

BY-LAWS

OF

SCHOONER BAY CONDOMINIUM

Dated: February 3, 1987

ARTICLE I

ADMINISTRATION

Section 1. Form of Administration. The condominium project, known as Schooner Bay Condominium, located in Estate Mount Welcome, East End Quarter A, St. Croix, U.S. Virgin Islands, has been subjected to the provisions of the Condominium Act, and a condominium regime has been established therefor, by the Declaration to which these By-laws are attached. The affairs of the condominium shall be governed by the council of unit owners, an unincorporated legal entity comprised of all the unit owners, acting through its board of directors, elected or appointed for the purpose of carrying out the responsibilities of said council of unit owners, all in the manner and to the extent hereinafter provided, and subject to the right and power of the council of unit owners, or the board of directors, to employ a manager to administer and supervise the condominium project.

Section 2. Applicability of By-laws. The terms, conditions, provisions and restrictions of these By-laws are applicable to the condominium project and to the use, occupancy, benefit and enjoyment thereof, and shall inure to the benefit of the unit owners and be binding upon said unit owners, their tenants, guests and other invitees, the agents, servants and employees of such unit owners, tenants, guests and invitees, and any other person, firm or corporation using any facility of the property. The acceptance of any deed, lease, contract or other paper covering any interest in a condominium unit, or the use, occupancy, benefit or enjoyment of such unit, without further act, shall signify that the By-laws of the condominium are approved and ratified and that the person accepting the deed, lease, contract or other paper, or using, occupying, or otherwise enjoying any unit shall comply with the terms, conditions, provisions and restrictions of the By-laws.

Section 3. Mailing Address. The mailing address of the council of unit owners shall be Schooner Bay Condominium Association, c/o Antilles Investment Corporation, Suite 11, Caravelle Arcade, Christiansted, St. Croix, U.S. Virgin Islands 00820, or at such other address as the council of unit owners, board of directors or manager may from time to time designate by written notice to the unit owners and the mortgagees.

ARTICLE II

COUNCIL OF UNIT OWNERS

The rights and powers of the council of unit owners are as follows:

(a) To have perpetual existence subject to the right of the unit owners to terminate the condominium regime, as provided in the Condominium Act or in the Declaration;

(b) To adopt and amend reasonable rules and regulations;

(c) To adopt and amend budgets for revenues, expenditures and reserves, and collect assessments for common expenses from unit owners;

(d) To sue and be sued, and complain and defend, in any court;

(e) To transact its business, carry on its operations and exercise the powers provided in the Condominium Act, in any state, territory, district or possession of the United States, and in any foreign country;

(f) To make contracts and guarantees, incur liabilities, borrow money, and to sell, mortgage, lease, pledge, exchange, convey, transfer and otherwise dispose of any part of its property and assets;

(g) To issue bonds, notes and other obligations, and secure the same by mortgage or deed of trust, on any part of its property, franchises and income;

(h) To acquire by purchase or in any other manner, and to take, receive, own, hold, use, employ, improve and otherwise deal with any property, real or personal, or any interest therein, wherever located;

(i) To hire and terminate managing agents and other employees, agents and independent contractors;

(j) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations of the U.S. Virgin Islands and foreign corporations, and of associations, partnerships and individuals;

(k) To invest its funds and to lend money in any manner appropriate to enable it to carry on the operations or to fulfill the purposes named in the Declaration or By-laws, and to take and to hold real and personal property as security for the payment of funds so invested or loaned;

(l) To regulate the use, maintenance, repair, replacement and modification of the common elements;

(m) To cause additional improvements to be made as a part of the general common elements;

(n) To grant easements, rights of way, licenses, leases and similar interests through or over the common elements in accordance with the Condominium Act and the Declaration;

(o) To impose and receive any payments, fees or charges for the use, rental or operation of the common elements, subject to the limitations set forth in the Condominium Act, the Declaration and these By-laws;

(p) To impose charges for late payment of assessments and, subject to the provisions of Article XVI of these By-laws, levy reasonable fines for violations of the Declaration, these By-laws, and rules and regulations of the council of unit owners adopted pursuant to Article XV of these By-laws;

(q) To impose reasonable charges for the preparation and recordation of rules, regulations, resolutions, statements of unpaid assessments, and amendments to such documents, and for the preparation and recordation of amendments to the Declaration, By-laws and condominium plat;

(r) To provide for the indemnification of and maintain liability insurance for officers, directors, and any managing agent or other employee charged with the operation or maintenance of the Condominium;

(s) To enforce the provisions of the Condominium Act, the Declaration, these By-laws, and the rules and regulations, if any, of the council of unit owners against any owner or occupant of a unit; and

(t) Generally to exercise the powers set forth in the Condominium Act and the Declaration or By-laws, and to do every other matter, act or thing not inconsistent with law, which may be appropriate to promote and attain the purposes set forth in the Condominium Act, the Declaration or By-laws, including the right to elect directors, officers and agents, and to define their rights, powers and duties.

