid except with the specific consent of the sponsor in writing for a period of five (5) years from the date of the first townhome conveyance or within 120 days after the sponsor has sold seventy-five percent (75%) or more of the lots then subject to the declaration, whichever period shall occur first. A written certification of any such change shall be executed by the Board of Directors and recorded in the Monroe County Clerk's Office.

Section 7.06 Working Capital Fund

The Sponsor shall advance to the Association Two Hundred Fifty Dollars (\$250.00) per lot for each lot prior to conveyance of the first lot. The purchase agreement set forth as Exhibit 9 of the Offering Plan requires the initial purchaser of each lot to reimburse the sponsor for the Two Hundred Fifty Dollars (\$250.00) per lot for purposes of working capital of the Association. Reimbursement shall be made at the time of closing title to the lot. The advance shall be used for such purposes as the Board of Directors, in its sole discretion, may determine including to meet unforeseen expenditures or to acquire additional equipment or services. Working capital fund may be replenished from funds collected in the assessment from lot owners. While the Sponsor is in control of the Board of Directors, the working capital fund shall not be used to reduce projected Association charges. Neither the Department of Law nor any other Government agency has passed upon the adequacy of the working fund established by the Sponsor.

Section 7.07 Special Assessments

In addition to the annual maintenance assessment, the Association may levy a special assessment for any purpose deemed necessary by the Board of Directors. For any special assessment in excess of twenty percent (20%) of the then current amount of annual maintenance assessment, consent of two-thirds (2/3) of the total votes of the owners shall be required. A meeting of Association members shall be called at least thirty (30) days in advance for the purpose of voting on special assessments.

Section 7.08 Nonpayment of Assessment

If an assessment or installment is not paid on the due date, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with interest thereon and costs of collection, shall there upon become a continuing lien on the property and shall bind such property in the hands of the then owner and such owner's heirs, devisees, personal representatives, successors and assigns.

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

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law.

The Association may bring an action at law against the owner who is personally obligated to pay the assessment or foreclose the lien against the property including interest, costs and reasonable attorneys fees of any such action. Each lot owner, by his acceptance of the deed to a lot, hereby expressly grants Cross Creek Homeowners Association, Inc. the right and power to bring all actions against such owner personally for the collection of each charge as a debt and to

enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property and such owner hereby expressly grants the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all lot owners. The Association, acting on behalf of the lot owners shall have the power to bid for an interest foreclosed upon a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot. Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall under no circumstances entitle any lot owner to withhold or fail to pay the assessments due to the Association for the lot or lots owned by such owner.

Section 7.09 Right to Maintain Surplus

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balances remaining. The Association is not obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and achievement of the purposes of the Association.

Section 7.10 Subordination of the Lien to Mortgages

Lien of the assessments provided for herein, and fees, late charges, fines or interest levied by the Association shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect the assessment lien, however the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7.11 Subordination of Mortgage

The mortgage for any land or construction loan for any part of the Cross Creek Townhomes shall be made subordinate to the Declaration or shall include covenant insuring that the Association and/or the townhome lot owner's undisturbed use of the premises for the purposes described herein in the event of foreclosure. To the extent permitted by law, the lien of the Association for maintenance assessments or other charges, fees, late charges or fines levied by the Association on or after the date of recording of the first mortgage on any lot shall be subordinate to said first mortgage lien.

ARTICLE EIGHT - MAINTENANCE

Section 8.01 Maintenance by the Association

The Association shall be responsible for all maintenance and or repair and or replacement to the improvements on the Association property; all parking areas and walkways on the Association property, all snow removal from parking areas and walkways on Association property, all landscape areas on Association property, all wires, conduit and public utility lines owned by the Association and for which the utility company, homeowners or other entities are not responsible. Such costs shall be funded from the maintenance assessments.

Section 8.02 Maintenance of Townhomes with Respect to the Townhomes

The Association shall repair, replace any exterior siding, gutters, downspouts, roofs including garages, and paint the exterior trim, windows and doors and maintain patios, but the Association shall not repair or replace broken window panes or doors. The Association shall paint and repair or replace all fences or railings installed by the "Sponsor" and shall maintain, replace and repair all walkways. Costs of all maintenance performed by the Association shall be funded from the maintenance assessments.

Section 8.03 Quality and Frequency of Maintenance and Repairs

All maintenance, repair and replacements whether or not performed by the Association shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and values of the property. The Association may

establish reasonable schedules and regulations for maintenance repair or replacement which schedules and regulations shall take into account the useful life of any painting and exterior materials in the enhancement and preservation of the appearance and value of the property.

Section 8.04 Access for Repairs

The Association, its employees, contractors and agents shall upon reasonable notice to owners have the right to enter upon any portion of the owners property and into and upon any townhome at a reasonable hour to carry on its functions, as provided for in this Article except that in an emergency the Association shall have the right without notice to enter upon any portion of the property or enter into any townhome to make necessary repairs and to prevent damage to any unit or any portion of the property. Repair of any damage caused from gaining access shall be the expense of the Association.

ARTICLE NINE - EXTERIOR MAINTENANCE

Section 9.01 Exterior maintenance

In addition to maintaining the common areas the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder. Maintenance shall include painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, patios, fences and other exterior improvements. Such exterior maintenance shall not include glass surfaces or doors, screens or screen doors, exterior door and window fixtures. Any maintenance or repair necessitated by the willful or negligent acts of an owner, his family, guests, or invitees shall be added to and become a part of the assessment to which said owner's lot is subject.

ARTICLE TEN - ARCHITECTURAL CONTROL

Section 10.01 Architectural Control

An architectural committee consisting of three or more representatives shall be appointed by the Board of Directors of the Cross Creek Homeowners Association, Inc. to establish and enforce the architectural standards for Cross

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Creek. These standards shall include prohibitions against the erection of any buildings, fences, walls, or structures upon the properties or the exterior addition, change or alteration of any building or lot unless such alteration has been first submitted and approved in writing by the architectural committee. The committee shall be obligated to respond within thirty (30) days of receipt of any plan and if the committee fails to approve or disapprove such design and location within sixty (60) days after receipt of same, this article will have been deemed to be fully complied with and committee approval will not be required. This prohibition is established to maintain the harmony of the external design, perspective and location of structures in Cross Creek Townhomes.

In addition, owners of townhomes in Cross Creek will be subject to any architectural control requirements of the Riverton Community Association, Inc. pursuant to an Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements as recorded in the Monroe County Clerk's Office in Liber 5520 of Deeds, page 202 and as set forth as Exhibit 8 in the Offering Plan for Cross Creek Homeowners Association, Inc.

