

REVISED AND AMENDED  
BY-LAWS  
OF  
THE WATER CLUB  
HOMEOWNERS ASSOCIATION, INC.

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**BY-LAWS**  
**OF**  
**THE WATER CLUB**  
**HOMEOWNERS ASSOCIATION, INC.**  
A New York Not-for-Profit Corporation

**ARTICLE I. NAME, LOCATION AND PRINCIPAL OFFICE**

These are the By-Laws of The Water Club Home Owners Association, Inc. hereinafter referred to as the "Association". The principal office of the Association shall be located at 1233 Beech Street, Atlantic Beach, County of Nassau and State of New York.

**ARTICLE II. DEFINITIONS**

The following words when used in these By-Laws shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to The Water Club Home Owners Association, Inc., a New York Not-for-Profit Corporation.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "By-Laws" shall mean and refer to these By-Laws which govern the operation of the Association.

(d) "Common Expense" shall mean and refer to those expenses (including reserves) that are incurred or assessed by the Association in fulfilling its lawful responsibilities and may also be referred to as "Assessment".

(e) "Common Properties" or "Common Areas" shall mean and refer to certain areas of land other than individual Lots as shown on the filed subdivision map and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(f) "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements, Charges and Liens applicable to The Properties recorded among the land records in the Clerk of the County of Nassau, New York.

(g) "Development" shall mean The Water Club, a 56 home development being

constructed on the Properties.

(h) "Home" shall mean and refer to all units of residential housing situated upon lots located on The Properties.

(i) "Lot" shall mean and refer to any plot of land intended and subdivided for residential uses as shown on the subdivision map of the Properties but shall not include the Common Areas as herein defined.

(j) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article VI. Each Member is entitled to one vote.

(k) "Owners" shall mean and refer to the record owner of fee simple title to any Home. Every Owner shall be treated for all purposes as a single owner for each Home or Lot held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, majority vote of such owners shall be necessary to cast any vote to which such owners are entitled.

(l) "The Properties" shall mean and refer to all those areas of land described in and subject to the Declaration.

### **ARTICLE III. PURPOSE**

This Association is formed to own, operate and maintain the Common Properties for the benefit of the Members of the Association.

### **ARTICLE IV. APPLICABILITY**

All present and future Members, their family members, tenants, occupants and guests, shall be subject to these By-Laws and to the rules and regulations issued by the Association to govern the conduct of its Members.

### **ARTICLE V. USE OF FACILITIES**

The Common Properties shall be limited to the use by the Members, their family members, tenants, occupants, and their guests. In the event that a Member shall lease or permit another to occupy his Home, the Lessee or occupant shall be subject to these By-Laws and the Association's rules and regulations, the lessee or occupant shall at the option of the Member, be permitted to enjoy the use of the Common Properties in lieu of

and subject to the same restrictions and limitations as said Member. However, both the Member and the Lessee may not use the facilities at the same time. Any Member, lessee or occupant entitled to the use of the Association facilities may extend such privileges to members of his family residing in his household by notifying the Secretary in writing of the names of any such persons and of the relationship of such Member, lessee or occupant to such persons on within thirty (30) days of occupancy. The Board may establish a limitation on guest privileges and/or establish a guest or lessee fee for the use of the Common Areas by guests or lessees of Home Owners or permitted occupants of Homes and their respective family members.

## **ARTICLE VI. MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** The Association shall have one class of membership interest: The Owner of a Home or a Lot on the Properties, which is subject to this Declaration, shall be a Member.

**Section 2. Voting Rights.** Each Member is entitled to one vote regardless of the number of Homes or Lots owned by a Member. When more than one person or entity holds such interest in the membership, the one vote attributable to such membership shall be exercised as such persons mutually determine but not more than one vote may be cast with respect to any such Member. No Member shall split or divide its votes on any motion, resolution or ballot.