### ARTICLE III

#### COUNCIL OF UNIT OWNERS

Section 1. Annual Meetings. The annual meeting of the council of unit owners shall be held at such place within the U.S. Virgin Islands or the United States as may be designated by unit owners holding a majority of the votes appurtenant to all units in

the condominium, by the board of directors, or by the manager of the condominium project, at 10:00 a.m., on the second Saturday of May of each year (or at such other time on said date as may be fixed by such majority, the board or the manager, or on such other date, and at such time, as may be fixed by unit owners holding at least two-thirds (2/3) of the votes appurtenant to all units in the condominium), for the election of directors and for the transaction of general business, except that no annual meeting of the council of unit owners shall be held during the developer control period. Such annual meetings shall be general meetings, i.e., open for the transaction of any business without special notice of such business, provided, however, that no new business shall be introduced or otherwise submitted at the meeting unless a written summary thereof is filed with the Secretary of the council of unit owners before commencement of the meeting.

Section 2. Special Meetings. Special meetings of the council of unit owners may be called at any time by a majority of the unit owners, the board of directors or the manager, either by vote or in writing, except that only the board of directors shall be entitled to call a special meeting of the council of unit owners during the developer control period. Upon the written request of a majority of unit owners, specifying the purpose of the special meeting and delivered to the board of directors or manager after the expiration of the developer control period, it shall be the duty of the board or manager forthwith to call a meeting of the council of unit owners. Notice thereof shall be given as provided in Section 3 of this Article III. No business other than that stated in the notice of the meeting shall be transacted at any special meeting of the council of unit owners, however called. Special meetings of the council of unit owners shall be held at such place within the U.S. Virgin Islands or the United States as may be fixed by a majority of the unit owners, board of directors, or manager calling the same.

Section 3. Notice of Meetings. At least fifteen (15), but not more than forty-five (45), days' written or printed notice of every annual meeting and every special meeting of the council of unit owners shall be given by the board of directors or the manager to each unit owner whose name appears as such upon the roster or books of the condominium project forty-five (45) days prior to the day of the meeting. Such notices of annual or special meetings shall state the place, day and hour of such meetings, and, in the case of special meetings, shall also state the business proposed to be transacted thereat. Such notice shall be given to each unit owner either by delivering the same to him or by mailing it postage prepaid and addressed to him at his address as it appears upon the roster or books of the condominium project, as aforesaid. No notice of the time, place or purpose of any meeting of unit owners, whether prescribed by law, by the Declaration, or by these By-laws, need be given to any unit owner who attends in person, or by proxy, or who, in writing, executed and filed with the records of the meeting, either before or after the holding thereof, waives such notice.

Section 4. Quorum. Unless otherwise specifically provided in the Condominium Act, in the Declaration, or in these By-laws, the presence in person or by proxy of unit owners holding at least twenty-five percent (25%) of the votes appurtenant to all units shall be necessary and sufficient at any meeting of the council of unit owners to constitute a quorum for the election of directors, for the adoption of decisions, or for the transaction of other business, and any such meeting may be adjourned from time to time until the transaction of business has been completed. In the absence of a quorum, the unit owners who shall be present in person or by proxy at any meeting (or adjournment) may, by vote of a majority of such unit owners, adjourn the meeting from time to time, but not for a period of over thirty days at any one time, by announcement at the meeting, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 5. Proxies. Unit owners may vote either in person or by proxy. Every proxy shall be in writing, subscribed by the unit owner or by his duly authorized attorney, and shall be dated, but need not be sealed, witnessed or acknowledged, unless otherwise required by law. Each proxy shall be presented at the meeting and deposited with the Secretary of the council of unit owners, the board, or the manager.

Section 6. Voting.

(a) Subject to paragraph (b) of this Section 6, at every meeting of the council of unit owners, every unit owner shall be entitled to cast the number of votes appurtenant to his unit, as determined under the provisions of the Declaration and registered in his name on the roster or books of the condominium project on the date for the determination of voting rights at the meeting. Upon demand by unit owners holding at least twenty-five percent (25%) of the votes held by the unit owners present in person or by proxy, the votes for directors, or upon any question before a meeting, shall be by ballot; and except in cases in which it is by statute, by the Declaration, or by these By-laws otherwise specifically provided, the vote of a majority of the unit owners present and voting shall be necessary and sufficient to elect or pass any measure.

