

DECLARATION OF THE SPLICER TO THE BOARD OF DIRECTORS
OF THE COMPANY
RE: CHANGE OF NAME TO EASTFORD DEVELOPMENT CORP.

1500 East Ave

DECLARATION

OF

PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES, AND LIENS -
FIFTEEN HUNDRED EAST AVENUE

MADE BY: EASTFORD DEVELOPMENT CORP.
2 State Street
Rochester, New York 14614

DATED: August 25, 1986

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES, AND
LIENS - FIFTEEN HUNDRED EAST AVENUE

(THE FIFTEEN HUNDRED EAST AVENUE DECLARATION)

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS -
FIFTEEN HUNDRED EAST AVENUE

THIS DECLARATION, made this 25th day of August, 1986, by Eastford Development Corp., having an office at 2 State Street, Rochester, New York 14614 being hereafter referred to as "the Sponsor".

W I T N E S S E T H

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

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

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

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

WHEREAS, the Sponsor has incorporated FIFTEEN HUNDRED EAST AVENUE, INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

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

ARTICLE I

DEFINITIONS

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

- A. "Association" shall mean and refer to FIFTEEN HUNDRED EAST AVENUE, INC., its successors, and its assigns.
- B. "Association Property" shall mean and refer to all land, improvements, and other properties heretofore or hereafter owned by the Association.
- C. "Class A Member" shall mean and refer to the Owner of a Lot or Unit, whether an Owner of a Lot initially under the Declaration pursuant to Section 2.01 hereof or whether an Owner of a Lot on the Additional Property added to the scope of the Declaration pursuant to Section 2.02 hereof. In the case of joint ownership of a Lot or Unit, the Class A Member with respect to such Lot or Unit shall be determined pursuant to Section 3.04 hereof. The Sponsor may not hold Class A membership simultaneously with Class B membership.
- D. "Class B Member" shall mean and refer to the Sponsor until the Class A members have the exclusive right to elect all of the members of the Board of Directors pursuant to the provisions of the By-Laws, at which time Class B membership shall cease.
- E. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens - Fifteen Hundred East

Avenue as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

- F. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Rochester or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- G. "Member" shall mean and refer to a Class A Member of the Class B Member.
- H. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot, and provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be deemed an Owner (and therefore not a Member).
- I. "Property" shall mean and refer to all properties as are subject to this Declaration.
- J. "Sponsor" shall mean and refer to Eastford Development Corp., its successors, and its assigns. The Sponsor is also sometimes hereinafter referred to as a Class B Member.
- K. "Unit" shall mean and refer to each completed dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the City of Rochester) situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Rochester, County of Monroe and State of New York, all of which property shall be hereinafter and is more particularly described in Schedule "A".

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions, and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

THE ASSOCIATION

STRUCTURE, MEMBERSHIP, VOTING RIGHTS, AND DIRECTORS

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

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

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

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

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

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

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

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

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

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

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

Section 3.11. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than 10 years from the date of recording the Declaration, the Board of Directors may not, without the Sponsor's written consent, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) assess any amount for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or

maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), this Section shall not be amended without the written consent of the Sponsor.

ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

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

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

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

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

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

condominiums, and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date of the canvass thereof.

Section 4.04. Rights of Sponsor. With respect to Association Property and in addition to the rights reserved in Section 4.10 below, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), the Sponsor shall have the right to:

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

The easements, rights-of-way, and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor, and their successors and their assigns. With respect to its exercise of the above rights, the Sponsor agrees (i) to repair any damages

resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Sponsor's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Sponsor.

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, coaxial cables, conduits, and public utility lines located on each Lot or within any Unit shall be owned by the Owner of such Lot or Unit. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use the pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines servicing, but not located on, such other Unit or Lot. The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair, or replacement of any pipes, wires, coaxial cables, conduits, drainage areas, or public utility lines located on any Lot or within any Unit and servicing two or more Units. The cost of such repair, maintenance, or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof.

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

Section 4.06. Common Access Easement. The Sponsor and all Owners and their guests, mortgagees, licensees, and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways,

driveways, and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair, and replacement of walkways, driveways, and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

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

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

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

Section 4.10 Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

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

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

Section 4.11 Association Easement for Maintenance and Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible to maintain, repair or replace as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

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

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

The Assessments shall be fixed, established, and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon, and costs of collection as hereinafter provided, shall be a charge and continuing lien

upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

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

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

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

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

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration), voting in person or by proxy, written notice of which change shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than 10 years after the date of recording the Declaration, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

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

Section 5.07. Special Assessments. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, unusual expenses including capital improvements, including without limitation, the construction, reconstruction, or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 100% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Members then entitled to vote (i.e. see Section 3.03 of this Declaration) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members then entitled to vote at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

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

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as

the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

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

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

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

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

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

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments

or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

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

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

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

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

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

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

ARTICLE VI MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the

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

The Association shall be responsible for the maintenance of all shrubbery and other plantings (except for flower beds) installed by or at the direction of the Sponsor or the Association but not for shrubbery, flower beds or other plantings installed by or at the direction of any Lot Owner or Unit occupant.

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

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall paint, repair and replace fences or railings initially installed by the Sponsor, and maintain, repair and replace all walkways, but shall not repair or replace stoops, stairs or decks.

The Association may increase or decrease its maintenance responsibilities, e.g. to maintain, repair and replace as necessary the roofs and gutters to the Units, or to paint or stain as necessary Unit exteriors, trim, windows and doors, provided (i) such increase or decrease is approved in writing by two-thirds (2/3) of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration) and (ii) if such increase or decrease is proposed while the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than 10 years after the date of recording the Declaration, the written consent of the Sponsor will be required.

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

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

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

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair, or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is covered or coverable by fire and casualty insurance of the Unit Owner occasioned by a negligent or willful act or omission of an Owner (including (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) or the Sponsor shall be made at the cost and expense of such Owner or the Sponsor, as the case may be. If such maintenance, repair, or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit or Lot, as the case may be, to secure the payment thereof.

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

ARTICLE VII

ARCHITECTURAL CONTROLS

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

Section 7.02. Composition and Function of Architectural Committee. The Architectural Committee shall be a permanent committee of the Association and shall (i) review and approve or disapprove all proposed additions, modifications or alterations to any improvements or any proposed change in the use of a Lot or any other portion of the Property (including Association Property) after transfer of title to such Lot or other portion of the Property and (ii) enforce those provisions of the General Covenants and Restrictions set forth in Article X of this Declaration pertaining to the exterior appearance and use of the Property as specifically set forth in Article X. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations, and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three or more persons (as determined by the Board of Directors of the Association) for terms of two years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

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

Section 7.04 Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

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

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements

6r uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health, or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

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

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

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

Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

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

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

Section 7.11. Architectural Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined

by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

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

ARTICLE VIII PARTY WALLS AND ENCROACHMENTS

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

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

Section 8.02. Maintenance of Party Walls. Each Lot Owner whose Lot contains a party wall shall have an easement to enter upon the Lot with which the party wall is shared to effect necessary repairs or maintenance of such party wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or

rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two Owners which share such wall.

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

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

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

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

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

result of replacement, the encroachment, or projection must be inad vertent in order for a valid easement to exist.

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

ARTICLE IX

INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain (1) fire and casualty insurance, (including flood insurance if required for the mortgaging of individual Units) (2) liability insurance for occurrences on the Association Property, (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association, (4) fidelity insurance covering those who handle Association funds, and (5) worker's compensation insurance covering Association employees and those who perform work for the Association, with coverages to be as follows:

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

The policy shall have the following provisions, endorsements, and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, (ii) "agreed amount" (unless not obtainable) and inflation guard, (iii) coverage for loss of maintenance assessments from Unit Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of any right to

claim by way of subrogation against individual Unit Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association, (v) an exclusion from the "no other insurance" clause of individual Unit Owners' policies which shall provide that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Unit Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Unit Owners or mortgagees, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control, (vii) cross-liability giving the Unit Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Units reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two years to assure the sufficiency of coverage and (x) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or from such other source as the Board of Directors shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land, foundations and improvements made by present or prior Unit Owners or occupants) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

Each Unit shall be billed 1/23 of the cost of such insurance at least annually. Such payment is hereby deemed a Special Assessment subject to Article V hereof.

2. Flood Insurance. The Property is not in a designated flood hazard zone by the Federal Secretary of Housing and Urban Development and therefore no flood insurance will be carried.

3. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences within such Owner's Unit or on such

Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander, false arrest and invasion of privacy), (ii) personal injury, (iii) medical payments, (iv) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured, (v) "severability of interest" precluding the insurer from denying coverage to a Lot Owner because of negligent acts of the Association or any other Lot Owner, (vi) contractual liability, (vii) water damage liability, (viii) hired and non-owned vehicle coverage, (ix) liability for the property of others, (x) host liquor liability coverage with respect to events sponsored by the Association, and (xi) deletion of the normal products exclusion with respect to events sponsored by the Association.

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

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

4. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. The policy shall provide for "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

5. Fidelity Insurance. The fidelity insurance shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The insurance shall be in an amount not less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the

exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the insurance may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to all institutional first mortgagees of any Unit(s) whose names appear on the records of the Association.

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

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

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

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

Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the

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

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

Section 9.03. Insurance Carried by Unit Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty and theft coverage for Owner's personal property, (2) coverage for such Owner's personal liability within the

Owner's Unit and on such Owner's Lot and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

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

ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

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

Section 10.02. Animals Including Birds and Insects. The Association may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, including birds and insects and (ii) prohibit certain types of animals, including birds or insects entirely. Notwithstanding the above, the Board of Directors of the Association shall have the right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, including birds or insects, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled.

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

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pickup, at such place on the Lot or other portion of the Property designated by the Architectural Committee so as to provide access to persons making such pickup. The Architectural Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

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

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

property, vegetation, or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance, or code.