**Section 3. Suspension of Membership.** The rights of an Owner, Lessee or occupant of a Home, and their respective family members, guests and invitees to the use and enjoyment of the Common Properties are subject to the payment of periodic Common Expenses levied by the Board, the obligation of which Common Expenses is imposed against each Owner and becomes a lien upon the property of any Owner against which such Common Expenses are made as provided for by Article VI of the Declaration. If an Owner shall be in default in the payment of the Common Expenses assessed against such Owner's Home, and fails to cure such default within five (5) days after receipt of written notice from the Board, the Board, in its sole discretion, shall have the option to suspend all privileges of the Association by such Owner, Lessee or occupant, and the respective family members, guests and invitees of the foregoing, and until such Owner is reinstated in good standing in the Association, to take such other legal action as may be permitted by applicable law or these By-Laws. In addition to the foregoing, any Owner so in default shall lose all voting privileges, be ineligible to be considered for membership to the Board and, if on the Board, shall be suspended thereto until such time as all Common Expenses, together with late charges, interest, costs, legal fees, fines, and expenses, if any, are paid to the Association. In no event, however, shall a Member's right of ingress and egress to and from his Home and Lot through the Common Properties be curtailed in any manner.



**Section 4. Transfer of Membership.** Membership in the Association shall be appurtenant to, and may not be transferred except in conjunction with the lawful sale or conveyance of a Home or Lot in the Association. No Owner shall be permitted to sell or convey his Home or Lot unless and until he shall have paid in full to the Association all unpaid Common Expenses and other amounts required by the Board to be paid and assessed by the Board against such Home or Lot. Upon such sale or conveyance, the seller of such Home or Lot shall relinquish his membership in the Association and the purchaser of such Home or Lot shall automatically become a Member, subject to this Declaration, the By-Laws and the rules and regulations of the Association. All Owners must notify the Board of Directors within seven (7) days of entering into a Purchase Agreement for the sale of a Home, and within seven (7) days of transferring title to the Home. Such notification shall include the name of the person(s) in contract and upon the transfer of title the name of the person(s) who are the new Members.

## **ARTICLE VII. QUORUM, PROXIES AND WAIVERS**

**Section 1. Quorum.** So many Members as shall represent at least 51% of the total authorized votes of all Members present in person or represented by written proxy shall be requisite to and shall constitute a quorum at all meetings of the Association for the transaction of business, except as otherwise provided by Statute, by the Declaration, the Certificate of Incorporation of the Association or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting. At least 5 days written notice of such adjourned meeting shall be given to all Members. At such adjourned meeting any business may be transacted which might have been transacted at the meeting originally called. At such adjourned meeting, so many Members as shall represent at least 33-1/3% of the total authorized votes of all Members shall constitute a quorum. If however, such reduced quorum shall not be present or represented at such adjourned meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting and such adjourned meeting shall require at least 25% of all Members whose Homes or Lots are then subject to the Declaration to be present. At least 5 days' written notice of such adjourned meeting shall be given to all Members.

**Section 2. Vote Required to Transact Business.** When a quorum is present at any meeting, the vote of a majority of the Members present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be binding upon all Members, unless the question is one upon which by express provision of the Statute, Declaration, Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

**Section 3. Right to Vote.** Members shall be entitled to one (1) vote, regardless of the number of Homes owned by such Member, either in person or by proxy at any meeting of the Association. Any such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

**Section 4. Proxies.** All proxies shall be in writing signed by the Member, and shall be filed with a Member or such other independent person, designated by the Board of Directors, who is not a member of the Board of Directors prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

**Section 5. Waiver and Consent.** Wherever the vote of the membership at a meeting is required or permitted by Statute or by any provision of the Declaration, Certificate of Incorporation or by 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.

**Section 6. Place of Meeting.** Meetings shall be held at any suitable place convenient to the Members as may be designated by the Board of Directors and designated in the notices of such meetings.

**Section 7. Annual Meetings.** The annual meeting of the membership of the Association shall be held on such date as is fixed by the Board of Directors. At such meetings there shall be elected by ballot of the membership a Board of Directors in accordance with the requirements of Article VIII of these By-Laws. The Members may also transact such other business as may properly come before the meeting.

**Section 8. Special Meetings.** It shall be the duty of the President to call a special meeting of the Association, if so directed by the Board of Directors, or upon the presentation to the Secretary of a petition signed by a majority of the Members.