(b) Notwithstanding the foregoing, no unit owner shall be entitled to vote at any meeting of the council of unit owners as long as any common expense assessment levied against him or his unit pursuant to Section 1 or 3 of Article IX hereof, or any charge or fine levied against him or his unit pursuant to subparagraph (a) or (b) of Section 5 of Article IX hereof, remains more than thirty (30) days in arrears.

Section 7. List of Unit Owners. The council of unit owners shall maintain a current roster of the names and addresses

of each unit owner to whom notice of meetings of the council of unit owners and the recreation association shall be sent. Each unit owner shall furnish his name and current mailing address to the council of unit owners, and a unit owner may not vote at any meeting of the council of unit owners or the Recreation Association until he has furnished such information. Prior to each meeting of the council of unit owners, the Secretary thereof, the board of directors, or manager, shall prepare a full, true and complete list of all unit owners entitled to vote at such meeting, indicating the number of votes to be cast by each, and shall be responsible for the production of such list at the meeting. The record time and date for determining the unit owners entitled to vote at any meeting of the council of unit owners shall be 5:00 p.m. on the last business day prior to the meeting, but no notice of the meeting need be furnished to any unit owner whose name does not appear upon the roster or books of the condominium on the date established in Section 3 of this Article III for determining the unit owners entitled to notice of such meeting.

Section 8. Order of Business. At all meetings of the council of unit owners, the order of business shall be, as far as applicable and practicable, as follows:

1. Organization and roll call.
2. Proof of notice of meeting or of waivers thereof. The Certificate of the Secretary of the council of unit owners, the board of directors, or the manager, or the affidavit of any other person who mailed the notice or caused the same to be mailed, shall be accepted as proof of service of notice by mail.
3. At any annual meeting, or at a meeting called for that purpose, reading of unapproved minutes of preceding meetings and action thereon.
4. Reports of the board of directors, officers, committees, and any manager employed by the council of unit owners or the board.
5. At an annual meeting, the election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

Section 9. Informal Action. Any action required or permitted to be taken at any meeting of the council of unit owners may be taken without such meeting if a written consent to such action is signed by all unit owners (and by all mortgagees, if mortgagee consent is required for the taking of such action) and such written consent is filed with the minutes of the proceedings of the council of unit owners.

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ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number and Qualification. Subject to the right of the board of directors to employ a manager, as provided in Article VIII of these By-laws, the affairs of the condominium project shall be managed by a board of directors, each of whom shall be a unit owner, either in his own name, or as a joint tenant, tenant in common, tenant by the entirety, or co-partner, if his unit is held in a real property tenancy or partnership relationship, or shall be an officer or agent of a corporate unit owner. For each unit owned, there shall be no limit as to the number of tenants, co-partners, officers, or agents of the unit owner who may serve as directors at the same time. The board shall initially consist of three (3) directors, but the number of directors shall automatically increase to four (4) as soon as the condominium contains at least fifty (50) units, and shall automatically increase to five (5) as soon as the condominium contains at least seventy-five (75) units; provided, however, in any event, that the number of directors fixed by these By-laws may, by a vote of a majority of the unit owners present and voting at any annual meeting of the council of unit owners, be increased to not exceeding five (5), or decreased to not less than three (3).

Section 2. Powers. The board of directors shall have all rights and powers necessary to the administration of the affairs of the condominium project and may do and perform all matters, acts and things not expressly reserved to the council of unit owners. The powers of the board of directors shall include particularly, but not by way of limitation, the right to do the following:

(a) Supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain the common elements; keep and maintain said elements in a clean, neat, trim, orderly, sanitary and safe condition, free of garbage, trash, rubbish and other refuse, free of insects, rodents, vermin and other pests, free from objectionable odors, and free of sand and water; procure all labor, material, services and utilities necessary or desirable to the foregoing; obtain all permits and licenses required for the property; comply with all laws, ordinances, rules, and regulations applicable to the maintenance and care of the common elements; and generally carry out all matters and things deemed necessary or advisable to the economic or efficient maintenance and operation of the condominium project.

(b) Employ all personnel necessary or desirable for the maintenance, operation and management of the condominium project; and engage any attorney or attorneys to handle the legal affairs of said project, including collection of the common expenses due by any unit owner, and any accountant or accountants to handle and maintain the financial records of the property, including the

preparation of any tax return or other form required to be filed with any governmental agency.