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

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

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

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

Section 10.11. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except (i) by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots and Units and (ii) the conducting of business by telephone. This

restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.12 Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be allowed for no more than seven (7) consecutive days in any 30-day period, except as may be otherwise permitted by the Association's Board of Directors, (unless prohibited altogether by the applicable zoning requirements).

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

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

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

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

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

ARTICLE XI

ENFORCEMENT, AMENDMENT, AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and

be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability.

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

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

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

person or organization for failure to enforce the provisions of the Declaration.

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

Section 11.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

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

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

with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.07. Amending or Rescinding. The Sponsor, during the time the Sponsor owns any Lot, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent. In the event that New York law is changed to permit Members to cast the same amount of votes as the number of Lots such Member owns, the Sponsor reserves the right to amend such provisions of this Declaration as are necessary to allow Members to cast the same amount of votes as the number of Lots owned, pursuant to the provisions of such law. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of not less than 67% of the Members then entitled to vote. In addition, and notwithstanding the above, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than 10 years after the date of recording the Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

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

In addition to the approval of the Owners and Sponsor as provided for herein, no amendment or rescission of a material nature shall be effective if lending institutions which together are first mortgagees on 51% or more of the Lots on which there are mortgages as shown on the records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 11.08. Owner Responsible for Tenants. Any lease of a Unit shall provide that the tenant shall comply in all

respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

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

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

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

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

the end that the Property shall be preserved and maintained as a high quality community.

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

Section 11.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

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

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

ARTICLE XII

GENERAL

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

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

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

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

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

(Seal)

EASTFORD DEVELOPMENT CORP.

By: _____

FIFTEEN HUNDRED EAST AVENUE, INC.

By: _____

SCHEDULE A

(Lands Covered by the Declaration)

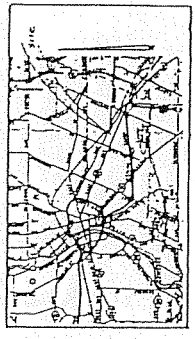
ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe and State of New York and as outlined in blank and described as "common area" on the map of Lot No. 2 of the 1500 East Avenue Subdivision set forth on the map annexed hereto.

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PROJ. NO. 1500
DATE 1/10/50
SCALE 1/8" = 1'-0"

DATE 9-5-51



LOCATION SKETCH

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David W. Hill, President

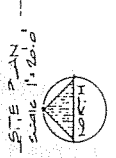


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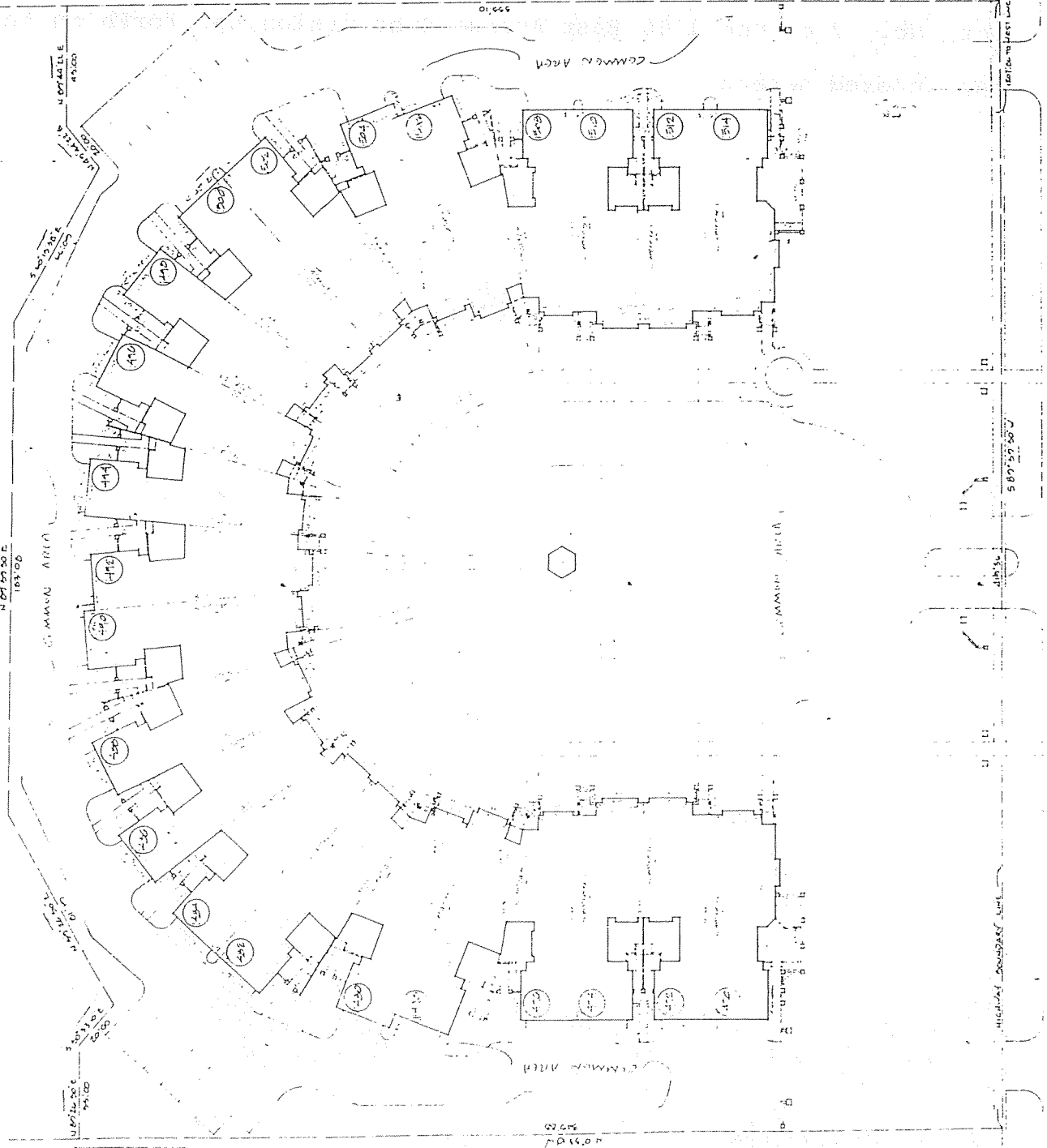
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CERTIFICATE OF INCORPORATION

OF

FIFTEEN HUNDRED EAST AVENUE, INC.

Under §402 of the Not-For-Profit Corporation Law.

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, hereby certifies:

1. Name. The name of the Corporation is FIFTEEN HUNDRED EAST AVENUE, INC.

2. Classification. The Corporation is a corporation as defined by subparagraphs (a)(5) of Section 102 of the Not-For-Profit Corporation Law. The Corporation is a Type A Corporation under Section 201 of the Not-For-Profit Corporation Law.

3. Purposes.

(a) The Corporation has not been formed for a pecuniary profit of financial gain, and no part of the assets, income or profit of the Corporation is distributable to or for the benefit of its members, directors, or officers, except to the extent permitted by the Not-For-Profit Corporation Law; and

(b) The purposes for which the Corporation is organized is to acquire, manage, maintain, and care for association property and community facilities in Fifteen Hundred East Avenue and to insure enjoyment of the rights, privileges,

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and easements with respect thereto for the benefit of the owners of Fifteen Hundred East Avenue. Fifteen Hundred East Avenue is in the City of Rochester, Monroe County, New York,

being hereinafter referred to as the "property".

4. Powers. In furtherance of the purposes of the

Corporation and in addition to the powers provided by law, the Corporation shall have the power:

(a) To purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, develop, improve, maintain and operate, and to aid and subscribe toward the acquisition, development or improvement of, real and personal property, and rights and privileges therein, suitable or convenient for any of the purposes of the Corporation;

(b) To purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, construct, erect, improve, manage, maintain, and operate, and to aid and subscribe toward the acquisition, construction or improvement of, systems, utilities, buildings, machinery, equipment and facilities, and

any other property or appliances which may appertain to or be useful in the accomplishment of any of the purposes of the Corporation;

(c) To make contracts, incur liabilities, and borrow money; and to issue bonds, notes and other obligations and secure the same (i) by mortgage of all or any part of the property, franchises and income of the Corporation and/or (ii) by the charges imposed on the property of others under, and the liens on such property created by, the Declaration; and to guarantee the obligations of others in which it may be interested in the furtherance of the purposes of the Corporation;

(d) To fix, charge and collect tolls, fees, rates, rentals, and other charges for the use of the facilities of, or for the services rendered by the Corporation not for profit but for the purpose of providing for the payment of the expenses of the Corporation, the cost of the construction, improvement, repair, equipping, furnishing, maintenance and operation of its facilities, the cost of its services, and the principal and interest on its obligations;

(e) To raise money for any particular facility or service which the Corporation proposes to provide by means of a special assessment of 1500 East Avenue Townhomes generally or of a part or parts thereof to be specially benefited thereby and to condition the providing of such facility or service upon the voluntary payment of all or a specified percentage of the aggregate amount of such assessment;

3

(f) To enforce any protective covenant or restriction, and any other covenant or obligation providing for the payment of any charges, assessment or fees, which are a part of the Declaration or created by any contract, deed or other instrument executed pursuant to the provisions of said Declaration, not for profit but for the purpose of providing for the payment of the expenses of the Corporation, the cost of construction, improvement, repair, equipping, furnishing, maintenance and operation of its facilities, the cost of its services, and the principal and interest on its obligations and to create any facilities, boards or associations deemed to be convenient by the Board of Directors for such enforcement;

(g) To have and exercise, to the extent necessary or desirable for the accomplishment of the aforesaid purposes and to the extent they are not inconsistent with the purpose of this Corporation, any and all powers conferred upon corporations of a similar character by the Laws of the State of New York.