Section 10.02 Liability of Architectural Committee

No action taken by the architectural committee or any member, employee or agent thereon shall entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances or with respect to physical or other conditions of any lot or other portion of the property. Neither the Association nor the architectural committee or any agent thereon shall be liable to anyone submitting plans to them for approval or to any owner, member, or other person, in connection with the submission of plans or the approval or disapproval thereof including without limitation mistakes in judgement, negligence or nonfeasance. Every person submitting plans to the architectural committee agrees by submission of such plans that no action or suit will be brought against the Association or the architectural committee or any members, subcommittee, employee, or agent thereof in connection with such submission.

ARTICLE ELEVEN - USE RESTRICTION

Section 11.01 Use Restriction

No commercial or business activity shall be permitted upon the properties

and all owners shall be bound by the by-laws and rules and regulations (see Schedule "A" of the By-Laws) a copy of which is annexed hereto and made a part hereof. An owner shall be entitled to rent his townhome only in accordance with the provisions of Article Seven of the By-Laws.

ARTICLE TWELVE - INSURANCE AND CASUALTY DAMAGE

Section 12.01 Insurance

The Board of Directors of the Association shall obtain and maintain in force and effect a policy of insurance in an amount determined by the Board of Directors to be appropriate or relevant to cover fire and casualty insurance on Association property, liability insurance on Association property, directors and officers liability insurance, insurance to cover the full replacement cost of any repair or reconstruction work on all Townhomes, and any additional umbrella coverage as may be deemed necessary or desirable.

Section 12.02 Deductible

The deductible, if any, on any insurance policy purchased by the Association shall be a common expense provided that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wanton malicious act of any owner against such owner. The Association may pay the deductible portion for which the owner is responsible, and the amounts so paid together with interest and cost of collection, including attorney's fees shall be a charge and continuing lien upon the lot involved and shall constitute the personal obligation of such owner and shall be collectible in the same manner as assessments pursuant to this declaration.

Section 12.03 Restoration or Reconstruction After Fire or Other Casualty

In the event of damage to or destruction of any townhome, insured through insurance obtained by the Board of Directors as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors or the insurance trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair or restoration in appropriate progress payments. If the owners of seventy-five percent

(75%) or more of all townhomes do not duly and promptly resolve to proceed with the repair and restoration, the net proceeds of the insurance policy, if any, shall be divided among the townhomes in proportion to the damage to the insured property in relation to the total damage to all the insured property, provided that no payment shall be made to a townhome owner until there is first been paid out of such townhome owner's share all liens on such owners townhome. In the event that insurance proceeds are insufficient to pay all the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessments to make up the deficiencies against all owners of the damaged townhomes in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhome and any negligence which in the opinion of the Board contributed to the damage or loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to their respective mortgagees and townhome owners in such proportion as the Board of Directors deems fair and equitable taking into account the damage sustained to each townhome and provided that no part of the distribution that results from an assessment paid by a townhome owner shall be made to all townhome owners and the mortgagees as their interest may appear.

Section 12.04 Condemnation

In the event of a loss or of condemnation rewards for losses to, or a taking of, common property a distribution cannot be made by the Association in any way which conflicts with the rights of any first mortgagee of any lot pursuant to the mortgage on said lot.

The Association shall represent, or appoint an Agent to represent, townhome lot owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for the acquisition of the common areas, or parts thereof.

Proceeds or awards of settlement shall be payable to the Association or trustee of the Association for the use and benefit of Association members and their mortgagees as their interests may appear.

ARTICLE THIRTEEN - WARRANTIES

Section 13.01 Homeowners Association Property

Builder agrees to give to the Homeowners Association a one (1) year warranty on workmanship and materials used in the construction of the common areas. This warranty is in lieu of all other warranties, express or implied.

The Homeowners Association hereby agrees and acknowledges that no action or proceeding of any type or nature may be commenced or maintained by the Homeowners Association against Sponsor its agents, employees, representatives or contractors, as to any claim, liability or cause of action, known or unknown, based upon any negligence or breach of warranty, express or implied, more than one (1) year after the date of issuance of the Certificate of Occupancy for the common areas or the date of recording of the deed to the Homeowners Association for the common areas, whichever event shall first occur.

Section 13.02 Individual Units

Builder agrees to give to purchaser a one (1) year warranty on workmanship and materials used in the construction of the premises. This warranty is in lieu of all other warranties, expressed or implied.

Purchaser hereby agrees and acknowledges that no action or proceeding of any type or nature may be commenced or maintained by purchaser against seller, its agents, employees, representatives or contractors, as to any claim, liability or cause of action, known or unknown, based upon negligence or breach of warranty, expressed or implied, more than one (1) year after the date of issuance of the Certificate of Occupancy for homeowners association property, or the date of recording of the deed to homeowners association property, whichever event shall first occur, as relating to the homeowners association property, or more than one (1) year after the date of issuance of the Certificate of Occupancy for the purchaser's unit, or the date of recording of the deed to the purchaser's unit, whichever event shall first occur, as relating to the purchaser's unit.

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ARTICLE FOURTEEN - GENERAL COVENANTS AND RESTRICTIONS

Section 14.01 Enforcement

The Association or any owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 14.02 Severability

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect the other provisions which shall remain in full force and effect.

Section 14.03 Declaration Runs With the Land

Each person or entity acquiring an interest in a lot or other portions of the property of Cross Creek Townhomes, whether by deed, lease or any other instrument, covenants and agrees for himself, his heirs, successors and assigns to observe, perform and be bound by the provisions of the declaration including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof and also covenants to incorporate this declaration by reference in any deed, lease or other instrument for the transferring and interest in such lot or other portion of the property.

Section 14.04 Amendment

Unless otherwise specifically provided, this declaration may be amended or rescinded upon the consent, in writing, of the owners of not less than two-thirds (2/3) of all the lots which are subject to this declaration. In addition, the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages, shall be required to add or amend any material provisions of the Declaration of the project, which establish, provide for, govern or regulate any of the following:

- 1 0 0 0 7 5 0 0 1 4 4
- a. Voting;
 - b. Assessments, assessment liens or subordination of such liens;
 - c. Reserves for maintenance, repair and replacement of the common areas;
 - d. Insurance or Fidelity Bonds;
 - e. Rights to use of the common areas;
 - f. Responsibility for maintenance and repair of the several portions of the project;
 - g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
 - h. Boundaries of any lot;
 - i. The interests in the general common areas;
 - j. Convertibility of lots into common areas or of common areas into lots;
 - k. Leasing of lots;
 - l. Imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;
 - m. Any provisions which are for the express benefit of eligible mortgage holders.