(c) Procure bids or otherwise establish the fixed cost of all labor, materials, services, utilities and other items required for the operation, maintenance and care of the condominium project, and the convenience of the unit owners; review and analyze all cost and expense factors arising out of or otherwise related to the property, together with the benefits and advantages to be derived therefrom; determine and fix a detailed annual budget for the project, and upon the establishment of such budget, assess and collect the funds therefor as a common expense.

(d) Impose reasonable charges for the preparation, copying and recordation of any documents related to the condominium project; and impose and collect charges and fines for the late payment of assessments and for violations of the Declaration, these By-laws and the rules and regulations of the council of unit owners.

(e) Adopt reasonable rules and regulations, not inconsistent with the Declaration or By-laws, for the care and preservation of the common elements, the comfort, health, safety and general welfare of the unit owners, and the efficient operation of the condominium project.

(f) Establish and maintain an accurate and efficient cash and accounting system, make collections and deposit of funds in such banks, trust companies, or other depositories as the board shall from time to time approve, verify and account for all receipts and expenditures involved in the operation of the condominium project, approve or disapprove all requisitions, bills, statements and vouchers, pay all costs and expenses incurred in the operation and maintenance of the property, designate signatories to which bank or other accounts shall be subject, keep and preserve, at the principal office of the condominium project, rosters, books, accounts and records covering the operation of the property, and execute and file any statement, certificate, affidavit, return or other forms required to be filed with any governmental agency in connection with any income or unemployment, social security or employee benefit tax, or the withholding of any tax, or any information relative to the foregoing, and prepare and submit such account or accounts of the financial condition of the condominium project as may from time to time be required or advisable.

(g) Procure and maintain all policies of insurance required by the Condominium Act, by these By-laws, or by the council of unit owners, or otherwise deemed advisable; designate a trustee or trustees, as the nominal beneficiary of any policy, to hold proceeds payable thereunder for the use and benefit of the council of unit owners; negotiate and adjust any loss occurring under any policy of insurance; and make any repair, replacement or



restoration of the property damaged or destroyed by fire or other casualty insured against.

(h) Prepare, with the assistance of an accountant, if deemed necessary, and file, all income tax returns and other tax returns, declarations, and other forms required of the council of unit owners by law, and arrange for payment of any tax shown thereby to be due.

Section 3. Election and Term of Office. The following persons shall serve as directors for a term commencing on the date of the creation of the condominium and ending at the first annual meeting of the council of unit owners: C. Peter Behringer, Susan B. Bastress, and William Sullivan. The term of any director(s) appointed by the Developer following an automatic increase in the number of directors to four (4) or five (5) pursuant to Section 1 of this Article IV shall also end at the first annual meeting of the council of unit owners. At the first annual meeting of the council of unit owners, directors shall be elected to succeed all directors theretofore appointed by the Developer. The term of office of two (2) such directors shall be fixed at two (2) years, and the term of office of the remaining director(s) shall be fixed at one (1) year. At the first or any succeeding annual meeting of the council of unit owners, additional directors shall be elected if required under the provisions of Section 1 of this Article IV. The term of each such additional director shall be fixed at two (2) years. At the expiration of the initial term (not including any term of office commencing on the date of the creation of the condominium) and any subsequent term of office of each director, his successor shall be elected at the annual meeting of the council of unit owners to serve for a term of two (2) years. Each director specifically named in this Section 3, or elected as provided in Section 3 or 4 of this Article IV, or appointed by the Developer as provided in Section 5 of this Article IV, (a) may, if reelected, succeed himself, and (b) shall hold office until his successor shall have been elected and qualified, or until he shall die or resign, or shall have been removed, or shall cease to qualify.

Section 4. Vacancies Arising After the Developer Control Period. If any director shall die or resign, or shall cease to qualify for directorship under Section 1 of Article IV of these By-laws, or if the council of unit owners shall remove any director without appointing another in his place, a majority of the remaining directors, although such majority is less than a quorum, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall become vacant and until his successor shall have been duly chosen and qualified. Vacancies in the board of directors created by an increase in the number of directors may be filled by the vote of a majority of the unit owners present and voting at an annual meeting of the council of unit owners, and directors so elected to fill such vacancies shall hold office until the second succeeding



for a period of over ten (10) days at any one time, without notice other than by announcement at the meeting, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which may have been transacted at the meeting as originally notified. Each director shall have one (1) vote. Except as otherwise provided herein, all questions shall be decided by a majority of the directors present. On request of any director the yeas and nays shall be taken and entered on the minutes.