**Section 9. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member at least ten but not more than thirty days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**Section 10. Order of Business.** The order of business at all meetings shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice

- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of committees
- (f) Appointment of inspectors of election (in the event there is an election)
- (g) Election of Directors (in the event there is an election)
- (h) Unfinished business
- (i) New business

## **ARTICLE VIII. BOARD OF DIRECTORS**

**Section 1. Number and term.** The number of Directors which shall constitute the whole Board shall be five. At all annual meetings the Members shall vote for and elect five Directors to serve for staggered terms and until their successors have been duly elected and qualified. All directors, must be either Members of the Association or their spouse residing in the Member's home. The election of Directors shall be staggered so that there will be continuity of Board Members. Such staggered Board of Directors shall be elected as follows: Five Directors shall be elected. The three receiving the highest number of votes shall be elected for two years; the other two shall be elected for one year. Thereafter, Members shall be elected for a two year term as their terms end and until their successors have been duly elected and qualified. As required by law, each Director shall be at least nineteen years of age. In no event shall any Member be eligible for election to the Board if such Member is then in default, beyond any applicable grace period, in the payment of Common Expenses or any other amounts required by the Association to be paid.

**Section 2. Voting** In an election of Directors, each Member shall be entitled to as many votes as shall equal the number of Directors to be elected, but no more than one vote can be given by any Member to any individual running for the Board.

**Section 3. Vacancy and Replacement.** If the office of any Director becomes vacant by reasons of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a special meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the unexpired term in respect of which such vacancy occurred and until his successor is duly elected and qualified.

**Section 4. Removal.** Directors may be removed for cause by an affirmative vote of a majority of the Members. No Director, shall continue to serve on the Board if, during his term of office, he shall cease to be a Member or spouse residing in a Member's Home.

In addition, any Member who formally puts the Member's Home up for sale by either listing the Home with a real estate broker, advertising the Home for sale, or any other means which evidences the Home is for sale, shall immediately cease to be a Director and/or Officer of the Association.

## Section 5. Powers.

(a) The property and business of the Association shall be managed by its Board of Directors, which may exercise all such powers of the Association and do all such lawful acts and things as are not by Statute, Declaration, Certificate of Incorporation or by these By-Laws, directed or required to be exercised or done by the Members or Owners personally. These powers shall specifically include, but not be limited to the following items:

1. To determine and levy Assessments to cover the cost of operating and maintaining the Common Properties payable in advance. The Board of Directors may increase the monthly Assessments in excess of that amount, if required, to meet any additional expenses. Any single expenditure in excess of \$100,000, which is not reimbursable by insurance, requires approval of the majority of the Members.
2. To collect, use and expend the Assessments collected to maintain, care for and preserve the Common Areas, and other maintenance or expense requirements of the Association.
3. To make repairs, restore or alter the Common Properties after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
4. To open bank accounts and borrow money up to \$100,000 on behalf of the Association and to designate the signatories to such bank accounts.
5. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the rules and regulations herein referred to.
6. To make reasonable rules and regulations and to amend the same from time to time. Such rules and regulations and amendments thereto shall be binding upon the Members when the Board has approved them in writing and delivered a copy of such rules and all amendments to each Member. Such rules and regulations may without limiting the foregoing, include reasonable limitations on the use of the Common Properties by guests of the Members as well as reasonable admission and other fees for such use.
7. To employ workmen, contractors and supervisory personnel, and to purchase supplies and equipment, to enter into contracts to provide maintenance and other services and generally to have the power of Directors in connection with

the matters hereinabove set forth.

8. To bring and defend actions by or against one or more Members, any of their Lessees or occupants and to assess special assessments to pay the cost of such litigation.

9. To hire a Managing Agent to perform and exercise the powers of the Board of Directors in the management of the Development.

10. To impose fines or penalties upon any Member who violates the Declaration, By-Laws or the rules and regulations of the Association.

11. Notwithstanding anything to the contrary contained herein, the Board shall submit and mail to owners with the Notice of the annual meeting, the itemized budget for the following year with a comparison of the current year's budget and remaining balance on hand.