5. Principal Office. The office of the Corporation is to be located in the County of Monroe, State of New York.

6. Directors. The names and addresses of the Directors until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Richard S. Brovitz	31 Towpath Circle Rochester, NY 14618

4

Philip F. Spahn, Jr.

14 Buckingham Street
Rochester, NY 14607

Arun H. Gade

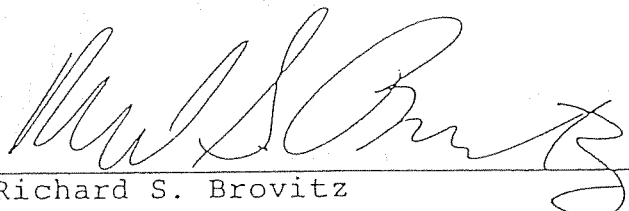
352 Barrington Street
Rochester, NY 14607

7. Service of Process. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Fifteen Hundred East
Avenue, Inc.
c/o Fix, Spindelman, Turk,
Himelein & Shukoff
2 State Street
Rochester, NY 14614

8. Age of Subscriber. The subscriber is of the age of 18 years or over.

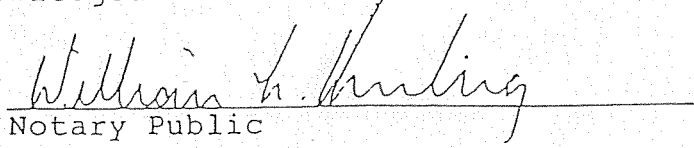
IN WITNESS WHEREOF, this Certificate has been subscribed this 4th day of August, 1986, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.



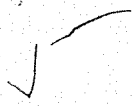
Richard S. Brovitz
Residing at:
31 Towpath Circle
Rochester, NY 14618

STATE OF NEW YORK)
COUNTY OF MONROE)

On August 4, 1986, before me personally came RICHARD S. BROVITZ, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation, and he duly acknowledged to me that he executed the same.


Notary Public

WILLIAM L. KREIENBERG
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Aug. 31, 1988



BY-LAWS
OF
FIFTEEN HUNDRED EAST AVENUE, INC.

NAME: FIFTEEN HUNDRED EAST AVENUE, INC.

SPONSOR: EASTFORD DEVELOPMENT CORP.
2 State Street
Rochester, New York 14614

DATED: August 25, 1986

LAW OFFICES
OF
FIX, SPINDELMAN, TURK, HIMELEIN & SHUKOFF
500 Crossroads Building, 2 State Street
Rochester, New York 14614

LAW OFFICES
OF
GEORGE GRASSER, ESQ.
3350 Marine Midland Center
Buffalo, New York 14203

BY-LAWS OF
FIFTEEN HUNDRED EAST AVENUE, INC.

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BY-LAWS
OF
FIFTEEN HUNDRED EAST AVENUE, INC.

ARTICLE I
NAME AND LOCATION

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

ARTICLE II
DEFINITIONS

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

Section 2.01. "Class A Member" shall mean and refer to the Owner of a Lot or Unit, whether an Owner of a Lot initially under the Declaration pursuant to Section 2.01 of the Declaration or whether an Owner of a Lot on the Additional Property added to the scope of the Declaration pursuant to Section 2.02 of the Declaration. In the case of joint ownership of a Lot or Unit, the Class A Member with respect to such Lot or Unit shall be determined pursuant to Section 3.06 hereof. The Sponsor may not hold Class A membership simultaneously with Class B membership.

Section 2.02. "Class B Member" shall mean and refer to the Sponsor until the Class A members have the right to elect all of the members of the Board of Directors (see Section 5.03 hereof) at which time Class B membership shall cease.

Section 2.03. Declaration: The document entitled "Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens - Fifteen Hundred East Avenue" imposed by the Sponsor on the "Property," as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.04. Lot: Any portion of the Property under the scope of the Declaration with the exception of Association Property as defined in the Declaration and identified as a separate parcel on the tax records of the Town of Webster or (ii) shown as a separate Lot on any recorded or filed subdivision map.

Section 2.05. Member: A Class A Member or a Class B Member.

Section 2.06. Owner: The holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot, and provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be deemed an Owner (and therefore not a Member).

Section 2.07. Property: All lands which are subject to the Declaration and improvements thereon.

Section 2.08. Sponsor: Eastford Development Corp., its successors, and its assigns. The Sponsor is also sometimes hereinafter referred to as the Class B Member.

Section 2.09. Unit: Any living unit on the Property, as evidenced by issuance of a Certificate of Occupancy issued by the Town of Webster, situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

ARTICLE III MEMBERS

Section 3.01. Membership in the Association: The Association shall have as Members only Owners and the Sponsor. The Sponsor shall be the Class B Member. All Owners (other than the Sponsor and except for the case of joint ownership as set forth in Section 3.06 of these By-Laws) shall, upon becoming such, be deemed automatically to have become Class A Members and there shall be no other qualification for membership. Except as Section 3.06 of these By-Laws may be applicable, membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of these By-Laws.

Section 3.02. Right of Sponsor to Assign: The Sponsor may, subject to a duly-filed amendment to the offering plan which has been filed with the New York State Department of Law for the offering of interests in the Association together with the Units (hereinafter sometimes referred to as the "Offering Plan"), assign its membership in the Association to any person, corporation, association, trust, or other entity and such assignee and any future assignee of such membership may take successive like assignments. Memberships in the

Association shall not otherwise be transferable or assignable.

Section 3.03. Voting Rights: Except as may otherwise be required by statute or as may be otherwise set forth in the Declaration or in these By-Laws, the Class B Member shall have the exclusive right to vote until such Class B membership shall cease pursuant to Section 5.03 hereof.

Each Class A Member entitled to vote shall have one (1) vote regardless of the number of Lots owned by such Member. The Class A Members shall have the exclusive right to vote for and elect one of the three members of the Board of Directors under the conditions set forth in Section 5.01 of these By-Laws.

If an institutional first mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Any Member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Member's voting rights be suspended for non-payment of assessments.

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

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

Section 3.06. Joint or Common Ownership: If a Lot is owned or held by more than one person or entity as joint tenants, tenants by the entirety, or as tenants in common,

such Owners shall agree among themselves as to which one of such Owners shall be a Member of the Association. The Association shall require a written statement (in such form as the Association may prescribe) to be signed by all of such Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no membership in the Association with respect to a jointly owned Lot unless such a written statement with respect to such Lot has been submitted to the Association.

Section 3.07. Absentee Ballots and Proxy Voting: On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and stating that the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the secretary of the Association.

ARTICLE IV MEETINGS OF MEMBERS

Section 4.01. Annual Meeting: The first annual meeting of the Association shall be held within 30 days after the transfer of title to twenty-three (23) of the Lots or within one (1) year after the recording of the Declaration, whichever first occurs. Thereafter, there shall be an Annual Meeting of the Members in February of each year on a day and at a time and place reasonably convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

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

Section 4.03. Notice of Meetings: Not less than ten (10) days or more than thirty (30) days before the date of any

Annual or Special Meeting of Members, the Association shall give to each Member entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, (Annual or Special) may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum: Except as may otherwise be provided in these By-Laws, the presence in person or by proxy of Members having one-third (1/3) of the total authorized votes of all Members shall constitute a quorum at any meeting of Members. If any meeting of Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present in person or by proxy. The quorum required in each reconvened meeting shall be one-half of the quorum required for the previous meeting. The act of two-thirds of the Members present at a Meeting at which a quorum was present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

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

vote upon the action if such meeting were held, shall consent in writing to such action being taken.

ARTICLE V
BOARD OF DIRECTORS

Section 5.01. Number and Qualification of Directors: The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three (3) persons designated by the Sponsor. Within 90 days after the transfer of title to nine (9) of the Lots or six (6) months after the date of recording the Declaration, whichever event takes place first, one of the members of the initial Board shall resign and the successor to such resigned member of the Board shall be elected to the Board by the Class A Members. Such Board member shall serve for two (2) years or until the first annual meeting of the Association at which Class A members are entitled to elect all of the members of the Board of Directors, whichever event takes place first. If the term of such Board member terminates because two years has elapsed, another election shall be held and the Class A members shall choose a successor Board member who shall serve until the first annual meeting at which Class A members are entitled to elect all of the members of the Board of Directors.

The Board of Directors shall consist of five (5) members commencing at the first annual meeting at which the Class A members are entitled to elect all of such members pursuant to Section 5.03 hereof.

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

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

Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

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

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

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

A new Board of Directors consisting of five (5) members shall be elected by the Class A members and Class B membership shall cease at the first annual meeting after (a) twenty-three (23) of the Lots have been sold (closed), or (b) four (4) years have elapsed since the first closing of a Lot, or (c) two years have elapsed since the last closing of a Lot, whichever of these events occurs first. The Sponsor may choose to voluntarily relinquish its Class B membership prior to the occurrence of any of these events, in which case the election of the five-member Board shall take place at the next annual meeting. The terms of the members of this first five-member Board shall be three years (two members), two years (two members), and one year (one member). The longer terms shall be assigned to the members receiving the greater number of votes. Thereafter, members of the Board of Directors shall be elected to serve three year terms or appointed to complete unexpired terms.

Voting shall be by secret written ballot which shall:

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

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

Section 5.04. Vacancies: Except for (i) Directors appointed or elected by the Sponsor who shall be replaced by the Sponsor and (ii) Directors elected by the Class A Members, who shall be replaced by the majority vote of the remaining Directors similarly elected, or, if none, by a special election by Class A Members, any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

Section 5.05. Removal: Subject to the limitations as provided in this Section 5.05, at any regular or special meeting of Members, any one or more of the members of the Board of Directors elected by the Class A Members may be removed with or without cause by the affirmative vote of not less than a majority of the Class A Members and a successor may then and there or thereafter be elected by the Class A Members to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed with or without cause only by the Sponsor. Successors to such removed members of the Board shall be appointed by the Sponsor. In addition, the other Directors may, by the affirmative vote of not less than two-thirds of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings.