Section 8. Telephone Meetings. Members of the board of directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 9. Informal Action. Any action required or permitted to be taken at any meeting of the board of directors may be taken without such meeting if a written consent to such action is signed by all the directors and such written consent is filed with the minutes of the proceedings of the board of directors.

Section 10. Compensation. No director, as such, shall receive any compensation for his services, but each director shall be entitled, subject to board approval, to reimbursement for all reasonable out-of-pocket expenses incurred by him, as a director, on behalf of the council of unit owners.

Section 11. Fidelity Bonds. The council of unit owners shall maintain blanket fidelity bonds for all officers, directors and employees of the council of unit owners and all other persons handling, or responsible for, funds of, or administered by, the council of unit owners. If a manager has the responsibility for handling or administering funds of the council of unit owners, the manager shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the council of unit owners. Such fidelity bonds shall name the council of unit owners as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the council of unit owners or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum of (a) the estimated annual operating expenses, and (b) all amounts then held in reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the manager, shall be paid by the council of unit owners as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium)

without at least ten (10) days' prior written notice to the council of unit owners or insurance trustee, if any. So long as the Federal National Mortgage Association ("FNMA") shall hold a first mortgage on any unit, such bonds shall also provide that the FNMA Servicer, on behalf of FNMA, must receive such notice of cancellation or modification.

Section 12. Conflict of Interest.

(a) If subsection (b) of this Section 12 is complied with, a contract or other transaction (I) between the council of unit owners and any of its directors or (II) between the council of unit owners and any other corporation, firm or other entity in which any of its directors is a director or has a material financial interest (any director of the council of unit owners described in item (I) or (II) above being herein called an "interested director") is not void or voidable solely because of any one or more of the following:

(i) The conflict of interest;

(ii) The presence of the interested director at the meeting of the board which authorizes, approves, or ratifies the contract or transaction; or

(iii) The counting of the vote of the interested director for the authorization, approval, or ratification of the contract or transaction.

(b) Subsection (a) of this Section 12 applies if:

(i) The conflict of interest is disclosed or known to the board of directors, and the board authorizes, approves, or ratifies the contract or transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum; or

(ii) The conflict of interest is disclosed or known to the unit owners, and the contract or transaction is authorized, approved, or ratified at a meeting of the council of unit owners by a majority of the votes cast, not including in either the numerator or denominator votes appurtenant to any unit owned in whole or in part by the interested director; or

(iii) The contract or transaction is fair and reasonable to the council of unit owners.

(c) The interested director or the votes appurtenant to the unit(s) owned in whole or in part by the interested director may be counted in determining the presence of a quorum at a meeting of the board or at a meeting of the council of unit owners, as the case may be, at which the contract or transaction is authorized, approved, or ratified.

(d) (i) If a contract or transaction entered into by the council of unit owners at or after its first annual meeting is not authorized, approved, or ratified in one of the ways provided in subsection (b)(i) or (ii) of this Section 12, the person asserting the validity of the contract or transaction bears the burden of proving that the contract or transaction was fair and reasonable to the council of unit owners at the time it was authorized, approved or ratified.

(ii) No contract entered into by the council of unit owners prior to its first annual meeting shall have a term in excess of three (3) years.

(e) Any indemnification provided in strict accordance with subsection (a) of Section 2 of Article VII hereof shall be deemed to satisfy subsection (b)(i) or (ii), as applicable, of this Section 12.

(f) A conflict of interest shall not be deemed to exist with respect to any contract or agreement, written or otherwise, between the council of unit owners and the recreation association merely because a director of either such entity is a member of the other such entity or because one or more persons serve as director of both such entities, it being understood that each member of each such entity is a member of the other entity as well, and that common directorships with respect to such entities are likely to promote (i) cooperation between such entities, and (ii) the efficient operation of such entities.

## ARTICLE V

### NOMINATIONS OF DIRECTORS

Section 1. Nominating Committee. On or before September 1 of each year, the board of directors may appoint a nominating committee, comprised of three (3) members, and, if such committee is so appointed, the board shall promptly notify the Secretary of the council of unit owners, in writing, of the names of the committee members. This nominating committee shall, at least thirty (30) days prior to the annual meeting of the council of unit owners, nominate not less than such number of candidates for membership on the board as may be required to be filled through election at such annual meeting, and forthwith submit its nominations to the Secretary of the council of unit owners. The decision of a majority of the members of the nominating committee shall be reported as the decision of the nominating committee.

Section 2. Other Nominations. In addition to the nominations, if any, made by the nominating committee for membership on the board of directors, as aforesaid, nominations may be made by any unit owner at or prior to any annual meeting of the council of unit owners. Each nomination made prior to the

annual meeting shall be submitted in writing to the Secretary of the council of unit owners.