Until five (5) years from the date of the first townhome conveyance or ~~within 120 days after the sponsor has sold seventy-five percent (75%) or more of~~ the lots subject to this declaration, whichever period occurs first, the written consent of the sponsor will be required for any amendment which adversely affects the interest of the sponsor. The owner of every lot shall receive written notice of every proposed amendment or recission to this declaration at least thirty (30) days prior to the date set for voting on said amendment or recision. Any amendment to the declaration must be recorded in the Monroe County Clerk's Office and shall not become effective until the date of recording. The provisions of this declaration shall unless amended or recinded continue with full force and effect against both the property and the owners for a period of not less than twenty (20) years from the date this declaration is recorded and shall then be automatically and without further notice extended for successive periods of ten (10) years.

Section 14.05 Inspection and Right of Entry

Any agent of the Association or architectural committee may at any reason-

able time or times upon not less than twenty-four (24) hours notice to the owner, enter upon a lot or other portion of the property and inspect improvements thereon for the purpose of ascertaining whether maintenance construction or alteration of a structure or other improvements comply with the Declaration or other rules and regulations issued pursuant thereto. Neither the Association or such agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry and inspection.

Section 14.06 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. Any notice required to be sent to the "Sponsor", owner, or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address to the person who appears as the "Sponsor", owner, or mortgagee on the records of the Association at the time of such mailing period.

Section 14.07 The Right Reserved to Impose Additional Protective Covenants

The "Sponsor" reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 14.08 Provisions Relating to Mortgagees

Any eligible holder of any lot mortgage at its request is entitled to timely written notification of the following:

1. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder.
2. Any delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such eligible holder, which remains uncured for a period of sixty (60) days.

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3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

4. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as follows:

a. Any restoration or repair of project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

b. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

c. Unless the formula for reallocation of interests in the common areas after a partial condemnation or partial destruction of the Cross Creek Townhomes is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a project may be effected without the prior approval of eligible holders holding mortgages on all remaining lots whether existing in whole or in part, and which have at least fifty-one (51%) percent of the votes of such remaining lots subject to eligible holder mortgages.

d. When professional management has been previously required by any eligible mortgage holder, whether such entity became an eligible mortgage holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of owners of lots to which at least two-thirds (2/3) of the votes in the Association are allocated and the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

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SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Henrietta, County of Monroe and State of New York known and described as Cross Creek at Riverton, Section II as shown on a map filed in the Monroe County Clerk's Office in Liber 254 of Maps Page 61.

Section 14.09 First Mortgages

First Mortgagees of lots in Cross Creek Townhomes may pay taxes or other charges which are in default and which may or have become a charge against any of the common areas and pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of policy for such property. Any first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

IN WITNESS WHEREOF, The undersigned being the "Sponsor" herein has hereunto set his hands and seal this 2nd day of May, 1988.

FABERCON DEVELOPMENT

BY: Bernard J. Iacovangelo, Sec.
BERNARD J. IACOVANGELO, SECRETARY
FABER CONSTRUCTION CO., INC.
GENERAL PARTNER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 2nd day of May, 1988, before me personally came BERNARD J. IACOVANGELO to me personally known, who, being by me duly sworn did depose and say that he resides in Chili, New York, that he is the Secretary of FABER CONSTRUCTION CO., INC., which is a General Partner of FABERCON DEVELOPMENT, the Grantor herein, and that he executed the within Instrument as Secretary of FABER CONSTRUCTION CO., INC. on behalf of FABERCON DEVELOPMENT, that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

David J. Gutman
Notary Public

DAVID J. GUTMAN
NOTARY PUBLIC, State of N.Y., Monroe Co.
My Commission Expires 12/31/93

COUNTY OF MONROE
TOWN OF HENRIETTA

*** PROPERTY DESCRIPTION REPORT ***

1. INFORMATION CONTAINED IN THIS REPORT WAS COLLECTED OVER THE PAST FEW YEARS. THIS DATA WILL BE USED TO UPDATE AND MAINTAIN OUR PROPERTY INVENTORY RECORDS. PLEASE REVIEW THIS REPORT CAREFULLY. IF THE INFORMATION IS CORRECT, YOU MAY KEEP THIS REPORT FOR YOUR RECORDS. IF YOU BELIEVE THAT CHANGES ARE NECESSARY DUE TO INCORRECT OR MISSING DATA, PLEASE MAKE THE NECESSARY CORRECTIONS AND RETURN WITHIN TEN DAYS.

CROSS CREEK HOMEOWNERS
ASSOCIATION INC
P O BOX 1643
AMHERST, NEW YORK 14226

*** PROPERTY DATA ***

PROPERTY ID 263200 188.39-1-25 ED
PROPERTY LOCATION 65 DESSIE HEIGHTS
PROPERTY DIMENSIONS 5.79 ACRES
SCHOOL DISTRICT 265001

PLEASE VERIFY SALE INFORMATION IF SOLD/PURCHASED AFTER 01/95:

SITE NO. 01 SALE DATE
PROPERTY TYPE 312 VAC W/IMPRV SALE PRICE
AVAILABLE UTILITIES GAS & ELEC TYPE OF ENTRY NO ENTRY
WATER SUPPLY COMM/PUBLIC ZONING MULTI RES
TYPE OF SEWER COMM/PUBLIC

*** LAND BREAKDOWN DATA ***

TYPE OF LAND ACREAGE PRODUCTIVITY RATING
04 RESIDUAL 5.79
TOTAL ACRES = 5.79

IMPROVEMENTS DIMENSIONS BUILT QUANTITY
RG4 GAR,1.0 DET 13 X 21 1989 1

IF THE TYPE OF ENTRY SHOWN ABOVE IS AN ESTIMATE OR A REFUSAL, YOU MAY CALL THE ASSESSOR'S OFFICE AT (716)-359-7032 TO ARRANGE AN INSPECTION. THERE MAY BE OTHER DATA ITEMS, SUCH AS PORCHES / DECKS, WHICH MAY HAVE BEEN COLLECTED FOR YOUR PROPERTY WHICH ARE NOT INCLUDED ON THIS REPORT

IF CORRECTIONS HAVE BEEN MADE, PLEASE SIGN AND DATE BELOW, AND MAIL THIS PAGE TO THE FOLLOWING ADDRESS:

TOWN OF HENRIETTA
ASSESSMENT OFFICE
475 CALKINS RD
HENRIETTA, NY 14467

SIGNATURE _____
PHONE # _____
DATE _____

COUNTY OF MONROE

COUNTY CLERK'S OFFICE RECORDING PAGE

Patricia L. McCarthy - County Clerk
Carolee A. Conklin - Deputy County Clerk

TR. NO. 88326154801
BOOK 7500 PAGE 322
REEL FR
NO. PAGES 26
11/21/88 15:48:04
AT
MONROE COUNTY CLERK

MORTGAGE TAX

Serial # _____

City/Town \$ _____

S.N.A. \$ _____

Trans. Auth. \$ _____

Total \$ _____

PAID AT RECORDING

TRANSFER TAX

Transfer Tax # _____

Amount \$ _____

18 NOV 21 P 3:48

CLERK'S OFFICE

RECORDED

PAID AT RECORDING

RETURNED TO:

Box 19

STATE OF NEW YORK
MONROE COUNTY, SS.