12. To review and obtain insurance coverage for the Association.

13. To establish a Reserve Fund or funds which fund(s) shall be used for capital expenditures and/or emergencies.

**Section 6. Compensation.** Directors and officers, as such, shall receive no compensation for their services.

**Section 7. Meetings.**

(a) The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the annual meeting of Association Members and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set.

(b) Regularly scheduled meetings of the Board may be held without special notice.

(c) Special meetings of the Board may be called by the President on two (2) days notice to each Director either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

(d) At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a

majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by Statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

(e) Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

(f) Members of the Board may participate in a meeting by means of a conference telephone call or similar communications equipment by means of which all persons participating in such meeting can hear each other and such participation shall constitute presence at such meeting.

**Section 8. Annual Statement.** The Board of Directors shall furnish to all Members and shall present annually (at the annual meeting) and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business conditions and affairs of the Association, including a balance sheet and profit and loss statement certified by a certified public accountant and a statement regarding any taxable income attributable to the Members and a notice of the holding of the annual meeting of Association members.

**Section 9. Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be a Common Expense of the Association.

## **ARTICLE IX. OFFICERS**

**Section 1. Elective Officers.** The officers of the Association shall be chosen by the Board of Directors and shall consist of a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Assistant Secretaries and Assistant Treasurers and such other officers as in their judgment may be necessary. All officers must be either members of the Board of Directors, or Members of the Association. Two or more offices may not be held by the same person.

**Section 2. Election.** The Board of Directors, at its first meeting after each annual meeting of Association Members, shall elect a President, a Vice President, a Secretary

and a Treasurer. Only the President must be a member of the Board.

**Section 3. Appointive Officers.** The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

**Section 4. Term.** The officers shall hold office for a period of one year or until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed with or without cause, at any time, by the affirmative vote of a majority of the Board of Directors, present at such meeting, provided prior notice was given to all Board members that this item was on the agenda for such meeting. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

**Section 5. The President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Association Members and the Board of Directors, shall be an ex-officio member of all standing committees, shall have general and active management of the business of the Association, shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 6. The Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act and shall have such other powers and duties as are usually vested in the office of Vice President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 7. The Secretary.** The Secretary and/or Assistant Secretary shall attend all sessions of the Board and all meetings of Association Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of Association Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he shall be.

**Section 8. The Treasurer.** The Treasurer and/or Assistant Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Association including the vouchers for such disbursements, and shall deposit all monies, and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. These duties may also be

exercised by the Managing Agent, if any. However, such Managing Agent shall not replace the Treasurer.

He shall disburse the funds of the Association as he may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Directors, at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer, and of the financial condition of the Association.

He shall keep detailed financial records and books of account of the Association, including a separate account for each Member, which among other things, shall contain the amount of each assessment, the date when due, the amount paid thereon and the balance remaining unpaid.

**Section 9. Agreements, etc.** All agreements and other instruments shall be executed by the President or such other person as may be designated by the Board of Directors.

## **ARTICLE X. NOTICES**

**Section 1. Definitions.** Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Directors or to any Director or Association Member, it shall not be construed to mean personal notice; but such notice may be given in writing, by mail, by depositing the same in a post office or letter box in a postpaid sealed wrapper, addressed to the Board of Directors, such Director, or Member, at such address as appears on the books of the Association.

**Section 2. Service of Notice Waiver.** Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## **ARTICLE XI. ASSESSMENTS AND FINANCES**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The creation of the lien and personal obligation of assessments is governed by Section 1 of Article VI of the Declaration.

**Section 2. Purpose of Assessments.** The purpose of assessments is as specified in Section 2 of Article VI of the Declaration.



**Section 3. Basis of Assess** The basis of the assessment is as specified in Section 3 of Article VI of the Declaration.

**Section 4. Date of Commencement of Assessments: Due Dates.** The date of commencement and the due dates of assessments are as specified in Section 4 of Article VI of the Declaration.

**Section 5. Effect of Non-Payment of Assessments: Remedies of the Association.** The effect of non-payment of assessments and the remedies of the Association shall be as specified in Section 5 of Article VI of the Declaration.

**Section 6. Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinated pursuant to the provisions of Section 5 of Article VI of the Declaration.