ARTICLE VI

OFFICERS

Section 1. Executive Officers. The executive officers of the council of unit owners shall be a president, a vice president, a secretary, and a treasurer, or, if there be fewer than four (4) members of the board of directors, then a secretary-treasurer, instead of a secretary and a treasurer, each of whom shall be a member of the board of directors, and such other officers as the board from time to time considers necessary for the proper conduct of the affairs of the association. The executive officers shall be elected every year by the board of directors at its first meeting following the annual meeting of the council of unit owners. Each such officer shall hold office for a term of one (1) year, and thereafter, until his successor is elected and qualified, or until his death, disqualification, resignation or removal. The powers and duties of the executive officers of the association shall be subject to the powers of any manager employed by the council of unit owners or the board of directors, to the extent set forth in the contract of employment of such manager.

Section 2. President. The President shall be the chief executive officer of the association. He shall, when present, preside at all meetings of the council of unit owners and board of directors; he shall have the power of general management and direction of the affairs of the association, subject to the control of the board of directors. He shall, in general, have the right to perform all acts incident to his office or which may be prescribed by the board. He shall also annually prepare or cause to be prepared a full and true statement of the affairs of the association, which shall be submitted at the annual meeting of the council of unit owners, and shall be filed within ten (10) days thereafter with the records of the association.

Section 3. Vice President. In the absence, inability or disqualification of the President, the Vice President shall have the right to perform all acts incident to the office of the President, and when so acting shall have all the powers of the President of the association.

Section 4. Secretary or Secretary-Treasurer. The Secretary or Secretary-Treasurer shall keep or cause to be kept the minutes of the meetings of the council of unit owners and of the board of directors in books provided for the purpose and shall count and record votes at all such meetings; he shall see that all notices are duly given in accordance with the provisions of the By-laws; he shall be the custodian of the records of the

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association; and, in general, he shall have the right to perform all acts ordinarily incident to the office of a secretary, and such other acts as, from time to time, may be assigned to him by the board of directors, or by the President.

Section 5. Treasurer or Secretary-Treasurer. The Treasurer or Secretary-Treasurer shall have charge of all funds, securities, receipts and disbursements of the council of unit owners, whether common expenses, or other funds, and shall deposit, or cause to be deposited, in the name of the association, all monies or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the board of directors; he shall keep, or cause to be kept, a just, true and correct copy of all receipts and expenses, and he shall make, or cause to be made, and submit an account of the financial condition of the council of unit owners when so requested by the President, Vice President, or by resolution of said council of unit owners, or the board of directors; and he shall make, or cause to be made, all reports, financial or otherwise, now or hereafter required by law; and, in general, shall have the right to perform all acts ordinarily incident to the office of a treasurer, and such other acts as may be assigned to him by the board of directors, or by the President.

Section 6. Assistant Officers. The board of directors may elect one or more Assistant Secretaries and one or more Assistant Treasurers. Each such Assistant Secretary and Assistant Treasurer shall hold office for such period and shall have such authority and perform such duties as the board may prescribe.

Section 7. Subordinate Officers. The board of directors may elect such subordinate officers as it may deem desirable. Each such officer shall hold office for such period and shall have such authority and perform such duties as the board may prescribe. The board of directors may, from time to time, authorize any officer to appoint subordinate officers and to prescribe the powers and duties thereof.

Section 8. Delegation of Duties. In the absence, inability or disqualification of any officer, other than the President, the duties of such officer shall be discharged by his assistant or associate officer, if any there be, or, no other arrangements having been made for the performance of such duties, the President may delegate the powers and duties of such officer to another officer or director or may appoint some other person to act in the stead of such officer until his place shall be filled by the board of directors.

Section 9. Compensation. No officer, as such, shall receive any compensation for his services, but each officer shall be entitled, subject to board approval, to reimbursement for all reasonable out-of-pocket expenses incurred by him, as an officer, on behalf of the council of unit owners. Any manager, its agents,

servants or employees, performing any duty of any officer of the condominium project shall be compensated for such performance or services at the common expense of the unit owners, however.

Section 10. Removal. The board of directors shall have power at any regular or special meeting to remove any officer, with or without cause, and such action shall be conclusive on the officer so removed. The board may authorize any officer to remove subordinate officers.

Section 11. Vacancies. The board of directors at any regular or special meeting shall have power to fill a vacancy occurring in any office for any unexpired portion of the term.