RECORDED ON 11/21/88
TIME 15:48:04
BOOK 7500 PAGE 322
REEL FR
OF

DEED
AND EXAMINED
PATRICIA L. MCCARTHY
MONROE COUNTY CLERK

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RECORDED

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BY-LAWS OF CROSS CREEK HOMEOWNERS ASSOCIATION, INC.**ARTICLE ONE - PLAN OF TOWNHOME OWNERSHIP****Section 1-01. Townhome Lot Ownership.**

The property of the CROSS CREEK HOMEOWNERS ASSOCIATION, INC., Town of Henrietta, Monroe County, State of New York (hereinafter called the "PROPERTY") has been submitted to the provisions of a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") recorded in the Office of the County Clerk, Monroe County, simultaneously herewith, and shall hereinafter be known as "CROSS CREEK HOMEOWNERS ASSOCIATION, INC." hereinafter referred to as the "Association".

Section 1-02. Applicability of By-Laws.

The provisions of these By-Laws are applicable to the property of the Association and to the use and occupancy thereof. The term "PROPERTY" as used herein shall include the land, the buildings and all other improvements thereon 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 the said Declaration.

Section 1-03. Applicability to Persons.

All present and future owners, lessees, and mortgagees, their employees, and any other person who may use the facilities of the property in any manner shall be subject to these By-Laws, the Declaration, and rules and regulations pertaining to the use and operation of the Association Property.

Acquisition, rental or occupancy of any lot on the property shall be sufficient to signify acceptance and ratification of the provisions of the aforementioned instruments, and in agreement to comply therewith.

Section 1-04. Membership in the Association.

The members of the Association shall be the record owners of a fee or undi-

vided fee interest in any of the lots within the Property, provided that any person or entity holding such interest merely as security for the performance of any obligation shall not be a member. The Association shall have one (1) class of members.

FaberCon Development (hereinafter called "Sponsor"), may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transaferable or assignable.

Section 1-05. Office.

The office of the Association and of the Board of Directors shall be located at CROSS CREEK HOMEOWNERS ASSOCIATION, INC., 80 West Main Street, Rochester, New York.

ARTICLE TWO - BOARD OF DIRECTORS

Section 2-01. Number and Qualifications.

The affairs of the Association shall be governed by a Board of Directors. Until five (5) years have elapsed from the date of conveyance of the first townhome lot or until 120 days after 75% of the townhome lots have been sold by Sponsor and paid for (whichever shall first occur) and thereafter until their successors shall have been elected by the members, the Board of Directors shall consist of such of the officers and directors of Sponsor as Sponsor shall from time to time designate. Thereafter, ~~The~~ Board of Directors shall be composed of five (5) persons, all of whom shall be owners, co-owners, spouses of owners, or mortgagees of lots, or, in the case of corporate owners or mortgagees of lots, officers, directors, shareholders, or employees of such corporations, or in the case of fiduciary owners, shall be the fiduciary or officers or employees of such fiduciaries.

Section 2-02. Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things, except as by law, or by the Certificate of Incorporation, or by the

Declaration, or by these By-Laws, may not be delegated to the Board of Directors by the members. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- A. Care, upkeep, maintenance and operation of the common elements;
- B. The determination of amounts required to defray common expenses of the Association (such as amounts required for operation and maintenance of the common elements);
- C. Collection of common charges from members;
- D. Maintenance of detailed and accurate records, in chronological order, of receipts and disbursements arising from the operation of the property, which records shall be made available for examination by members at convenient hours on weekdays;
- E. Authorization and prosecution of suits to foreclose liens for non-payment of common charges, or to recover money judgments for unpaid common charges, on behalf of all members;
- F. Authorization and prosecution of actions or proceedings on behalf of the owners of two (2) or more lots as their respective interests may appear, with respect to any cause of action relating to the common elements or to more than one (1) lot;
- G. Employment and dismissal of personnel necessary or appropriate for the maintenance and operation of the property, the common areas and facilities and the restricted common areas and facilities;
- H. Adoption and amendment of rules and regulations not inconsistent with these By-Laws, covering the details of operation and use of the property;

I. Establishment of bank accounts in the name of the Association, and authorization of signatories therefore;

J. Purchasing, leasing, or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members, lots offered for sale, lease or surrender by their owners to the Board of Directors;

K. Purchasing lots at foreclosure or other judicial sale in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members;

L. Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with lots acquired by, and subleasing lots leased by the Board of Directors or its designee, corporate or otherwise on behalf of all members;

M. Organizing corporations to act as designees of the Board of Directors in acquiring title to or leasing lots on behalf of all of the members;

N. Procuring of insurance for the Association Property, including the lots thereof, as set forth in Article Five, Section 5-13 and 5-14, hereof;

O. Contracting for and/or making of repairs, additions, and improvements to the property, and for repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

P. Levying fines against members for violations of the rules and regulations established by it to govern the conduct of the members, provided, however, that no fine may be levied in an amount in excess of TWENTY-FIVE DOLLARS (\$25.00) for any one (1) violation. But for each day a violation continues after notice, it shall be considered a separate violation. Such fines may be collected as if they were common charges owed by the member(s) against whom the fines are levied. Where a member is fined for an infraction of the rules and regulations and fails to pay

the fine within ten (10) days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where a member persists in violation of the rules and regulations, the Board may require him to post a bond to secure future compliance with the rules and regulations;

Q. Controlling the use of all common elements of the property, including restricted common elements;

R. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however, that (1) the consent two-thirds (2/3) in number of all voting Association members, 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 THREE THOUSAND DOLLARS (\$3,000.00) and (2) no lien to secure repayment of any sums borrowed may be created on any lot without the consent of the lot owner;

S. Employment of a Managing Agent and/or Manager at such reasonable compensation and to perform such duties as the Board of Directors may authorize; provided however, that the Board of Directors shall not delegate to any such Managing Agent and/or Manager any of the powers set forth in subsections F., H., I., K., L. and M., of this Section;

T. Exercising all other necessary and proper actions for the sound management of the Association and fulfillment of the terms and provisions of the Association Certificate of Incorporation, Declaration and By-Laws.

Section 2-03. Election and Terms of Office.

At the first annual meeting of members, the terms of office of the Board of Directors shall be fixed as follows:

A. The terms of office of two (2) members shall be set at three (3) years;

B. The terms of office of two (2) members shall be set at two (2) years;

and

C. The terms of office of one (1) member shall be set at one (1) year. At the expiration of the initial term of office of each Board Member, his successor shall be elected to serve for a term of three (3) years. Board Members shall hold office until their successors have been elected and hold their first meeting.

