

Declaration of Covenants, Restrictions,  
Easements, Charges and Liens

Declaration of Covenants, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") of The Landings at Fresh Creek Homeowners Association, Inc. made this 29th day of August, 1991 by Fresh Creek Landing Associates, L.P., a Delaware limited partnership, with an office at 767 Fifth Avenue, 50th Floor, New York, New York 10153 (the "Sponsor") and Realty and Equipment Corporation, a Delaware corporation with an office at Clarendon House, Church Street, Hamilton, Bermuda (the "Owner"). The Owner and the Sponsor are hereinafter collectively referred to as "the Declarant".

W I T N E S S E T H :

WHEREAS, Sponsor is the lessee of the "Phase II Property" (as hereinafter defined), the sponsor of the Condominium Offering Plan for The Landings at Fresh Creek Condominium I, a condominium regime comprised of 114 "Units" (as hereinafter defined) and the owner of the land on which the Units and common elements of the "Condominium" (as hereinafter defined) are located as more particularly described on Schedule A.

WHEREAS, the Owner is the owner of the Phase II Property which Sponsor desires to develop as a residential community of one or more Condominiums, rental apartment projects, single family residential developments or any mixture thereof, with various open spaces and other common facilities for the benefit of said community; and

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

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

WHEREAS, Sponsor has incorporated The Landings at Fresh Creek Homeowners Association, Inc., under the Not-for-Profit

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Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Declarant for itself, its successors and assigns, declares that the real property described in Section 1 of Article II and more particularly described on Schedule A-1 annexed to and made part of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

#### ARTICLE I. DEFINITIONS

The following words when used in this Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

1. "Association" shall mean and refer to The Landings at Fresh Creek Homeowners Association, Inc., a New York Not-for-Profit Corporation;
2. "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration being more particularly described on Schedule A-1 annexed to and made part of this Declaration;
3. "Common Elements" shall mean and refer to all parts of The Properties other than the Units.
4. "Common Facilities" shall mean and refer to those Common Elements and the facilities located therein intended to be devoted to the common use and enjoyment of the owners of The Properties;
5. "Unit" shall mean and refer to all units of single family residential housing situated upon The Properties whether they are houses or apartments, and whether they are condominiums, or rental units. The Properties shall contain a total of no more than 282 Units.
6. "Parking Space" shall mean and refer to any and all of the parking spaces available for the exclusive use of the Unit Owners for the outdoor parking of automobiles situated upon the Common Elements. The Properties shall contain no more than 282 Parking Spaces.
7. "Unit Owner" shall mean and refer to the record owner of fee simple title to any Unit, including the Sponsor with respect to an unsold Unit. Every Unit Owner shall be treated for all purposes as a single owner for each Unit held, irrespective of whether such ownership is joint, in common, or tenancy by the

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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.

8. "Member" shall mean and refer to each holder of one of the four such interests as set forth in Article III.

9. "Condominium" shall mean and refer to The Landings at Fresh Creek Condominium I, a condominium regime comprised of no more than 114 Units which is being developed pursuant to Article 9-B of the Real Property Law, on the real property more particularly described on the attached Schedule A.

10. "Phase II Property" shall mean and refer to those certain parcels of land contiguous to the Condominium, as more particularly described on the attached Schedule A-2, upon which the Sponsor intends to erect a total of no more than 168 Units.

11. "Sponsor" shall mean and refer to Fresh Creek Landing Associates, L.P. and its successors and assigns.

12. "Owner" shall mean and refer to Realty and Equipment Corporation and its successors and assigns.

13. "Declarant" shall mean and refer to Sponsor and Owner, and their successors and assigns.

**ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section A. The Properties.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings and the City and State of New York, being more particularly bounded and described on Schedule "A" which is annexed to and made a part of this Declaration.

**Section B. Declarant's Option to Withdraw the Phase II Property or a Portion thereof from The Properties.** The Declarant shall have the right, at any time within five years of the date of the recording of this Declaration, to notify the Association in writing that it irrevocably elects to surrender its right to include all or a portion of the 168 Units which Sponsor plans to construct within the Phase II Property. The Declarant's notification shall be in recordable form and have annexed to it a metes and bounds description of the portion or portions of the Phase II Property it is withdrawing from The Properties. In the event the Declarant should so elect, the Board of Directors of the Association shall have the written notification it receives from the Declarant recorded in the form of an amendment to this Declaration within twenty (20) days of such receipt. The Board

40266344

of Directors shall proceed with any such recordation without the need of any action by the Declarant.

In the event the Declarant so excludes a portion or portions of the Phase II Property from The Properties, the owner or owners of the land so excluded shall not be members of the Association or be liable for Association Assessments made on or after the date of the Declarant's written notification of election to the Association as to the Units to which it so surrenders its right to include in The Properties; nor shall such owner or owners be entitled to the use and enjoyment of the Common Facilities, or to any of the easements and covenants set forth in this Declaration other than the easements set forth in Section 3 of Article V; nor shall the portion or portions of the Phase II Property so removed be in any manner subject to this Declaration and the covenants, restrictions, easements, charges and liens set forth herein, other than the easements set forth in Section 3 of Article V; the reciprocal easements set forth in Section 3 of Article V shall survive any withdrawal by the Declarant of a portion or portions of the Phase II Property from The Properties.

**ARTICLE III. MEMBERSHIP AND VOTING RIGHTS  
IN THE ASSOCIATION**

The Association shall have four classes of membership interests as follows:

**CLASS A** Class A Members shall be all Unit Owners in condominium regimes situated upon The Properties. Class A Members shall not be entitled to any voting rights in the Association.