Section 5.06. Compensation: Directors shall not receive any compensation or salary for their services as Directors. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. A Director who serves the Association in any other capacity, however, may receive compensation therefor.

Section 5.07. Regular Meetings: Regular meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal

holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

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

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

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

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

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

- (1) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation, or the Declaration.
- (2) Determine, levy, and collect the Maintenance Assessments, Special Assessments, and other charges as provided for in the Declaration.
- (3) Collect, use, and expend the assessments and charges collected for the maintenance, care, and preservation and operation of the property of the Association, and the maintenance, care, and preservation of the Units and other improvements to the Property.
- (4) Establish reserves for the maintenance, repair, and replacement of Association Property and the maintenance, repair, and replacement of the Unit exteriors. Such reserves shall be adequate to fund the projected costs of such maintenance, repair, and replacement and shall be sufficient to meet the reasonable requirements of existing or proposed lenders, holders, and insurers of first mortgages on the Units.
- (5) Enter into agreements for the management of the affairs and operations of the Association provided any such agreements (i) have a term of three (3) years or less, (ii) if entered into at a time when the Sponsor owns 25% or more of the Lots under the Declaration, afford the Association the right to terminate, without cause, without penalty, and on notice of not more than 90 days, at any time after the Sponsor is no longer in control of the Board of Directors.
- (6) To the extent it deems the same necessary and reasonable, procure and maintain adequate liability insurance covering the Association, its directors, officers, agents, and employees and procure and maintain adequate hazard insurance on such of the Association's real and personal property and the Units as it deems appropriate.
- (7) Subject to the provisions of the Declaration, repair, restore, or alter the properties of the Association

after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

- (8) Adopt and publish rules and regulations governing the use of the Property, and the personal conduct of the Members, occupants, and guests thereon, and establish fines and other penalties for infractions thereof.
- (9) Collect delinquent assessments by suit or otherwise, abate nuisances, and enjoin or seek damages from or impose penalties on Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- (10) Pay all taxes owing by the Association.
- (11) Suspend the voting rights of a Member after notice and hearing for a period not to exceed thirty (30) days for infractions of published rules or regulations, provided that in no event shall the Board suspend the voting rights of a Member for nonpayment of assessments.
- (12) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors.
- (13) Keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and present a statement thereof to the Members at the annual meeting of Members, or at any special meeting of Members when such a statement is requested in writing by not less than one-fourth (1/4) of the Members entitled to vote.
- (14) Issue, or cause to be issued, upon demand by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessments for any Lot.

ARTICLE VI OFFICERS

Section 6.01. Officers: The officers of the Association shall be the President (who shall be a Member of the Board of Directors), one or more Vice Presidents, (the number thereof to be determined by the Board of Directors), the Secretary and

the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. The President, but no other officer, must be a member of the Board of Directors.

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

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

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

Section 6.05. President: The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall, if there is no Chairman of the Board, preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned to him or her by the Board. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

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

Section 6.07. Secretary: The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all

meetings, shall have charge of the seal, if any, and corporate records of the Association, shall keep records of the Members of the Association and the mortgagees of dwelling units on the Property, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

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

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

ARTICLE VII COMMITTEES

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

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

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

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

ARTICLE VIII FINANCE

Section 8.01. Checks: All checks, drafts, and orders for the payment of money, notes, and other evidences of indebtedness, issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer and countersigned by one Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

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

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

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

Section 8.05. Separate Accounting for Reserve Fund: Any funds of the Association collected or designated as reserves

for the replacement of capital items and for major maintenance and repair shall be accounted for separately from all other funds of the Association. This requirement shall not be construed as requiring the segregation of Funds into separate bank accounts.

ARTICLE IX
BOOKS, RECORDS, AND LEGAL DOCUMENTS

Section 9.01. Books, Records, and Legal Documents: The Board of Directors shall make available for inspection upon reasonable notice and during normal business hours, to existing and prospective Owners, tenants, title insurers, mortgagees, mortgage insurers, and mortgage guarantors, current copies of the Declaration, By-Laws, Certificate of Incorporation, rules and regulations, budget, schedule of assessments, balance sheet, and any other books, records, and financial statements of the Association. The Board of Directors may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

ARTICLE X
CORPORATE SEAL OPTIONAL

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

ARTICLE XI
AMENDMENTS

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

- a.. a notice of the meeting containing a full statement of the proposed modification, alteration, repeal, amendment, or addition has been sent to all Owners and Lot first mortgagees as listed on the records of the Association, not less than ten (10) nor more than forty (40) days prior to the date or initial date set for the canvass of the vote thereon; and

- b. a majority of a quorum of Members then entitled to vote and present at the meeting in person or by proxy approve the change; except that, if the amendment is of a material nature (i) 67% of the Members must approve the change; and (ii) prior to the date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from first mortgagees of 51% or more of the Lots on which there are mortgages as shown on the records of the Association.

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

Section 11.03. Consent of Sponsor: So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to the Declaration (whether or not subject to the Declaration) but not longer than 10 years after the date of recording the Declaration, Sections 3.02, 5.01, 5.03, 5.04, 11.01, 11.02, 11.03, and 11.04 shall not be amended without the consent of the Sponsor.

Section 11.04 Amendment by Sponsor: The Sponsor, during the time the Sponsor owns any Lot, may make amendments to these By-Laws to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent.

ARTICLE XII MISCELLANEOUS

Section 12.01. Notices: All notices hereunder shall be in writing and sent by mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, if to go to the Board of Directors, at the office of the Board of Directors, and if to go to an Owner or to a Lot mortgagee, to the address of such Owner or mortgagee at such address as appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws,

a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

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

Section 12.03. No Waiver for Failure to Enforce: No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 12.04. Gender: The use of the masculine gender in these By-Laws shall be deemed to include the masculine, feminine or neuter and the use of the singular shall be deemed to include the plural, whenever the context so requires.

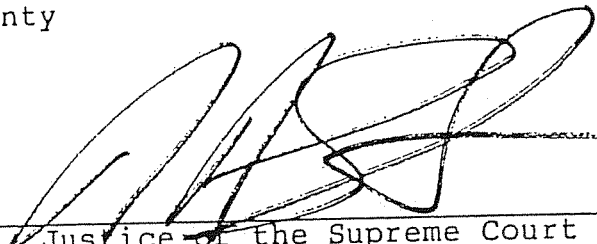
Section 12.05. Captions: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 12.06. Severability: Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability, or effect of the balance of these By-Laws shall not be impaired or affected in any manner.

APPROVAL OF CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION
BY
SUPREME COURT JUSTICE

I, Thomas A. Stander, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Fifteen Hundred East Avenue, Inc., and consent that the same be filed.

Dated: June 24th, 1993
Supreme Court, Monroe County
Ex Parte Term
Rochester, New York



Justice of the Supreme Court
Seventh Judicial District

AGREEMENT commencing the first day of January 1987 by and between FIFTEEN HUNDRED EAST AVENUE, INC., a New York Not-For-Profit Corporation, hereinafter called the "ASSOCIATION," and ROCKHURST MANAGEMENT CORPORATION, a New York Corporation, hereinafter called "ROCKHURST."

W I T N E S S E T H:

In consideration of the terms, conditions, and covenants hereinafter set forth, the parties hereto mutually agree as follows:

1. The ASSOCIATION hereby appoints ROCKHURST, and ROCKHURST hereby accepts appointment pursuant to the terms and conditions herein provided, as exclusive managing agent of the Townhouse Project known as Fifteen Hundred East Avenue in the City of Rochester, County of Monroe, State of New York, consisting of or to consist of twenty-three (23) townhouses.
2. The authority and duties conferred upon ROCKHURST herein are confined to:
 - a. the Common Area as defined in the recorded Declaration of Covenants, Conditions, and Restrictions (hereinafter called the "DECLARATION") and the recorded Plat thereof; and
 - b. the exterior surfaces for which the ASSOCIATION has maintenance responsibilities as defined in the DECLARATION.

Such authority and duties do not and shall not include supervision or management of individual townhouses except as stated above.

3. The ASSOCIATION shall furnish ROCKHURST with a complete set of the plans and specifications of the Townhouse Project; with the aid of these documents ROCKHURST will inform itself with respect to the layout, construction, locations, character, plan, and operation of the common areas and the roofs and exterior walls of the townhouse units. Copies of any and all guarantees and warranties pertinent to the common area, roofs, and exterior walls of the Townhouse Project and in force at the time of the execution of this Agreement shall be furnished to ROCKHURST by the ASSOCIATION. ROCKHURST shall have no responsibility for any replacement, repairs, or maintenance of the interiors of the Townhouse units except insofar as the ASSOCIATION has an interest in a casualty loss.
4. ROCKHURST shall render services and perform duties as follows:
 - a. Maintain cordial relations with members, whose service requests shall be received, considered, and recorded in systematic

fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after investigation, be reported to the ASSOCIATION's Board of Directors with appropriate recommendations. As part of a continuing program, ROCKHURST will assist the ASSOCIATION in seeking full performance by members of all items of maintenance for which they are responsible. Members' service requests shall be responded to within fourteen (14) days. If it is not possible to effect the requested repair within fourteen (14) days, the member shall receive a response explaining the reason for the delay.