Section 2-04. Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the members, shall be filled by vote of the majority of the remaining Board Members, even though they may constitute less than a quorum; each person so elected shall hold office until his successor is elected at the next annual meeting of Association members.

Section 2-05. Removal of Board Members.

At any regular or special meeting duly called, any one or more members of the Board of Directors may be removed with or without cause by a majority of voting Association members, and a successor may then and there be elected to fill the vacancy so created. Any Board Members so elected shall serve for the unexpired term of his predecessor in office. Any Director whose removal has been proposed by the Association member shall be given an opportunity to be heard at the meeting at which a vote is to be taken on the issue of his removal.

Section 2-06. Organizational Meetings.

The first (1st) meeting of the Board of Directors shall be held within fifteen (15) days of the first (1st) bi-annual meeting of Association members at which Board Members are elected and at such place as may be fixed by the Board of Directors. No notice shall be necessary to the newly elected Board of Directors in order legally to constitute such a meeting, providing a majority of the Board shall be present.

Section 2-07. Regular Meetings.

Regular meetings of the Board of Directors 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 Directors, but at least twelve (12) of such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be

given to each Board Member personally, or by mail, telephone, or telegraph at least three (3) business days prior to the date set for such meeting.

Section 2-08. Special Meetings.

Special meetings of the Board of Directors may be called by the President, and shall be called by the President or Secretary on the written request of at least two (2) Board Members on two (2) business days' notice to each Board Member, given personally or by mail, telephone, or telegraph. Any such notice shall state the time, place, and purpose of the meeting.

Section 2-09. Waiver of Notice

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

Section 2-10. Quorum of Board of Directors.

At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, a majority of those present may adjourn the meeting. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 2-11. Fidelity Bonds.

The Board of Directors shall in their discretion, obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums of such bonds shall constitute a common expense.

Section 2-12. Compensation.

No member of the Board of Directors shall receive compensation from the Association for acting as such, provided, however, that nothing herein contained shall be construed to preclude any Board Member from serving the Association or the Board of Directors in any other capacity and receiving compensation therefore.

Section 2-13. Liability of Board Directors.

The members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liabilities to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Certificate of Incorporation, the Declaration or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the Board of Directors or by the Managing Agent or by the Manager on behalf of the Association shall provide that the members of the Board of Directors, or the Managing Agent, or the Manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

ARTICLE THREE - LOT OWNERS**Section 3-01. Bi-Annual Meetings.**

Within 120 days after 75% of the Townhome lots have been sold by Sponsor and paid for or within five (5) years from the date of conveyance of the first Townhome lot, whichever shall first occur, sponsor shall notify all lot owners thereof, and the first bi-annual meeting of members shall be called by the President to be held within thirty (30) days thereafter. At such meeting officers and directors of the Sponsor holding office as members of the Board of Directors shall resign and all lot owners, including Sponsor, shall elect a new Board of Directors. Thereafter, bi-annual meetings of members shall be held, at the property, on the first Monday in February and August of each succeeding year, or at such other

reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Directors delivered to the members not less than fifteen (15) days prior to the date fixed for said meeting. At such meetings there shall be elected by ballot of the members, a Board of Directors in accordance with the requirements of Section 2-03 of these By-Laws. The members may also transact such other business of the Association as may properly come before the meeting.

Section 3-02. Special Meetings.

The President may, and shall if directed by resolution of the Board of Directors or by Petition signed and presented to the Secretary by members representing twenty-five percent (25%) of the voting Association membership, call a special meeting of the Association. The notice of any special meeting shall state the time and place of the meeting, and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3-03. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association, or at such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 3-04. Notice of Meetings.

It shall be the duty of the Secretary to mail a notice of each bi-annual or special meeting, stating the purpose, the time and the place thereof, to each Association member, at least ten (10), but not more than thirty (30) days prior to such meeting. Any notice so mailed shall be considered served.

Section 3-05. Quorum; Majority Voting.

At all meetings of the Association, members holding in the aggregate in excess of fifty percent (50%) in voting interests, shall constitute a quorum for transaction of business. If a quorum is present at a meeting, the acts of a majority of voting members present shall bind all members for all purposes other than those for which a higher percentage is required by law, by the Declaration or by these By-Laws. If, at any meeting of members, less than a quorum is present, a

majority of voting members present may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice. As used in these By-Laws, the term "majority of members" shall mean those members holding in excess of fifty percent (50%) in the aggregate in voting interests.

Section 3-06. Order of Business.

The order of business at all meetings of Association members shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of the preceding meeting;
- D. Reports of officers;
- E. Report of Board of Directors;
- F. Reports of committees;
- G. Election of voting inspectors (when appropriate);
- H. Election of members of Board of Directors (when required);
- I. Unfinished business;
- J. New business.

Section 3-07. Title to Lots.

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

Section 3-08. Voting.

The Association shall have one class of voting membership. Members shall be entitled to no more than, nor less than one vote. The appointment of any proxy shall be made in a writing filed with the Secretary, and shall be revocable at any time by notice in writing to the Secretary.

ARTICLE FOUR - OFFICERS

Section 4-01. Designation.

The principal officers of the Association shall be President, Vice-President, Secretary, and Treasurer, all of whom shall be elected by and from the Board of Directors. The Board of Directors may also appoint an Assistant Vice-President, an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary.

Section 4-02. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board, and shall hold office at the pleasure of the Board of Directors.

Section 4-03. Removal of Officers.

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

Section 4-04. President.

The President shall be the chief executive officer of the Association, shall supervise the functions of the other officers, shall preside at all meetings of the Association members and shall preside at all meetings of the Board of Directors. He shall keep the Board of Directors fully informed, and shall freely consult with them concerning the activities of the Association. He shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Association all contracts, agreements, deeds, leases, checks, and other instruments of the Association authorized either generally or specifically by the Board of Directors. He shall perform all duties incident to the office of President, subject however, to the control of the Board of Directors.

Section 4-05. Vice-President.

The Vice-President shall take the place of the President and perform his

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

Section 4-06. Secretary.

The Secretary shall keep the minutes of all meetings of the Board of Directors and of the Association members; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary, subject however, to the control of the Board of directors and such other duties as shall from time to time be assigned to him by the Board of Directors.

Section 4-07. Treasurer.

The Treasurer shall have the custody of all funds and securities of the Association which may come into his hands. He shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Association, and shall deposit all monies and other valuable effects of the Association in the name and to the credit of the Association in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of directors, he shall render a statement of his accounts. He shall at all reasonable times exhibit his books and accounts to any officer or member of the Board of Directors of the Association, and shall perform all duties incident to the office of Treasurer, subject however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give security for the faithful performance of his duties as the Board of Directors may require.

Section 4-08. Agreements, Contracts, Deeds, Checks and Other Instruments.

All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any one (1) officer of the Association or by such other person or persons as may be designated by the Board of Directors.