**Section 7. Checks.** All checks or demands for money and notes of the Association shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board of Directors may from time to time designate. All checks must have no less than two different signatures of members of the Board of Directors.

**Section 8. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all Members. Disbursements from said account shall be for the general needs of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the community.

**Section 9. Other Accounts.** The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

## **ARTICLE XII. AMENDMENTS**

These By-Laws may be altered, amended or added to at any duly called meeting of Association Members provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment and (2) that the amendment shall be approved by a vote of at least fifty-one percent (51%) of the Members. No amendment, however, shall affect or impair the validity or priority of the interests of holders of a mortgage encumbering a Member's Home.

## **ARTICLE XIII. SELLING, LEASING AND GIFTS OF HOMES**

**Section 1. Selling and Leasing Homes.** Any Home may be conveyed or leased by a Member free of any restrictions except that no Member shall convey, mortgage, pledge, hypothecate, sell or lease his Home unless and until all unpaid Common Expenses assessed against the Home shall have been paid as directed by the Board of Directors, and that any lease shall be subject to Section 2 of this Article XIII. Such unpaid Association expenses, however, may be paid out of the proceeds from the sale of a Home, or by the Grantee. Any lease of a Home in violation of this section shall be voidable at the election of the Board of Directors. Upon the written request of a Member or his mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this Section as they apply to the acquisition of a Home by a mortgagee who shall acquire title to such Home by foreclosure or by deed in lieu of foreclosure. In such event the unpaid Assessments against the Home which were assessed and became due prior to the acquisition of title to such Home by such mortgagee shall be deemed waived by the Association and shall be charged to all other Members of the Association as a Common Expense. Such provisions shall, however, apply to any Assessments which are assessed and become due after the acquisition of title to such Home by the mortgagee and to any purchaser from such mortgagee.

Whenever the term "Home" is referred to in this Section, it shall include the Home, the Member's interest in the Association and the Member's interest in any Homes acquired by the Association.

**Section 2. Leasing Requirements.** Every lease on every Home is subject to the following restrictions regardless of whether stated in the lease:

- (a) The lease must be in writing;
- (b) The lease must be for the entire Home;
- (c) The lease must be for a minimum of sixty (60) days and may only be entered into with one (1) party and may only be leased once per annum.
- (d) The lease may not be assigned or sublet without the prior approval of the Board of Directors.
- (e) The use of the premises is subject to the Declaration and the By-Laws and the rules and regulations of the Association;

- (f) Within thirty (30) days prior to occupancy by the tenant, the name and telephone number of the tenant, together with a clear and complete copy of the lease, must be furnished to the Managing Agent or if no Managing Agent to a member of the Board of Directors;
- (g) The Home Owner must notify the Board of Directors of the Home Owners address and phone number during the term of the lease within thirty (30) days of the date of the execution of the lease.
- (h) The Home cannot be used as a motel or hotel or otherwise for transient persons;
- (i) If any Home Owner (landlord) or tenant is in violation of any of the provisions of the applicable Declaration or By-Laws or any rules and regulations, the Association may bring an action in its own name or in the name of the Home Owner, or both, to have the tenant evicted or to recover damages, or both. If the court finds that the tenant is or has violated any of the provisions of the Declaration or the By-Laws of the Association or its rules and regulations, the Court may find the tenant guilty of forcible detainer notwithstanding the fact that the Home Owner is not a party to the action and/or that the tenant is not otherwise in violation of tenant's lease or other rental agreement(s) with the Home Owner. For purposes of granting the forcible detainer against the tenant, the court may consider the Home Owner a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the Association). The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies available to the Association. If not prohibited by present or future law as applicable, the Association shall be entitled to recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Home that shall bind the Home in the hands of the then Home Owner and the Home Owner's successors and assigns. The Board of Directors or Association shall give the tenant and the Home Owner written notice of the nature of the violation of the rules and fifteen (15) days from the mailing of the notice in which to cure the violation before the Association may file for eviction, etc.
- (j) By becoming a tenant, each tenant agrees to be bound by the Declaration, By-Laws and the rules and regulations of the Association, and recognizes and accepts the right(s) and the power(s) of the Association to evict the tenant for any violation by the tenant of the above. The tenant's family members, occupants and guests are subject to the same rules, regulations, restrictions and limitations as the tenant.
- (k) During the time a Home is rented pursuant to this Section 2 of Article XIII,

the Member may not utilize any of the Association's facilities.