- b. Cause the buildings, appurtenances, and grounds of the Townhouse Project to be maintained according to standards acceptable to the ASSOCIATION's Board of Directors.
- c. As may be requested or required by the Board, take such action as the Board deems necessary to comply with any and all orders or requirements affecting the premises or improvements placed thereon by any Federal, State, County, or Town authority having jurisdiction thereover, and the Board of Fire Underwriters or other similar bodies. ROCKHURST shall promptly, and in no event later than seventy two (72) hours from the time of their receipt, notify the President of the ASSOCIATION in writing of all such orders and notices of requirements.
- d. Negotiate all contracts as Agent for the ASSOCIATION for lawn mowing, snow removal, and other necessary services as the Board of Directors may deem advisable. All such contracts shall be made in the name of the ASSOCIATION, may be reviewed by the ASSOCIATION's attorney at the ASSOCIATION's expense, and shall be signed by an officer of the ASSOCIATION.
- e. ROCKHURST shall place orders for such equipment, tools, materials, and supplies as are necessary to properly maintain the Townhouse Project. Expenses incurred for such purchases shall not exceed \$500.00 per occurrence unless specifically authorized by the ASSOCIATION's Board of Directors.
- f. Insurance:
 - i. Investigate and seek out bids or quotes from licensed insurers for all necessary forms of insurance as in the opinion of the Board may be required by the Declaration or otherwise be appropriate, including but not limited to public liability insurance and fire and extended coverage insurance on all dwellings. All the various types of insurance coverage required shall be placed with such companies, in such amounts, and with such beneficial interests appearing therein as shall be acceptable to the ASSOCIATION's Board of Directors.
 - ii. Investigate and maintain reports of all accidents or claims for damage as reported to or relating to the management, operation, and maintenance of the Townhouse Project, including any damage or destruction thereof and the estimated cost

of repair, and shall cooperate and make any and all reports required by any insurance company in connection therewith.

- g. Maintain the ASSOCIATION's records, books, and accounts. As a standard practice, ROCKHURST shall render to the ASSOCIATION a statement of income and expense as of the end of every quarter. Annually, such records, books, and accounts shall be audited and appropriate tax returns prepared by a Certified Public Accountant, acceptable to the ASSOCIATION's Board of Directors, whose report shall be submitted to the ASSOCIATION's Board of Directors.
 - h. Collect and, as necessary, receipt for all monthly assessments and other charges due the ASSOCIATION. The only responsibility that ROCKHURST has for the collection of delinquent assessments is as follows: i.) send a delinquency notice during the first delinquent month; ii.) prepare and file a lien if no response or payment is received by the 10th day of the following month; the ASSOCIATION hereby authorizes ROCKHURST to file such liens.
 - i. Designate one of its employees as property manager for the ASSOCIATION; such employee shall attend quarterly meetings of the Board of Directors one of which meetings shall be held on the same day as and just before or after the Annual Meeting of the Members of the ASSOCIATION. For additional meetings of the Board with the property manager or with other ROCKHURST management personnel, ROCKHURST shall charge the ASSOCIATION at an hourly rate not to exceed \$70.00 per hour, which rate may be lessened or waived depending on the employee, the frequency, location, and/or the time of the day and day of the week of such meeting(s).
5. Everything done by ROCKHURST Corporation under the provisions of Article four (4) shall be done as Managing Agent contracted by the ASSOCIATION, and all obligations or expenses incurred thereunder shall be for the account, on behalf, and at the expense of the ASSOCIATION including but not limited to attorneys fees and/or fees to Certified Public Accountants. ROCKHURST shall not be obligated to make any advance to or for the ASSOCIATION or to pay any sum, except of funds held or provided as aforesaid, nor shall ROCKHURST be obligated to incur any liability or obligation for the account of the ASSOCIATION without assurance that the necessary funds for the discharge thereof will be provided. ROCKHURST shall not reimburse itself for any portion of its overhead expenses, administrative expenses, managerial, or reasonable secretarial and bookkeeping expenses. However, materials for repairs, postage, long distance telephone calls, and supply expenses are ASSOCIATION expenses and ROCKHURST is authorized to reimburse itself for such expenses. Charges for copies shall be \$0.10 per page for letter and legal size and \$0.15 per page for ledger size. Other services which are not included in the management fee may be available from ROCKHURST at fees mutually agreeable to both parties. Examples of such services are preparation of newsletters, annual insurance billing, negotiations with Developers or governmental officials, and revision of control documents. Charges for documents for preparation of closing packages are billed to the requesting party (usually the purchaser).

6. For casualty losses requiring reconstruction expense of \$5,000.00 or more resulting from a single occurrence, ROCKHURST shall not be responsible for coordination and supervision except as may be mutually agreed by ROCKHURST and the ASSOCIATION at an additional cost to the ASSOCIATION.
7. Notwithstanding the provisions of this Agreement regarding ROCKHURST's general management responsibilities, the services provided by ROCKHURST do not include research or bidding of new capital improvements for any items or projects.
8. Notwithstanding the provisions of this Agreement regarding ROCKHURST's general management responsibilities, the services provided by ROCKHURST do not include preparation of specifications or bidding of repair or replacement work (any single project) which project shall incur expense in excess of \$6,000.00
9. For provision of services excluded from this Agreement pursuant to the terms of paragraphs 6, 7, or 8, the ASSOCIATION may enter into separate agreements with ROCKHURST or with any third party.
10. ROCKHURST shall establish and maintain, in a bank or banks whose deposits are insured by an agency of the United States Government, separate bank accounts in the name of the ASSOCIATION for the deposit of monies of the ASSOCIATION, with exclusive authority to draw thereon for any payments to be made by ROCKHURST to discharge any liabilities or obligations incurred pursuant to this Agreement and for payment of ROCKHURST's fee.
11. ROCKHURST shall maintain a fidelity bond in the principal amount of not less than two hundred fifty thousand dollars (\$250,000) throughout the term of this agreement. ROCKHURST agrees to furnish the Board of Directors with a certificate of such insurance with the ASSOCIATION named as a certificate holder and entitled to receive not less than ten (10) days notice of any cancellation of such insurance. In the event that a claim arises under the bond, ROCKHURST agrees to diligently file and pursue such claim. If ROCKHURST does not file and pursue such claim within a reasonable time after the cause of such claim has arisen, the ASSOCIATION shall have the right to act on ROCKHURST's behalf in filing and pursuing such claim and ROCKHURST hereby appoints the Board of Directors of the ASSOCIATION as its attorney-in-fact for this purpose alone.

12. a. The compensation which ROCKHURST shall be entitled to receive for services performed under this agreement shall be a fee payable monthly, in advance, in the following amounts:

First year: \$16.00/townhouse unit/month, minimum \$200.00/month

These fees increase by 4% per year in the second and third years of the Agreement.

These fees become effective on the first of the month following the original closing of each unit.

- b. The ASSOCIATION shall give 60 (sixty) days' notice of its intention to enter into a new contract with ROCKHURST at the end of the term.
13. The ASSOCIATION and ROCKHURST agree that all repairs to the common area and the exteriors of the townhouses which do not require a specialized contractor shall be performed by ROCKHURST at the expense of the ASSOCIATION on a time and materials basis. The maximum hourly rate which ROCKHURST may charge to the ASSOCIATION for repair service personnel shall be initially \$27.00 per hour (plus applicable tax). Such hourly rate may only be increased during the term of this Agreement on the first day of September of each year and such increases shall not exceed 4% in each instance. The parties hereto further agree that the ASSOCIATION shall pay ROCKHURST for the time of its Service personnel in inspecting repair and replacement work performed by outside contractors.

14. Termination:

- a. This Agreement shall be effective as of the date first above written and unless terminated as provided below shall continue in effect for a period of three (3) years.

b. Early termination:

- (i) This Agreement may be terminated by mutual consent in writing of the parties hereto as of the end of any calendar month.
- (ii) This Agreement may be terminated by either party upon sixty (60) days notice which notice may only be given within the first thirty (30) days following the transition from developer to lot owner control of the Board of Directors.
- (iii) In the event a petition of bankruptcy is filed by or against ROCKHURST or the ASSOCIATION or in the event that either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party may terminate this Agreement without notice to other. In the event this Agreement is terminated pursuant to this subparagraph, the ASSOCIATION shall immediately and automatically

have a lien upon all funds held by ROCKHURST for the benefit of the ASSOCIATION in accordance with the terms of the Agreement. The ASSOCIATION's Board of Directors shall have the right and power to do all things necessary for the enforcement and foreclosure of said lien;

- (iv) In the event of a material breach of this Agreement by ROCKHURST or the ASSOCIATION, the party believing the Agreement to have been breached shall give written notice thereof to the other party and if such breach is not cured within a period of thirty (30) days following the receipt of such notice then the aggrieved party may cancel this Agreement. Notwithstanding the foregoing, a party shall not be deemed in breach hereof so long as it has attempted to commence the cure thereof in good faith but is prevented from doing so by acts of God, acts of government, or, without limitation by reason of the foregoing enumeration, other circumstances beyond its control. The delay caused by such events shall be added to the thirty (30) day period.

15. Indemnifications:

- a. ROCKHURST agrees to indemnify and hold harmless the ASSOCIATION from any claim or loss arising from personal injury, bodily injury, or property damage caused by the negligence of ROCKHURST, its agents, or employees in the performance of its operations. ROCKHURST agrees to defend promptly and diligently, at its sole cost and expense, any such claim, action, or proceeding brought against the ASSOCIATION even if such claim is asserted after the term of this Agreement.
- b. The ASSOCIATION agrees to indemnify and hold harmless ROCKHURST from any claim or loss arising from personal injury, bodily injury, or property damage by reason of cause other than ROCKHURST's negligence either on or about the ASSOCIATION's premises or elsewhere. The ASSOCIATION agrees to defend promptly and diligently, at its sole cost and expense, any such claim, action, or proceeding brought against ROCKHURST even if such claim is asserted after the term of this Agreement.