Section 4-09. Compensation of Officers.

The salaries, if any, of all officers shall be set by the Board of Directors, in their discretion, and the fact that any officer is a member of the Board of Directors shall not preclude him from receiving his salary, if any, or from voting on any resolution providing for the same.

ARTICLE FIVE - OPERATION OF PROPERTY

Section 5-01. Determining Common Charges.

Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of any alteration, addition or improvement to, common elements ("common expenses") shall be determined by the Board of Directors and shall be borne by the Association members. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association which budget shall include projections of common expenses, common revenues (from sources other than assessments of lot owners), the amount of common charges required to meet the excess of the former over the latter, and an allocation and assessment of such common charges against lot owners as provided in the Declaration. As used in these By-Laws, the term "common expenses" or "common charges" shall mean expenses or charges for which lot owners are proportionately liable, and shall include, but shall not be limited to the following:

A. All expenses of administration, maintenance, repair and replacement of the common elements;

B. Insurance premiums on all policies of insurance obtained by the Board of Directors, Managing Agent or Manager, as the case may be, pursuant to Sections 5-13 and 5-14 of this Article;

C. Working capital reserve;

D. General operating reserve;

E. Capital Improvement fund;

F. All other amounts that the members may agree upon or that the Board of Directors may deem necessary or appropriate for the operation, administration, and maintenance of the Association property;

G. All other amounts designated common expenses by the Declaration, by these By-Laws, or by law.

The Board of Directors shall furnish all lot owners and mortgagees with copies of the budget by which the allocations and assessments of common charges are based.

Section 5-02. Collection of Assessments.

The Board of Directors shall assess common charges against the lot owners from time to time, and at least annually, and shall advise each lot owner in writing of the amount of common charges payable by him. If any common charges remain unpaid for more than ten (10) days from the date due, the Board of Directors shall take prompt action to collect the same and impose a late charge as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue assessment or installment thereof, provided such late charges are equitable and uniformly applied.

Section 5-03. Obligation to Pay Common Charges.

All lot owners are obligated to pay common charges assessed by the Board of Directors at such times as the Board may determine. No lot owner may exempt himself from liability for any assessment for common charges by waiver of the use or enjoyment of any of the common elements or by abandonment of his lot. In all voluntary conveyances of lots, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover against the grantor any amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Directors, or the Managing Agent or the Manager, setting forth the amount of unpaid assessments. In such event, the grantee shall not be liable for any amount in excess of the amount set forth in such statement. A mortgagee or other purchaser

of a lot at a foreclosure sale, shall not be liable for non-payment of any common charges assessed prior to the date of the foreclosure sale and such lot shall not be subject to a lien for non-payment of such charges.

Section 5-04. Default in Payment of Common Charges.

In the event of default by any lot owner in paying the common charges assessed against his lot by the Board of Directors, such lot owner shall be obligated to pay the maximum legal interest rate permissible by law (or such lower interest rate as may be fixed by the Board of Directors), on such common charges from the due date thereof, together with all expenses, including reasonable attorneys' fees incurred by the Board of Directors in any proceeding brought to collect such common charges, or to foreclose a lien for non-payment thereof.

Section 5-05. Foreclosure of Liens for Unpaid Common Charges.

The Board of Directors has the right and duty to attempt to recover unpaid common charges, together with interest thereon, and expenses of the proceeding, including reasonable attorney's fees, (1) in an action to recover a money judgment brought against any lot owner in default on his obligation to pay the common charges, or (2) by foreclosure of the lien, on any lot in respect to which such default has occurred. The suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien, securing the same, and foreclosure shall be maintainable notwithstanding the pendency of a suit to recover a money judgment. In any such foreclosure, the lot owner shall be required to pay reasonable rental for the lot for any period prior to sale, and the Board of Directors, as Plaintiff in such a foreclosure, shall be entitled to the appointment of a receiver to collect the same.

Section 5-06. Common Surplus.

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balance remaining. The Association shall not be obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may

determine to be desirable for the greater financial security and effectuation of the purposes of the Association.

Section 5-07. Maintenance and Repair

All maintenance and repairs and the responsibility therefore shall be in accordance with the provisions of Articles Nine and Ten of the Declaration, which provisions shall become a part of these By-laws as if fully set forth herein.

Section 5-08. Uses of Lots.

In order to provide for a more congenial occupancy of the Association property and for the protection of the values of the lots, the use of the Association property shall be restricted to and shall be in accordance with the following provisions:

- a. Lots shall be used for residential purposes only.
- b. Common elements may be used only for the furnishing of the services, the facilities and the other uses for which they are reasonably suited.
- c. No nuisance shall be allowed on the Association property, nor shall any use or practice be allowed which is a source of annoyance to owners or occupants of the townhomes or which interferes with the peaceful possession or proper use of the Association property by its owners or occupants.
- d. No immoral, improper, offensive or unlawful use shall be made of the Association property or any portion thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the Association property, shall be complied with at the full expense of the respective lot owners or the Board of Directors, whoever shall have the obligation to maintain or repair such part of the property.
- e. Lot owners shall not allow anything be done or kept in their lot which would increase the rate of fire insurance thereon or on the Association as a whole.

f. Townhomes may be rented only in accordance with the provisions of Section 7-03 of these By-Laws and any rules or regulations established by the Board of Directors.

Section 5-09. Modifications by Lot Owners

No lot owner shall make any structural addition or alteration in or to his townhome without the prior written consent of the Architectural Committee pursuant to Article Ten of the Declaration. On request by any lot owner for approval of a proposed addition or alteration, the Architectural Committee shall answer the same within sixty (60) days after receipt thereof, and failure to do so within the stipulated time shall constitute a consent. Any application to any governmental authority for a permit to make any addition or alteration in or to any townhome shall be executed by the Architectural Committee only. The Association, the Board of Directors and the Architectural Committee shall not, however, be liable to any contractor, sub-contractor, or material man, or to any person claiming injury to person or property as a result of such addition or alteration. The provisions of this section shall not apply to lots owned by sponsor until such lots shall have been initially sold by sponsor and paid for.

Except as provided herein, no lot owner shall construct any additions to the exterior of his townhome, make structural changes to any of the common elements, or excavate or otherwise alter common elements, whether such common elements be located in, under, or adjacent to the building.

Section 5-10. Right of Entry

Each lot owner shall grant a right of access to his townhome to the manager and/or the managing agent and/or any other person authorized by the Board of Directors, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his townhome and threatening another townhome or a common element, or for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other common elements in his townhome or elsewhere in the building, or to correct any condition which violated the provision of any mortgage covering another lot, provided that requests for entry are made in advance and that any such entry is at

a time reasonably convenient to the lot owner. In case of an emergency, such right of entry shall be immediate, whether the lot owner is present at the time or not.