Section 12. Contracts, Agreements and other Instruments. No deed, deed of trust, mortgage, bond, bill of sale, assignment, contract, agreement, promissory note, check, or any other instrument or document intended to bind the council of unit owners shall be valid or binding unless signed (a) by two officers of the association, one of whom shall be the President or Vice President, or (b) except with respect to deeds, deeds of trust and mortgages, by the manager of the condominium project.

## ARTICLE VII

### LIMITED LIABILITY AND INDEMNITY OF OFFICERS AND DIRECTORS

Section 1. Officer and Director Liability. No officer or director of the council of unit owners shall be liable to any unit owner for any mistake in judgment, negligent or otherwise, unless attributable to willful misconduct or bad faith.

Section 2. Indemnification and Insurance. (a) The council of unit owners shall indemnify any individual who (i) is a present or former director or officer of the council of unit owners or (ii) serves or has served another association, corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director or officer, or as a partner or trustee of such partnership or employee benefit plan, at the request of the council of unit owners, and who by reason of service in that capacity was, is or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, to the fullest extent which would be permitted under the Virgin Islands Code, as amended from time to time, if the council of unit owners were a nonprofit corporation organized under Chapter 3 of Title 13 of the Virgin Islands Code. The council of unit owners may, with the approval of its board of directors, provide such indemnification for any employee or agent of the council of unit owners.



(b) The council of unit owners shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the council of unit owners, or is or was serving any other entity at the request of the council of unit owners, in any capacity, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the council of unit owners would have the power to indemnify him against such liability under the provisions of subsection (a) of this Section 2.

(c) The indemnification provided by subsection (a) of this Section 2 shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any by-law, agreement, vote of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 3. Unit Owner Liability. The responsibility or liability of any unit owner to any third party for injuries arising in connection with the common elements or for liabilities incurred by the council of unit owners, or to any officer or director of the council of unit owners under any indemnity to the officers or directors, shall not exceed such proportion of the total liability as shall equal the percentage interest of such unit owner in the common elements (his percentage interest factor). Further, each agreement made by the officers of the council of unit owners or by the board of directors on behalf of the council of unit owners shall provide that such officers and the board are acting solely as agent for the council of unit owners and that the responsibility or liability of each unit owner upon said agreement shall not exceed such proportion of the total liability under the contract as shall equal the percentage interest of such unit owner in the common elements (his percentage interest factor).

## ARTICLE VIII

### MANAGER

The board of directors, on behalf of the council of unit owners, may employ a manager to administer or supervise the condominium project, and may delegate to such manager all rights, duties, and powers conferred upon the board under these By-laws, so that the manager shall thereupon have all the rights, duties and powers of the board necessary to the administration of the affairs of the condominium project and to do and perform all matters, acts and things not expressly reserved to the council of unit owners, provided, however, that no assessment or levy of any common expense, and no adoption or amendment of any rule or

regulation for the condominium project, shall take effect until approved by the board of directors, or if there be no board, by the council of unit owners, and, provided further, that any agreement for management of the condominium project shall be subject to the following: No management contract shall exceed a term of three (3) years; and each such contract shall provide that same may be terminated by the council of unit owners without cause and without penalty on not more than ninety (90) days' written notice, and that same may be terminated by the council of unit owners with cause on not more than thirty (30) days' written notice. Further, any and all duties of any officer of the council of unit owners, including the President, may be delegated to the manager. Upon the employment of a manager by the council of unit owners, or by the board of directors, as aforesaid, then the rights, duties and powers conferred upon the board and upon the executive officers of the council of unit owners under these By-laws shall be subject to the rights, duties and powers of the manager, to the extent set forth in its contract of employment. The fee or other compensation payable to the manager, including reimbursement of any cost or expenses advanced or incurred by the manager for or on account of the council of unit owners, or the condominium project, shall be deemed a common expense.

#### ARTICLE IX

##### COMMON EXPENSES

Section 1. Assessments. The fiscal year of the council of unit owners shall consist of twelve (12) calendar months, commencing on January 1; except that the first fiscal year shall commence on a date to be determined by the board of directors, and shall end on December 31, 1987. Not later than sixty (60) days prior to the commencement of each fiscal year, beginning with the 1988 fiscal year, the board of directors shall estimate the total common expenses required for the operation and maintenance of the condominium during the ensuing year, including particularly, but not by way of limitation, all sums required to provide labor, materials, services, and insurance for the operation, maintenance and care of the property and the conveniences deemed desirable to the use and enjoyment thereof, together with an adequate reserve for the painting, repair and replacement of the common elements, and reserves for such other purposes, if any, as the board of directors deems appropriate, and within fifteen (15) days thereafter, shall notify each unit owner, in writing, of the aggregate estimated common expenses for the coming fiscal year and such unit owner's proportionate share thereof, based on his percentage interest factor. On or about the fifteenth (15th) day prior to the commencement of the fiscal year, the board shall finally determine and assess the common expenses, and formally levy against each unit owner his share thereof, in accordance with his percentage interest factor, by noting the assessment and levy on the books of the council of unit owners and submitting a