16. As used in this Agreement:

- a. The term "assessments" shall mean those monthly rates, or one-time charges, established by the ASSOCIATION's Board of Directors which the members are bound to pay as their share of common expenses under the Declaration.
- b. The term "ASSOCIATION" means, as used herein, a corporation existing of all of the owners of townhouses in the Townhouse Project, organized and existing under the laws of the State of

- 17. a. This Agreement shall inure to the benefit of and constitute a binding obligation upon the contracting parties, their respective successors and assigns.
- b. This Agreement shall constitute the entire Agreement between the contracting parties, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement, and shall be construed according to New York State Law.
- c. For the convenience of the parties, the Agreement has been executed in several counterparts, which are in all respects similar and each of which is deemed to be complete in itself so that any one may be introduced in evidence for any other purpose without the production of the other counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

FIFTEEN HUNDRED EAST AVENUE, INC.

Date: _____ By: _____, President

ROCKHURST MANAGEMENT CORPORATION

Date: _____ By: William G. Tomlinson, President

AREA MAP

See Drawing on Site Plan at Page 97 of this Offering Plan

PURCHASE AGREEMENT

FIFTEEN HUNDRED EAST AVENUE

This agreement made the _____ day of _____, 19____, by and between EASTFORD DEVELOPMENT CORP., a New York corporation having its office at 2 State Street, Rochester, New York 14614, hereinafter called "Seller," and _____, residing at _____, hereinafter called "Purchaser."

W I T N E S S E T H :

In consideration of the mutual promises herein made, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the premises hereinafter described for the price and upon the terms and conditions hereinafter set forth.

1. DESCRIPTION OF PREMISES: Those certain premises locally known as No. _____ located in the City of Rochester, County of Monroe, and State of New York, known and designated as Lot No. _____, as shown on map filed in the Monroe County Clerk's office under Cover No. _____.

The premises are or will be improved with:

Seller's _____ Model dwelling;

A dwelling unit in accordance with the plans and specifications which are on file at _____ and which are incorporated into this Agreement by reference

except for those "Extras," changes, or deletions, if any, set forth on Exhibit A to this Agreement.

Together with all rights of Seller in and to any and all street, roads, highways, alleys, driveways, easements, and rights of way appurtenant thereto.

2. SUBJECT, however, to the following: Purchaser agrees to accept title to the premises subject to: 1) restrictive covenants of record provided the same have not been violated, unless the enforcement of said covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; 2) water, sanitary sewer, drainage, electrical, and telephone easements of record, provided said easements are or may be

used to service the premises and provided the improvements do not encroach upon the easements; 3) the title exceptions set forth in Exhibit B attached hereto and made a part hereof; and also the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens - Fifteen Hundred East Avenue, and the By-Laws for Fifteen Hundred East Avenue, Inc. (the "Association") both of which are included in the Offering Plan for Fifteen Hundred East Avenue, Inc. which Offering Plan Purchaser hereby acknowledges having received at least three (3) business days prior to the date hereof and which is incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein. Purchaser hereby agrees to be bound by the Declaration, By-Laws, and any Rules and Regulations of the Association as the same may be amended from time to time. Purchaser acknowledges that Purchaser is purchasing an interest in such Association, and that except as stated in this Agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any representations or other statements of any kind or nature made by Seller or otherwise.

3. DWELLING UNIT: Seller agrees to construct and complete on the premises such dwelling unit identified in Paragraph I above including the Extras agreed to by Purchaser in accordance with Exhibit "A" hereto attached. In the event that Seller is unable to obtain the exact materials specified in the plans and specifications or on the options chosen, through Seller's ordinary and usual source of supplies, Seller shall have the right to substitute materials of similar pattern, design, and quality. Seller shall also have the right to determine the grading, elevation, and design (including reversal of the building layout) of the plot and dwelling to fit into the general pattern of the development. The dwelling unit will be conveyed free of violations of applicable buildings codes and ordinances.

4. PRICE: Puchaser shall pay to Seller for said premises the sum of \$_____ payable as follows:

Upon signing this instrument as a deposit by check payable to "Fifteen Hundred East Avenue Escrow Account" \$ _____

Within _____ days after acceptance of this Agreement by Seller, the additional deposit by check payable to "Fifteen Hundred East Avenue Escrow Account" \$ _____

Upon delivery of the deed as hereinafter provided in cash or certified check the sum of: \$ _____

Purchaser is advised that, to assure the return of the funds deposited hereunder in the event this Agreement is terminated for reasons other than Purchaser's default, such funds will be held in escrow by the Seller at Norstar Bank, 2 State Street, Rochester, New York 14614 until closing and disbursed only with the signature of any partner of the firm of Fix, Spindelman, Turk, Himelein & Shukoff. Anything herein to the contrary notwithstanding, Seller shall have the right to use the funds in the Escrow Account upon posting a bond or irrevocable letter of credit pursuant to paragraph 6 on page 27 of the Offering Plan.

In the event this Agreement is terminated for reason other than Purchaser's default, such funds together with any interest earned thereon will be returned to Purchaser within fifteen (15) days of such termination. The funds will be handled in accordance with Sections 352-h and 352-e 2(b) of the New York General Business Law and Section 71-(a)(3) of the New York Lien Law.

5. **ADJUSTMENTS AT CLOSING:** There shall be prorated and adjusted as of the date of delivery of the deed: taxes computed on a fiscal year basis (including all items in the current county tax bill, except returned school taxes), and Association assessments. In addition, Purchaser shall, at Seller's request, pay, at the time of closing, the Association assessment on the Unit for the month following the month in which the closing occurs. Purchaser will accept title subject to, and will pay all assessments and installments of assessments for local improvements which are not payable as of the date of delivery of the deed and which, if any, appear on the current tax rolls. Seller will, at no cost to Purchaser, furnish Purchaser at closing with a certification from the Board of Directors or managing agent of the Association setting forth the payment status of the association assessments for the Unit(s).

6. **SEARCH AND SURVEY:** Seller shall furnish and deliver to Purchaser at least ten (10) days prior to closing (i) a fully guaranteed tax, title, and United States Court searches dated or redated after the date of this Purchase Agreement and (ii) a survey made by a land surveyor duly licensed by the State of New York, showing the premises above described and the location of all buildings, improvements, and other structures affecting same. Purchaser shall reimburse Seller for the cost of the survey and the abstract at closing.

7. **FORM OF DEED:** The closing deed shall be in proper statutory form for recording, shall be a Warranty Deed, shall be duly executed and acknowledged and shall contain such a

description of the premises as shall be accepted and or approved by any title insurer of the premises so as to validly convey under New York State Law the premises referred to herein.

8. **INSPECTION:** Before closing Purchaser shall have the right to inspect the premises on reasonable notice to Seller.

9. **POSSESSION:** Purchaser shall have possession and occupancy of the premises on delivery of the deed.

10. **MORTGAGE AND FINANCIAL APPROVAL:** This Agreement is submitted on the condition that, within sixty (60) days from _____, Purchaser shall have obtained a commitment for a _____- year mortgage loan of not less than \$ _____.

Purchaser will make application for such loan within five (5) days after being requested to make such application by Seller. If Purchaser does not receive a commitment for a mortgage loan within 60 days from the date of application and Purchaser so notifies Seller in writing within 5 days after the expiration of the 60 day period, or if such mortgage commitment, once obtained, is thereafter rescinded or expires without fault of Purchaser, and is not reinstated or extended at the same or a lower interest rate and Purchaser so notifies Seller within 5 days after such rescission or expiration, this Agreement shall terminate automatically and Seller shall cause the downpayment to be returned to Purchaser, with any interest earned thereon.

11. **COSTS:** Purchaser shall pay for continuance of tax and title search to the time of closing. Purchaser shall be responsible for (i) the payment of the premium of any title insurance desired or required by Purchaser or required by Purchaser's mortgagee, (ii) the cost of the survey and the abstract of title, (iii) any fees incurred in recording of the deed, (iv) the cost of the required Real Estate Transfer Tax Stamps to be affixed to the deed, (v) bank's attorneys' fees in connection with any mortgage loan obtained by Purchaser, (vi) the cost of recording the mortgage, and (vii) New York State Mortgage Tax incurred in connection with obtaining of the mortgage. Purchaser shall also at the time of closing pay to the Association an amount equal to two (2) months' Association assessments for the Association's working capital for the premises.

12. **INSURABLE TITLE:** Seller shall give and Purchaser shall accept such title as any member of the New York Board of Title Underwriters will approve and insure subject only to

those liens and encumbrances set forth in Exhibit B annexed hereto, the conditions of the standard title insurance policies written by such company, the above described purchase money and/or assumed mortgage, if any, the conditions set forth in this Purchase Agreement, and the provisions of the Declaration and the By-Laws. If requested by Purchaser and at Purchaser's expense, Seller will obtain for Purchaser at closing of title, a certificate of title issued by any member of the New York Board of Title Underwriters.

13. **SELLER'S FAILURE TO CLOSE:** If title to the Unit does not close because of the default (willful or otherwise) of Seller or Seller's inability to convey title to the premises in accordance with the terms of this Agreement, unless the closing date is otherwise provided for herein or mutually adjourned in writing, Purchaser may cancel this Agreement upon written notice of cancellation to Seller, and upon such cancellation, Seller shall refund to Purchaser all monies paid by Purchaser hereunder, neither party shall have any claim against the other and both shall be released from all obligations hereunder.

14. **CLOSING OF TITLE:** The closing of title shall be held at such place in the County of Monroe, New York, as Seller may designate at an hour and on a date (the "Closing Date") to be specified by Seller by written notice to Purchaser, which shall be not earlier than fifteen (15) days after the giving of said notice, except that if the dwelling unit on the premises shall not be ready for occupancy on such date, the closing may be postponed by Seller to a date to be set by Seller upon written notice mailed to Purchaser at Purchaser's address set forth above. In the event that such date is more than 180 days after the date of this Agreement, Purchaser may cancel this Agreement by sending written notice to that effect to Seller, at Seller's address as set forth above, within ten (10) days of the date on which the notice of postponement of the closing was mailed by Seller to Purchaser, and in that event this Agreement shall become null and void and both parties shall be released from any liability hereunder, except that Seller shall refund to Purchaser, with interest, if any has been obtained thereon, the downpayment paid to Seller. Seller shall not be responsible for any delay in completing the Unit if such delay is caused by the unavailability of materials, labor, or transportation or by other causes beyond the control of Seller, and the refund to Purchaser of the downpayment or portion thereof in accordance with this Agreement, shall discharge and release Seller from any liability arising out of or resulting from such delay.