Section 5-11. Modifications by Board of Directors.

Any additions or alterations in or to the common elements costing THREE THOUSAND DOLLARS (\$3,000.00) or less may be made by the Board of Directors without the approval of members or lot mortgagees, and the cost thereof shall be treated as common expenses. Whenever, in the judgment of the Board of Directors, the common elements require additions or alterations costing in excess of THREE THOUSAND DOLLARS (\$3,000.00) the making of such additions or alterations shall require approval by a majority of voting members, and by those mortgagees holding first mortgages on fifty-one percent (51%) of the lots. After such approval has been obtained, the Board of Directors shall proceed with the additions or alterations, and the cost thereof shall be treated as common expenses.

Section 5-12. Repair or Reconstruction.

Except as regarding eligible holders of mortgages as provided in Section 13.08 of the Declaration, if seventy-five percent (75%) or more of the property is destroyed or substantially damaged and seventy-five percent (75%) or more of the voting lot owners do not duly and promptly resolve to proceed with repair or restoration, then the property, or so much thereof as shall remain, shall be subject to an action for partition at the suit of any lot owner or lienor as if owned in common. In such event, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered as one fund and shall be divided among all lot owners proportionately; provided however, that no payment shall be made to a lot owner until there has been paid out of his share of such fund all liens on his lot.

In all other cases, in the event of damage to or destruction of the property, the Board of Directors shall arrange for the prompt repair and restoration of the property, including individual lots therein, but not including furniture, furnishings, decorations, fixtures, equipment, or other personal property installed in the townhomes by lot owners. The Board of Directors shall disburse the proceeds of all insurance policies, in appropriate progress payments, to the contractors

engaged in repair and restoration work. Costs of repair and restoration in excess of insurance proceeds shall be treated as common expenses.

Section 5-13. Fire and Extended Coverage Insurance

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against loss by fire and other casualties normally covered under broad form fire and extended coverage insurance as written in New York, covering all Association property, all structural portions of the Association property, and all lots, but not including furniture, fixtures, decorations, equipment, or other personal property placed therein by lot owners, in at least an amount satisfactory to mortgagees holding first mortgages on the individual lots and in accordance with Article Twelve of the Declaration. The premiums for such insurance shall be a common expense to be paid by monthly assessments levied by the Board of Directors.

Section 5-14. Liability Insurance.

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against liability for personal injury and death and for damage to property arising from accidents occurring within the Property in amounts satisfactory to mortgagees holding first mortgages on the individual lots. Such amounts shall be determined by the governing board and the premiums for such insurance shall be a common expense.

Section 5-15. Right of Owners to Insure Lots.

Any insurance obtained or maintained by the Board of Directors, managing agent, or manager, as the case may be, shall be without prejudice to the rights of lot owners to obtain and maintain such lot insurance as they see fit.

Section 5-16. Use of Common Elements and Facilities.

A lot owner shall not place or cause to be placed in the common facilities or areas, other than an area to which such lot owner has sole access, and other than the areas designed as storage areas, any furniture, packages, merchandise or object of any kind.

Section 5-17. Rules of Conduct.

Rules and regulations concerning the use of the common elements and of individual lots may be promulgated and amended from time to time by the Board of Directors with the approval of a majority of lot owners. Copies of all such rules and regulations shall be furnished by the Board of Directors to each lot owner prior to their effective date. Initial rules and regulations, shall be effective until amended by the Board of Directors with the approval of a majority of voting lot owners, are annexed hereto and made a part hereof as "Schedule A".

Section 5-18. Abatement of Violations.

Violation of any provision of the Declaration, of these By-Laws, or any rule or regulation adopted pursuant hereto, shall give the Board of Directors, acting on behalf of all lot owners, the right, in addition to any other rights set forth herein:

a. To enter any lot in or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting lot owner, any thing or condition constituting such violation or breach, and the Board of Directors shall not be deemed guilty of trespass in so doing; or,

b. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

ARTICLE SIX - MORTGAGES**Section 6-01. Notice to Board of Directors.**

The lot owner who mortgages his lot shall, within fifteen (15) days after such mortgage has been executed, notify the Board of Directors of the name and address of his mortgagee. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Lots".

Section 6-02. Payment of Assessments.

No lot owner shall be permitted to convey, mortgage, pledge, sell, or lease his lot unless and until he has paid in full to the Board of Directors all unpaid

charges theretofore assessed his lot, and until he has satisfied all unpaid liens against his lot other than mortgage liens.

Section 6-03. Notice of Unpaid Common Charges.

The Board of Directors, whenever so requested in writing by a mortgagee of a lot, shall promptly report any unpaid common charges or any default by the owner of the mortgaged lot.

Section 6-04. Notice of Default.

Upon giving notice to a lot owner of a default, whether in payment of common charges or otherwise, the Board of Directors shall send a copy of such notice to each holder of a mortgage secured by such lot whose name and address appears in the book entitled "Mortgagees of Lots".

Section 6-05. Notice of Action.

Upon written request to the Association any eligible mortgage holder shall be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held by such eligible mortgage holder;
- b. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- c. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Article Eleven of these By-Laws.

Section 6-06. Inspection of Books.

Lot owners and lot mortgagees shall be permitted to inspect the books of accounts of the Association at reasonable times during business hours, but not more often than once per month.

ARTICLE SEVEN - SALES AND LEASES OF LOTSSection 7-01. Compliance with Article.

No lot owner may sell or lease his lot or any interest therein except by complying with the provisions of this Article.

Section 7-02. Financing Acquisition of Lots by Board of Directors.

Acquisition of lots by the Board of Directors may be financed from special assessments pursuant to the Declaration, working capital, and common charges in the hands of the Board of Directors. The Board of Directors is also authorized to borrow money to finance the acquisition of such lots; provided however, that no lien or encumbrance on any property, other than the lot to be acquired, may be suffered to secure such financing.

Section 7-03. Leasing of Lots.

An owner may lease his lot or any part thereof in accordance with the following provisions:

a. Any lease must be consistent with the Declaration, By-Laws and rules and regulations of the Association, as the same may be amended from time to time and must provide that the lessee must comply therewith. Said lease must further provide that if the lessee fails to comply with the aforementioned provisions, the Board of Directors shall have the power to terminate such lease and/or bring a summary proceeding to evict the lessee in the name of the landlord.

b. Said lease must further provide that it may not be modified, amended, extended or assigned, without prior written consent of the Board of Directors and that the lessee shall not sublet the demised premises or any part thereof without prior written consent of the Board of Directors.

c. Said lease must further provide that if the landlord fails to pay common charges or special assessments assessed against the lot owner, the Board of Directors can evict the lessee on not less than thirty (30) days prior written notice of foreclosure of the lien of such lot.

d. Except as otherwise provided herein, such lease shall be an approved form of Association lease, whose such modifications shall be approved in writing by the Board of Directors.

e. A copy of said lease shall be delivered to the Board of Directors, to be kept in the permanent records of the Association.

f. Leases made in violation of these provisions shall be voidable by the direction of the Board of Directors. If the Board of Directors so elects, the landlord shall be deemed to have authorized the Board of Directors to institute legal proceedings to evict the lessee in the name of the owner, as landlord, and the landlord shall reimburse the Board of Directors for all costs incurred in connection therewith, including, but not limited to, reasonable attorney's fees. Any such costs shall become a continuing lien on the property pursuant to the terms of the By-Laws and the Declaration.