written billing to the unit owner for the sum due by him. The failure or delay of the board of directors to prepare an estimate or determine the common expenses for any year, or notify any unit owner of the total common expenses of the council of unit owners, or of such unit owner's proportionate share of the common expenses, shall not in any manner constitute a waiver or release of the unit owner's obligation to pay his share of the common expenses whenever the same may be determined or assessed. In the absence of an annual determination of the common expenses or a formal assessment against the unit owners, each unit owner shall continue to pay the bimonthly installments due by him during the last fiscal year in which an assessment or levy had been made, all subject to acceleration or modification by the board of directors. Notwithstanding anything to the contrary herein, the costs of the water, electricity and cable TV services provided to the unit owners shall be allocated among, and assessed against, the unit owners as provided in Section 6 of Article XII hereof.

## Section 2. Reserve Funds.

(a) The board of directors shall establish and maintain a reasonable repair and replacement reserve fund, and reserve funds for such other purposes, if any, as it deems appropriate. Such reserves shall be deposited in a special account, but may be invested in (i) obligations fully guaranteed as to principal by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or any successor thereof, and/or (ii) money market funds distributed by New York Stock Exchange member firms.

(b) The repair and replacement reserve fund shall be used for the painting, repair and replacement of the common elements for which the council of unit owners is responsible, provided, however, that such reserve may be used for such other purposes as are approved (i) by unit owners having at least sixty-six and two-thirds percent (66 2/3%) of the votes appurtenant to all units, (ii) by a majority vote of the eligible mortgagees (as such term is defined in Article I of the Declaration), provided that each such eligible mortgagee shall have the number of votes appurtenant to the unit or units upon which it holds a mortgage or mortgages, and (iii) by all construction mortgagees.

(c) All funds assessed for payment into, or otherwise credited to, any reserve fund shall be deemed contributions to the capital of the association made or to be made by the unit owners, and same shall be shown on the balance sheet and other financial records of the council of unit owners as "paid-in-surplus", or its equivalent, to the end and intent that none of the reserve funds received or retained by the association shall be considered as income for tax purposes.

Section 3. Additional Assessments. If the board of directors at any time determines that the common expenses assessed under the provisions of Section 1, or the reserve funds established and maintained under Section 2, of this Article IX, are inadequate, or that additional funds are otherwise required for the operation and maintenance of the condominium, it may assess such further sums, as common expenses, as it deems necessary, and levy the same against each unit owner in accordance with his percentage interest factor.

Section 4. Payment of Common Expenses. Each unit owner shall be obligated to pay to the board of directors, or its designee, the common expenses levied against him by the board of directors under the provisions of Section 1 or Section 3 of this Article IX, or otherwise, as follows:

(a) Each annual assessment levied under the provisions of Section 1 of this Article IX shall be paid in six (6) equal successive bimonthly installments, each installment to be equal to one-sixth (1/6) of the annual assessment, which installments shall be payable on January 1, March 1, May 1, July 1, September 1 and November 1 of the fiscal year as to which the annual assessment applies; provided, however, that (i) the first annual assessment shall be paid in such number of equal or unequal bimonthly installments as the board of directors shall determine, (ii) the first annual assessment shall not begin to accrue until the first day of the first fiscal year, and (iii) no annual assessment shall begin to accrue with respect to units in any subsequent stage until the date such subsequent stage is added to the condominium, and the first bimonthly installment payable with respect to each unit in such subsequent stage shall be prorated to said date; and further provided, however, that upon default in the payment of any installment of an annual assessment on its due date, and the continuation of such default for a period of ten (10) days, the entire unpaid principal balance thereof may, at the option of the board of directors, be accelerated so that said entire assessment shall forthwith be due and payable.

(b) Any additional assessment levied under the provisions of Section 3 of this Article IX, or otherwise, shall be due and payable fifteen (15) days after the date of levy of such assessment and notice thereof to the unit owners, or at such other time or times as may be provided by the board of directors in making the assessment, and further provided that if such assessment is payable in installments, then upon default in the payment of any such installment on its due date, and the continuation of such default for a period of ten (10) days, the entire unpaid principal balance thereof may, at the option of the board of directors, be accelerated so that said entire assessment shall forthwith be due and payable.