15. **PURCHASER'S FAILURE TO TAKE TITLE:** If Purchaser fails to close title to the premises after receiving at least

fifteen (15) days' prior written notice to close from Seller (except for Seller's default or failure to obtain a commitment for the mortgage loan as contemplated herein), unless the closing date is otherwise provided for herein or mutually adjourned in writing, or if Purchaser fails to make prompt and proper application for the aforesaid mortgage or does not furnish Seller within five (5) days after Seller's written request with notice of whether such mortgage loan was granted or rejected, the Seller shall send written notice to Purchaser affording Purchaser the opportunity to cure Purchaser's failure. If Purchaser does not cure such failure within five (5) business days after receipt of such notice, Seller may, at its option, cancel this Agreement and refund Purchaser's down payment together with any interest thereon. If Purchaser does not cure such failure within 30 days after receipt of such notice, Seller may cancel this Agreement and recover for damages as follows: (i) Seller and Purchaser agree that Seller would suffer damage by Purchaser's failure to take title and that such damages, other than the actual costs incurred by Seller for any "extras", changes, or modifications to the premises which were contracted for by Purchaser, would be difficult to prove or to arrive at accurately. For that reason, Seller and Purchaser agree that if Purchaser fails to take title as hereinbefore stated, Seller shall be entitled to liquidated damages in an amount equal to 10% of the offering price, excluding from the offering price solely for the purpose of computing liquidated damages the cost to Purchaser of any "extras," changes, or modifications which were contracted for by Purchaser. Seller shall be entitled to retain towards payment of the liquidated damages any deposits made by or on behalf of Purchaser, provided that in no event shall Seller be entitled to retain any amount in excess of the liquidated damages; and (ii) in addition, Seller shall also be entitled to recover the actual costs incurred by Seller for any "extras," changes, or modifications to the dwelling unit which were contracted for by Purchaser. If this paragraph or any application thereof shall to any extent be invalid or unenforceable, it shall to the extent not found invalid or unenforceable be valid and be enforced as permitted by law.

16. **LIMITED WARRANTY:** The following limited warranty will be provided by Seller to Purchaser and the terms and conditions of the warranty will survive delivery of the deed:

Coverage. Seller shall, effective the date of closing, warrant the following defects in materials and workmanship:

- (1) for one year--roof, floors, ceilings, walls, other internal structural components, and electrical systems, doors (including hardware), windows,

electric switches, receptacles, caulking around exterior openings.

Exclusions. All other warranties, whether expressed or implied, are specifically excluded.

Repairs. Any warranty claim made by Purchaser shall be in writing to Seller at Seller's above address except that, in an emergency Purchaser may telephone Seller. Unless delayed by weather conditions, labor problems or material shortages, Seller will repair or replace within 60 days after receiving notice of the defect all defective items covered by this warranty. Seller shall determine who will perform the work and whether the defective item will be repaired or replaced.

Not Transferrable. The warranty shall apply only to the Purchaser and not to anyone who succeeds to Purchaser's interest in the Property.

17. **THIS AGREEMENT SUBJECT AND SUBORDINATE TO BUILDING LOAN MORTGAGE:** Purchaser agrees that the provisions of this Agreement are and shall be subject and subordinate to the lien of any mortgage obtained by Seller to construct the improvements on the premises. Such subordination shall be to the full extent of any advances or expenses made or incurred pursuant to such mortgage, whether or not such advances or expenses are voluntarily made by the lender. No further documentation need be executed by the Purchaser to confirm this. Because of this subordination, Purchaser's right to purchase could be "cut off" by a foreclosing mortgage lender, who has a construction mortgage loan on the premises which is in default. Before transferring title to the premises to Purchaser, Seller shall pay off or discharge all mortgages on the premises or obtain a release of the premises from the lien of such mortgages.

18. **ESCROW FOR COMPLETION:** In the event that the dwelling unit being constructed on the premises by Seller shall not be fully completed at the time set by Seller for the closing of title, the same shall not constitute an objection to such closing provided that the lending institution granting Purchaser's mortgage shall issue an inspection report and an escrow fund be deposited by Seller with the lending institution if required under said report, and further provided that Purchaser shall have the right to delay the closing of title until a Certificate of Occupancy has been issued. The escrow fund or portions thereof shall be paid by the lending institution directly to Seller when the lending institution, in its sole discretion, deems specific items for

which the escrow is held to be completed. Purchaser shall receive credit at closing for any funds so held in escrow.

19. **BROKER:** Purchaser and Seller warrant that _____ is the sole broker involved in this transaction.

20. **ASSIGNMENT:** Purchaser may not assign this Agreement without the prior consent in writing of Seller, and any purported assignment of this Agreement in violation hereof shall be deemed null and void.

21. **DEFINITIONS:** The term "Purchaser" shall be read as "Purchasers" if more than one person be named herein as the Purchaser, in which case their obligations shall be deemed joint and several. The term "interest" shall mean such interest as Seller is able to obtain on Purchaser's deposit from Marine Midland Bank.

22. **NOTICES:** Any notice to be given hereunder shall be in writing and sent by certified mail, return receipt requested, to Purchaser at its address given above and to Seller at: Seller's address given above, (with a copy to Donald C. Summers, Esq., 20 West Main Street, Webster, New York 14580) or at such other address as either party may hereafter designate to the other in writing. The date of mailing shall be deemed to be the date of the giving of the notice, except that the date of actual receipt shall be deemed to be the date of the giving of any notice of change of address.

23. **GENDER:** The use of the masculine gender in this Agreement shall be deemed to refer to the feminine gender whenever the context so requires.

24. **OTHER AGREEMENTS:** This Agreement supersedes any and all understandings and agreements between the parties and constitutes the entire understanding between them and no oral representations or statements shall be considered binding. However, in any conflict between this Agreement and the Offering Plan, the Offering Plan shall control.

25. **AMENDMENT OF AGREEMENT:** This Agreement may not be amended except by a written instrument signed by the party sought to be charged therewith or by the duly authorized agent of such party.

26. **CAPTIONS:** The captions in this Agreement are for convenience and reference only and in no way define, limit, or describe the scope of this Agreement or the intent to any provision thereof.

27. ACCEPTANCE: Unless Seller accepts this Purchase Agreement within 20 days after receipt, this Agreement shall not become effective.

28. EXHIBITS: The following exhibits are attached to and made a part of this Agreement:

Exhibit A - Extras, Upgrades, Changes or Deletions

Exhibit B - Liens, Encumbrances and Other Title Exceptions

Exhibit _ - Credits

Exhibit _ - _____

Purchaser(s): _____

Social Security or Tax ID No.: _____

Seller: EASTFORD DEVELOPMENT CORP.

By: _____

EXHIBIT A TO PURCHASE AGREEMENT

FOR UNIT _____ IN
FIFTEEN HUNDRED EAST AVENUE TOWNHOUSES

EXTRAS, UPGRADES, CHANGES, OR DELETIONS

The undersigned parties to the above referenced Purchase Agreement agree that the dwelling which is the subject of the agreement shall contain the following extras, "upgrades", changes, or deletions, all of which are included are not included in the purchase price as set forth in the Agreement:

The Purchaser(s) acknowledges that if the Agreement is terminated for reasons other than Seller's default, any costs incurred by the Seller for the acquisition, installation or removal of materials for such extras, upgrades, changes, or deletions, prior to such termination, shall be deducted by the Seller from Purchaser's deposit prior to any return of such deposit to the Purchaser.

Purchaser also acknowledges that if completion of the dwelling is delayed due to the unavailability of materials required to complete the installation of such extras, upgrades, or changes, Purchaser will not delay the closing and will close the purchase solely on Seller's written assurance that the completion of such installation will be completed by Seller promptly after receipt of such materials.

Seller: EASTFORD DEVELOPMENT CORP.

By: _____

Purchaser(s): _____
Print full name Signature

Print full name Signature

EXHIBIT B TO PURCHASE AGREEMENT

LIENS, ENCUMBRANCES, AND OTHER TITLE EXCEPTIONS

1. The terms, conditions, covenants, easements, and provisions of the Declaration and By-Laws of Fifteen Hundred East Avenue Townhomes.

2. State of facts shown on a survey of the land and buildings made by _____ Associates, dated _____ and as updated _____.

3. Zoning regulations and ordinances and any amendments thereto provided that neither the building in which the Unit is located nor its use as contemplated by the Plan are prohibited thereby.

4. New York State franchise taxes of any corporation in the chain of title, provided that a title company is willing to insure that such taxes will not be collected out of the Unit.

5. Sewer, water, electric, plumbing, heating, gas, telephone, television, and other utility easements and consents, if any, then or thereafter recorded, including the right to maintain and operate lines, wires, cables, pipes, conduits, poles, and distribution boxes in, over, under, and upon the Property and the buildings.

6. Water charges (but the Seller will be obligated to pay all such charges through the date preceding the date of the first closing of title to a Unit).

7. Future installments of special assessments for improvements payable with County Taxes.

8. Utility easements, drainage easements, rights of way, and agreements granted to or made with Rochester Gas & Electric Company, Rochester Telephone Company, the City of Rochester, or any other utility companies or municipalities.

All of the above shall survive delivery of the deed.