Section 7-04. Payment of Assessment.

No lot owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his lot unless and until he shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against his lot and until he shall have satisfied all unpaid liens against such lot, other than permitted mortgages.

Section 7-05. Lots Held for Investment.

A purchaser of a lot or lots from the Sponsor, who intends to hold the property for investment purposes and not for the purpose of owner occupancy shall not offer for sale any such lots for a period of eighteen (18) months from the date of closing.

ARTICLE EIGHT - CONDEMNATION

Section 8-01. Condemnation of Association Property.

Except as regarding eligible holders of mortgages as provided in Section 13.08 of the Declaration, in the event of a taking in condemnation or eminent domain

of part or all of the Association property, the award made for such taking shall be payable to the Board of Directors. If seventy-five percent (75%) or more in number of voting lot owners duly and promptly approve the repair and restoration of the common elements, the Board of Directors shall contract for such repair and restoration, and shall disburse the proceeds of the award in appropriate progress payments to contractors engaged in such repair and restoration. If the proceeds of the award are insufficient to defray the entire expense of repair and restoration, the excess of such expense over such proceeds shall be treated as a common expense. In the event that seventy-five percent (75%) or more of the voting lot owners do not duly and promptly approve the repair and restoration of the Association property, the net proceeds shall be divided by the Board of Directors among all lot owners proportionately, paying out of the share of each lot owner the amount of any unpaid liens on his lot, in the order of priority of such liens.

ARTICLE NINE - RECORDS

Section 9-01. Records; Certification by Certified Public Accountants.

The manager, managing agent, and/or Board of Directors shall keep detailed records of all actions of such manager, managing agent and Board of Directors, as well as minutes of the meetings of the Board of Directors, minutes of the meetings of members, and financial records and books of accounts for the Association, including a chronological record of all receipts and disbursements. A separate account shall also be kept for each lot containing, among other things, the amount of each assessment against such lot, the date when due, amounts paid thereon, and the balance remaining due. The Board of Directors shall also prepare a quarterly written report summarizing receipts and disbursements of the Association, copies of which shall be made available to all lot owners. Additionally, an annual report of receipts and disbursements of the Association, certified by an independent certified public accountant, shall be rendered by the Board of Directors to all lot owners and mortgagees requesting the same, promptly after the end of each fiscal year.

Section 9-02. Fiscal Year.

The fiscal year of the Association shall commence on January 1st of each year and end on December 31st.

ARTICLE TEN - MISCELLANEOUSSection 10-01. Notices.

All notices required or permitted to be sent to the Board of Directors shall be personally delivered or sent by registered or certified mail in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Board of Directors at 80 West Main Street, Rochester, New York, or to such other address as the Board of Directors may designate. All notices required or permitted to be sent to any lot owner, shall be sent by registered or certified mail to the Association or to such other address as such owner may have designated in writing to the Board of Directors. All notices to lot mortgagees shall be sent by registered or certified mail to their respective addresses, as maintained in the book entitled "Mortgagees of Lots". 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.

Section 10-02. Invalidity.

If any provision or provisions of these By-Laws is or are declared invalid, such invalidity shall in no way impair or effect in any manner the validity, enforceability, or affect of the remaining provisions of these By-Laws.

Section 10-03. Captions.

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

Section 10-04. Waiver.

No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations and failures to enforce that may occur.

Section 10-05. Gender; Singular/Plural.

The use of the masculine gender in these By-Laws shall be deemed to include

the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 10-06. References to the Sponsor.

Whenever a reference is made to the sponsor, such reference shall be deemed to include any corporation, subsidiary or other entity wholly controlled by the sponsor and designated by it to act in its place and stead concerning any matter pertaining to ownership, leasing or mortgaging of lots, operation of the Association property, or both.

ARTICLE ELEVEN - AMENDMENTS TO BY-LAWS

Section 11-01. Amendments.

These By-Laws may be modified or amended by the vote of two-thirds (2/3) of all voting members at a meeting of members duly called for such purposes.

However, the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages, shall be required to add or amend any material provisions of the By-Laws which establish, provide for, govern or regulate any of the following:

- a. Voting;
- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the common areas (or lots if applicable);
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the common areas;
- f. Responsibility for maintenance and repair of the several portions of the project;

g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;

h. Boundaries of any lot;

i. The interests in the general common areas;

j. Convertibility of lots into common areas or of common areas into lots;

k. Leasing of lots;

l. Imposition of any rights of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;

m. Any provisions which are for the express benefit of eligible mortgage holders.

Section 11-02. Amendments Affecting Sponsor.

Notwithstanding any provision contained herein to the contrary, no amendment to these By-Laws shall be effective in any way against the Sponsor, until five (5) years shall have elapsed from the date of conveyance of the first townhome lot or until 120 days after seventy-five percent (75%) of the townhome lots have been sold by Sponsor and paid for, whichever shall first occur.

ARTICLE TWELVE - CONFLICTS

Section 12-01. Conflicts.

In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE THIRTEEN - DEFINITIONS

Section 13-01. Definitions.

The words, phrases or terms used in these By-Laws shall have the same meanings as those words, phrases or terms set forth and defined in Article One of the Declaration.

IN WITNESS WHEREOF, the undersigned being the "Sponsor" herein has hereunto set his hands and seal this 2nd day of May, 1988.

FABERCON DEVELOPMENT

BY: Bernard J. Iacovangelo, Jr.
BERNARD J. IACOVANGELO, SECRETARY
FABER CONSTRUCTION CO., INC.
GENERAL PARTNER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 2nd day of May, 1988, before me personally came BERNARD J. IACOVANGELO to me personally known, who, being by me duly sworn did depose and say that he resides in Chili, New York, that he is the Secretary of FABER CONSTRUCTION CO., INC., which is a General Partner of FABERCON DEVELOPMENT, the Grantor herein, and that he executed the within Instrument as Secretary of FABER CONSTRUCTION CO., INC. on behalf of FABERCON DEVELOPMENT, that he knows the seal of ~~said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.~~ H-1000

David J. Gutmann
Notary Public
DAVID J. GUTMANN
NOTARY PUBLIC, State of N.Y., Monroe Co.
My Commission Expires 8/3/1989