- (l) During the period of time the Home is rented each Home Owner shall remain solely responsible for all maintenance charges payable to the Association.

**Section 3. Gifts, etc.** Any Member may convey or transfer his Home by gift during his lifetime or devise his Home by will or pass the same by intestacy without restriction.

#### **ARTICLE XIV INSURANCE.**

##### **Section 1. Common Properties.**

(a) The Board shall be required to obtain and maintain, to the extent obtainable and to the extent determined by the Board to be appropriate, the following insurance: (i) fire insurance with all risk extended coverage, vandalism and malicious mischief endorsements, insuring the insurable parties of the Common Properties, together with all service machinery contained therein and covering the interests of the Association, the Board and all Members, as their respective interests may appear, in an amount equal to the full replacement value of all Common Properties and appurtenances thereto (exclusive of any foundation and footing, if any), without deduction for depreciation; (ii) workers' compensation and New York State disability benefits insurance for any employees; (iii) fidelity insurance covering all officers, Board members, directors and employees of the Association and of the managing agent or agents who handle funds of the Association; (iv) directors' and officers' errors and omissions insurance; and (v) such other insurance as the Board may determine. The premiums for all insurance referred to above and for the liability insurance referred to below shall be a Common Expense and shall be borne by the Members in the same proportion and as a part of the Association Assessments.

(b) The Board shall also be required to obtain and maintain, to the extent obtainable, comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Common Properties and in such limits as the Board may from time to time determine, covering (i) the Board, any managing agent appointed by the Board, each Board member and each Association Member, and any lessee, occupant, guest and family member of a Member or Lessee.

(c) Members shall not be prohibited from carrying other insurance for their own benefit, at their own expense(s), and the Board shall not be prohibited from carrying additional insurance as a Common Expense, provided that any such policies shall contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Member.

## **Section 2. Repair or Reconstruction after Fire or Other Casualty.**

(a) Common Properties. In the event that the Common Properties or any part thereof is damaged or destroyed by fire or other casualty, the Board will arrange for the prompt repair and restoration thereof and the Board, 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. If the insurance proceeds are less than sufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be borne equally by all Home Owners as an Association Common Expense or shared equally by all Home Owners, except that the amount of any surplus payable to any Home Owner pursuant to this Section 3 shall be lessened by the amount of any unpaid Common Expense against such Home Owner.

(b) Home Owner. Any repair or reconstruction of the exterior of any Home must be performed in a good and workmanlike manner and shall conform as nearly as possible to the original plans and specifications. The plans and specifications for repair or reconstruction to the exterior of any Home must be submitted to and approved in writing by the Board. If no cleanup, repair or rebuilding has been contacted for, or otherwise substantially started by the Owner, with the cooperation of the Board within thirty (30) days of the receipt of insurance proceeds, the Board of Directors shall have the right but not the obligation to initiate the clean up, repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Home, in a good and workmanlike manner in conformance with the original plans and specifications. The Board of Directors may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contractor or contractors selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding to the Board. In the event the insurance proceeds are insufficient to fully pay the costs of repairing and/or rebuilding the damaged or destroyed portions of a Home(s) in a good and workmanlike manner, the Board of Directors may levy a special assessment against the Owner whose Home is being repaired or reconstructed in whatever amount may be sufficient to make up the deficiency. Until such time as the special Assessment is paid, the Board of Directors may borrow funds or impose a special Assessment against the Association Members to pay for such reconstruction and cleanup. The cost of such borrowing including interest, legal fees, etc., shall be paid by the Owner. If insurance proceeds exceed the cost of repairing and/or rebuilding, such excess shall be paid over to the respective Owner and/or Owner's mortgagee. The Board of Directors shall have the right to enter in and on the Owners Lot or Home to effectuate necessary repairs.