CERTIFICATION OF SPONSOR
AND PRINCIPALS OF SPONSOR

EASTFORD DEVELOPMENT CORP., by Arun H. Gade, individually, being duly sworn, depose and say that:

We are the sponsor and the principals of the sponsor of the homeowners association offering plan for Fifteen Hundred East Avenue Townhomes.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 22, and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan for the homeowners association does, and that documents submitted hereafter by us which amend or supplement the offering plan for the homeowners association will:

- (i) set forth the detailed terms of the transaction and be complete, current, and accurate;
- (ii) afford potential investors, purchasers, and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, suppression, false pretense, or fictitious or pretended purchase or sale;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the transaction or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

EASTFORD DEVELOPMENT CORP.

By: _____

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On the 3 day of August, 1986 before me personally came Arun H. Gade, to me known, who, being by me duly sworn, did depose and say that he resides at Rochester, New York, that he is the President of EASTFORD DEVELOPMENT CORP., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

WILLIAM L. KREIENBERG
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Aug. 31, 1988

William L. Kreienberg
Notary

Subscribed and sworn to before me this 3 day of August, 1986

William L. Kreienberg

Arun H. Gade
Arun H. Gade

WILLIAM L. KREIENBERG
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Aug. 31, 1988

Subscribed and sworn to before me this 4 day of August, 1986

William L. Kreienberg

Norman M. Spindelman
Norman M. Spindelman

Subscribed and sworn to
before me this 25th
day of August, 1986

William L. Kreienberg

WILLIAM L. KREIENBERG
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Aug. 31, 1988

Philip F. Spahn, Jr.

Philip F. Spahn, Jr.

Subscribed and sworn to
before me this 25th
day of August, 1986

William L. Kreienberg

WILLIAM L. KREIENBERG
Notary Public in the State of New York
MONROE COUNTY
Commission Expires Aug. 31, 1988

Richard S. Brovitz

Richard S. Brovitz



Re: 1500 East Avenue
Townhouses
Rochester, New York

CERTIFICATION OF SPONSOR'S ARCHITECT

Barkstrom & LaCroix Architects, by Robert T. Barkstrom A.I.A., a licensed professional architect in the State of New York, certifies as follows:

The Sponsor of the offering plan for the homeowners association for the above-captioned property retained me to prepare a report describing the property when constructed (the "Report"). I examined the building plans and specifications, and the Report dated July 17, 1986, prepared by Barkstrom & LaCroix, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

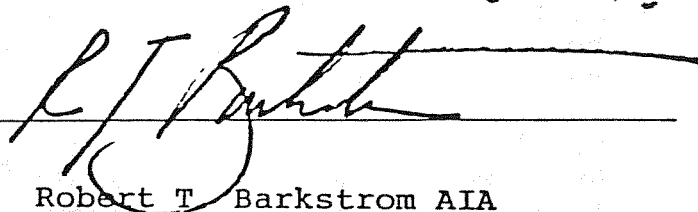
I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to this Report. I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. I certify the Report does:

- (i) set forth in narrative form the significant elements of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (ii) in my opinion afford potential investors, purchasers, and participants an adequate basis upon which to found their judgement concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, or suppression;

- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where I: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

I further certify that I am not owned or controlled by and have beneficial interest in the sponsor and that my compensation for preparing this Report is not contingent on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

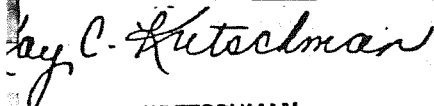
This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.



Robert T. Barkstrom AIA

scribed and sworn to

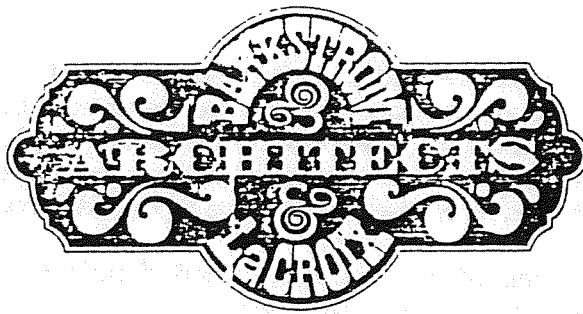
before me this 16th day of October, 1986.



KAY C. KRETSCHMAN

NOTARY PUBLIC, State of N.Y., Monroe Co.
My Commission Expires Jan. 31, 19 89





July 17th 1986

DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE OWNED
AND MAINTAINED BY THE ASSOCIATION

1500 EAST AVENUE HOMEOWNER'S ASSOCIATION

Location:

The property is located on North side of East Avenue approximately 520 feet West of Colby street in the city of Rochester, county of Monroe and state of New York.

Acreage:

The project consists of 3.496 acres of land of which the association will own and maintain 2.374 acres. The remaining 1.122 acres (land under units) shall be owned by the individual unit owners.

Buildings, Streets and Sidewalks:

There will be no building interiors or enclosed patios owned or maintained by the association. The building constructed shall contain twenty three two story single family townhouse units.

Entrance driveways shall be sixteen and eighteen feet wide without curbs. The driveway shall consist of 6 inch run of crusher stone, 2 inch binder and 1 inch top. Parking areas will have the same construction. Sidewalks shall consist of 4 inches concrete over 6 inch gravel. The site will be graded to drain into receiving basins with lines connected to Rochester Pure Water District sewers in East Avenue.

There will be brick entrance walls and wooden gazebo in common area.

Sub-soil Conditions:

Sub-soil is brown medium fine sand with traces of gravel capable of supporting the loads required by the townhouses. No sign of flooding has been indicated.

All areas not designated to receive other improvements shall be fine graded and seeded. Existing trees that do not have to be removed for improvements will remain. New plantings include Greenspire Lindens, Skyline Honey Locust, Summit Ash and Red Maples together with various flowering trees, evergreens, hedges and foundation plantings. Flower beds are located around the gazebo.

Back fence consists of sections of 6 feet high wood fencing between wood posts set in concrete. Brick entry walls are planned.

Utilities:

Electricity and natural gas are provided by Rochester Gas & Electric Corporation. Gas and electric consumption by individual units is the responsibility of the unit owners. The only common electrical usage is for exterior light poles, entry pier lights and gazebo lighting. Telephone service is provided by Rochester Telephone Corporation. All the units will be wired for cable television connections but the individual unit owners have option to contract or not contract with Rochester Cablevision Company. Electrical, telephone and cable lines run through the basements of town house units.

Water is provided by the city of Rochester with water lines running through the basements of the town house units. There are two fire hydrants planned for fire protection. There is one water meter and total usage bill shall be equally distributed among all unit owners.

Sanitary and storm sewer lines will run through the basements of the town house units and connect with Rochester Pure Waters district sewer lines in East Avenue. All sanitary and storm mains, receiving basins and manholes are owned and maintained by the association.

Refuse Removal:

Refuse will be picked up on a weekly basis by the city of Rochester.

Parking Areas:

There are 28 guest parking spaces on the site. Overnight guest parking is restricted to 14 spaces in Northeast and Northwest corners of the property. 14 spaces in front of the units are reserved for short term visitor parking. Parking on the grass or roadways is not permitted. All parking areas are to be owned and maintained by the association.

Smoke and Safety Devices:

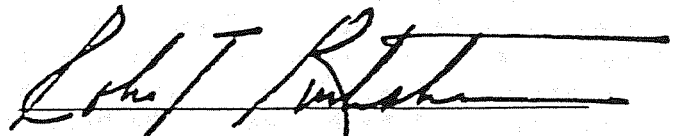
An electronically operated smoke safety device will be installed in each unit.

Exterior Lighting:

Exterior lighting shall be provided by exterior light poles and lights located on entrance walls. The individual units will have lights placed in the front entry and garage wall which will light rear driveway.

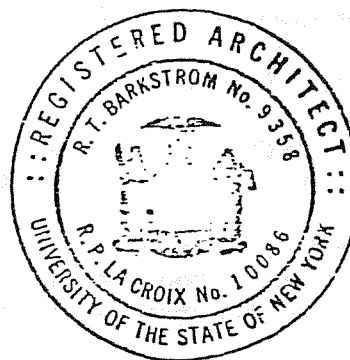
General:

Sanitary and storm sewer system, water lines, lawn and yard maintenance, snow removal and building exterior shall be responsibility of the association.



Robert Barkstrom A.I.A.
R.A. # 9358

SEAL



ROCKHURST CORPORATION

500 Helendale Road □ Rochester, New York 14609-3109 □ 716-288-9540

CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK)
 COUNTY OF MONROE) SS:

The undersigned, being duly sworn, deposes and says as follows:

The sponsor of the homeowners association offering plan for Fifteen Hundred East Avenue, Inc. retained me to review the projections of receipts and expense for the first year of operation as a homeowners association (Schedule A). My firm is currently managing agent for eighteen community associations. These organizations range in size from thirteen to two hundred eighty units. I have been in the property management business for ten years.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to Schedule A.

I have reviewed Schedule A and investigated facts set forth in Schedule A and the facts underlying it with due diligence in order to form a basis for this certification. I also have relied on my experience in managing residential property.

I certify that the projections, in Schedule A appear reasonable and adequate under existing circumstances, and the projected income will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

I certify that the Schedule:


- 1) sets forth in detail the terms of the transaction as it relates to the Schedule and is complete, current, and accurate;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;
- 3) does not omit any material fact;
- 4) does not contain any untrue statement of a material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) does not contain any representation or statement which is false, where I (a) knew the truth; (b) with reasonable effort could have known the

truth: (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

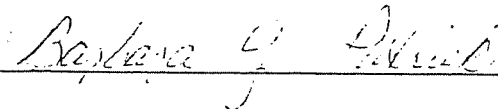
I further certify that my firm is not owned or controlled by the sponsor. I understand that it is intended that a copy of this certification will be incorporated into the offering plan.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 25 August 1986


William G. Tomlinson, President
ROCKHURST MANAGEMENT CORPORATION

Sworn to before me this
25th day of August 1986



BARBARA G. PATRICK
NOTARY PUBLIC, State of N.Y., Monroe Co.
My Commission Expires March 30, 1987