## **ARTICLE XV. INDEMNIFICATION**

**Section 1. Indemnification of Officers and Directors.** To the fullest extent allowed by law, the Association shall indemnify any person made a party to an action by or in the right of the Association to procure a judgment in its favor by reason of the fact that

he, his testator or, intestate, is or was or has agreed to become a Director or Officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, or in connection with any appeals therein, except in relation to matters as to which such Director or Officer is adjudged to have breached his duty to the Association, as such duty is defined in Section 717 of the Not-For-Profit Corporation Law. To the extent allowed by law, the Association shall also indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the Association to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation, domestic or foreign, which he served in any capacity against judgment, fines, amounts paid in settlement, and reasonable attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeals therein, if such Director or Officer acted in good faith, for a purpose which the Director or Officer reasonably believed to be in the best interests of the Association and had no reasonable cause to believe that the Director's or Officer's conduct was unlawful.

**Section 2. Indemnification to Employees and Agents.** The Association may, to the extent authorized from time to time by the Board or by a committee comprised of members of the Board, provide indemnification to employees or agents of the Association who are not Officers or Directors of the Association with such scope and effect as determined by the Board or such committee.

**Section 3. Indemnification to Others.** The Association may indemnify any person to whom the Association is permitted by applicable law to provide indemnification or the advancement of expenses, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (i) a resolution of the Members, (ii) a resolution of Directors, or (iii) an agreement providing for such indemnification, it being expressly intended that these By-Laws authorize the creation of other rights in any such manner.

**Section 4. Other Rights.** The right to be indemnified and to the reimbursement or advancement of expenses incurred in defending a proceeding in advance of its final disposition authorized by this Article XV shall not be exclusive of or limit any other right(s) which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-Laws, agreement, vote of Members or disinterested Directors or otherwise.

Nothing contained in this provision shall limit any right to indemnification to which any Director or any officer may be entitled to under contract or under any law now or hereinafter enacted.

## ARTICLE XVI GENERAL PROVISIONS

**Section 1. Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

**Section 2. Seal.** The Association seal shall have inscribed thereon the name of the Association and the year of its incorporation under the laws of the State of New York. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

**Section 3. Examination of Books and Records.** Each Member, or their respective representatives and first mortgagees, shall be entitled to a reasonable examination of the books and records of the Association at any time upon reasonable notice to its Board of Directors. The Declaration, Certification of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or first mortgagee at the principal office of the Association.

**Section 4. Construction.** Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires.

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

**Section 5. Use of Property.** In addition to the provisions contained in Article IX of the Declaration the following use provisions shall apply:

(a) **Disrepair of Lots.** In the event the Owner of any Home and/or Lot on the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, including but not limited to the situation where such maintenance, repair and replacement functions are not otherwise directed by the provisions of the Declaration or By-Laws to be performed by the Association, after written notice, by certified mail or other means evidencing receipt of said notice, to cure such unsatisfactory situation within thirty (30) days of receipt of such written notification the Board of Directors shall have the right, through its agents and employees to enter upon the Lot upon which said Home is located and to repair, maintain and restore the Lot and/or the Home and any other improvements erected thereon or to take whatever legal action it may deem necessary. The cost of such maintenance, repair and replacement, including any legal fees necessary to enforce the above, shall be added to and become part of the Assessments to which such Home is subject.

(b) **Damages.** The Association will not be responsible for any consequential,

incidental, special and/or indirect damages to the Home caused as a result of its maintenance, repair and replacement obligations.

(c) **Violations.** Upon receipt, by the President of the Board of Directors or by any Managing Agent, of a signed written complaint alleging violation of any provision of the Declaration, the By-Laws or Rules, as herein established or hereafter established or adopted by the Board of Directors, the President of the Board, or in his absence, the Vice President together with any two (2) members of the Board, without a formal meeting of the Board, shall make a determination as to the validity of the complaint. If in their determination the complaint is valid and justified any Managing Agent or Board member, if no agent, shall be directed to send written notice of such violation to the violator. If the violation is not corrected or eliminated within a period of three (3) days from the date of receipt of such notice; another notice will be sent levying a fine of up to \$100 upon the violator. Such fine is to be considered as an additional Common Expense to the account of the violator and shall be treated as such regarding late penalties and a lien upon the Property as elsewhere provided in the Declaration. If after imposition of a fine the violation is not corrected or eliminated, the Board of Directors may assess additional fines of up to \$100 each after serving written notice upon the violator as provided for above. If the violation results in loss of or damage to property classified as Common Area of the Association, the Board of Directors shall direct the Managing Agent or the Board, if no Managing Agent, to have said loss or damage repaired or replaced, and the actual cost of said repair or replacement shall be assessed to said violator as an additional Common Expense.

(d) Any costs incurred by the Board of Directors to remedy or cure any violation of the Declaration, By-Laws or the Rules or Regulations of the Association as herein or hereafter established, shall be an additional Common Expense charged to the violator in addition to the fine(s) levied upon the violator. Fines may be levied against a Owner's tenant, if the tenant is in violation of the Declaration, By-Laws or the Rules or Regulations of the Association, and the Owner shall be jointly and severally liable with his tenant for the payment of same. In the event the Association institutes legal action for the collection of any fines or the enforcement of any of the provisions of the Declaration, By-Laws and/or rules and regulations of the Association, then the Defendant shall be responsible for payment of reasonable attorney's fees of the Association plus interest and costs of suit.

**Section 6. Architectural Review.** No building, deck, patio, fence, wall, statuary, sign or other structure, or change in landscaping (including the addition or removal of any trees, bushes, flowers, etc.) that requires a permit or variance from any municipal agency; or change, alteration or change in color to the exterior of the Homes (including exterior facade and roof) that requires a permit or variance from any municipal agency, shall be commenced, erected, replaced, repaired or maintained upon the Properties, nor shall any exterior addition to, or change or alteration to any of the above requiring a permit or variance from any municipal agency, be made until the plans and specifications showing the nature, kind, shape, heights, materials, color and locations of the same shall have



been submitted to, and approved in writing as to harmony of external design and location, in relation to surrounding structures and topography by the Board of Directors of the Association (hereinafter "the Board") by the Home Owner. A two-thirds majority of a quorum of the Board shall be required for approval of all of the above items.

The make-up and procedures applicable to the approval process is as follows:

(a) Plans and Specifications. The Board may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and description or samples of exterior material and colors prepared by a licensed professional engineer or registered architect. Until receipt by the Board of any required plans and specifications, the Board may postpone review of any plan submitted for approval. Decisions of the Board and the reasons thereof shall be transmitted by the Board to the Home Owner at the address set forth in the application for approval, within sixty (60) days after receipt by the Board of all materials required by the Board. In the event the Board fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will be deemed denied.

(b) Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(1) The Board or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Section 5. However, the Board's right of inspection of the work for which plans have been submitted and approved shall terminate sixty (60) days after the work has been completed and the respective Home Owner has given written notice to the Board of its completion. The Board's rights of inspection shall not terminate pursuant to this paragraph if plans for the work have not previously been submitted to and approved by the Board. If, as a result of such inspection, the Board finds that the work was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Board, it shall notify the Home Owner in writing of his failure to comply with this Section within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Board shall have the authority to require the Home Owner to take such action as may be necessary to remedy the noncompliance.

(2) If upon the expiration of sixty (60) days from the date of such notification, the Home Owner has failed to remedy the noncompliance, the Board shall notify the Home Owner in writing of such failure and provide for a hearing regarding the noncompliance. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Home Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Home Owner. If the Home Owner does not comply with the

Board ruling within that period, the Board, at its option, may take whatever action it may have at law, in equity or in the Declaration or By-Laws including, without limitation, correcting or removing the noncompliance and charging the cost of all necessary work to correct or remove the noncompliance, including reasonable legal fees, to the Home Owner as an additional Common Expense.

(c) Simultaneously with the Home Owner providing the necessary plans and specifications to the Board, the Home Owner shall provide written notification of the desired architectural modification to the Home Owner's immediate neighbors to the side, rear and front, if applicable.

**Section 7. Severability.** Should any of the covenants, terms or provisions herein imposed be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.