**CLASS B** Class B Members shall be the respective boards of managers of any condominium regimes presently or hereafter established upon The Properties. Each Class B Member shall be entitled to the number of votes corresponding to the number of Units in its condominium. No Class B Member shall split or divide its votes on any motion, resolution or ballot, other than for the cumulative voting procedure which shall be employed in the election of Directors.

**CLASS C** Class C Members shall be all Unit Owners of Units situated upon The Properties other than Units formerly or presently in condominium regimes. Subject to the limitations contained in Section 3 of Article VI, the Sponsor shall be considered a Class C Member with respect to each of the 168 Units planned for development on the Phase II Property, to the extent such Units of residential housing remain unbuilt. Each Class C Member shall be entitled to one vote for each Unit he or she owns.

40266344

CLASS D Class D Member shall be all Unit Owners of Units formerly, but not presently, subject to condominium regimes. Each Class D Member shall be entitled to one vote for each Unit he or she owns.

**ARTICLE IV. EASEMENTS IN THE COMMON  
ELEMENTS AND COMMON FACILITIES**

Section A. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Elements and the Common Facilities and, as to Class A, C and D Members, such easement shall be appurtenant to and shall pass with the title to every Unit.

Section B. Intentionally Omitted.

Section C. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Association, as provided in its By-Laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;
2. The right of the Declarant to grant and reserve easements and rights-of-way, in, through, under, over and across The Properties for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil, cable systems and other utilities, and the right of the Declarant to grant and reserve easements and rights-of-way, in, through, under, over, upon and across The Properties for the completion of the Sponsor's work under Sections 1 and 2 of Article V; and
3. The right of the Declarant to continue to use The Properties, including the Common Facilities, and any sales offices, model Units and parking spaces located on The Properties, in Sponsor's efforts to complete and market Units constructed on The Properties.

**ARTICLE V. DEVELOPMENT OF THE LANDINGS AT FRESH CREEK  
CONDOMINIUM I AND PHASE II PROPERTY**

Section A. The Landings at Fresh Creek Condominium I. The Sponsor shall build no more than 114 Units on the parcel

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comprising the Condominium. As long as the Phase II Property is used solely for residential purposes and reasonable accessory uses, the Condominium parcel may be used only for residential purposes and reasonable accessory uses.

Section B. Phase II Property. The Sponsor shall build no more than 168 Units on the the Phase II Property. Said Units may be constructed as one or more condominiums, rental apartment projects, single family residential developments, or any mixture thereof.

Section C. Easements. The Declarant does hereby establish and create for the benefit of the Association and for all Unit Owners from time to time in the Condominium and the Phase II Property, and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

a. Right-of-way for ingress and egress by vehicles or on foot, in, through, over, under and across the parking areas and walks in the Condominium and the Phase II Property (as they may be built or relocated in the future) for all purposes and (if the Association and/or the owners of a section of a street, parking area or walkway fail to maintain the thruway) the right to maintain and repair the same;

b. rights to connect with and make use of utility lines, wires, pipes, conduits, sewers and drainage lines which may from time to time be in or along the streets or other areas of The Properties and (if the Association and/or the owners of the land upon which sections of the lines, wires, pipes, conduits, sewers or drainage lines are located neglect to keep them adequately maintained) the rights to maintain and repair the same.

Section D. Reservations of Easements. The Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across The Properties, for the purpose of enabling Sponsor to complete its work under Sections 1 and 2 of this Article V and Section 2 of Article II and, towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the Condominium and the Phase II Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil, cable systems and other utilities and for any other materials or services necessary for the completion of the work. The Declarant further reserves the right to connect with and make use of utility lines, wires, pipes, conduits, sewers, storm water detention system and drainage lines which may from time to time be in or along the parking areas, walkways, or other areas of The Properties. The

40266344

Sponsor further reserves the right to create new easements for the benefit of other lands presently owned by or to be acquired by either Declarant to provide electrical services, telephone services, and other utility services, public or private water, sewer and drainage services and any other necessary services. The Sponsor further reserves the right to permit the users or occupants of lands owned by or controlled by either Declarant as well as the owners of the property contiguous to The Properties to utilize easements, roads, water, sewer and drainage facilities, utility lines and the like within or servicing The Properties, on fair and equitable terms and conditions to be arranged with the Association for the cost thereof. The Declarant further reserves the right and grants to the owners of electric, gas, water and sewer companies serving The Properties an easement of ingress and egress on The Properties as well as an easement in, over, under and through The Properties in order to complete the expansion of said systems serving The Properties and the adjacent property as well as to maintain and operate the electric, gas, water and sewer facilities.

**ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section A. Creation of the Lien and Personal Obligation.** The Sponsor for each Unit owned by it within The Properties and, subject to the limitations contained in Sections 3 and 4(ii) of this Article VI, for each of the 168 Units planned for development on the Phase II Property to the extent such Units remain unbuilt, hereby covenants, and each Unit Owner by acceptance of a deed for a Unit, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association such assessments as are fixed by the Association's Board of Directors and assessed to the Members as hereinafter provided. All sums assessed by the Association but unpaid, together with such interest thereon as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, as hereinafter provided, shall also be a personal obligation of the person who was the owner of such property at the time when the assessment fell due.

**Section B. Purpose of the Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties as a community and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Facilities and of the Units situated upon The Properties, including as to the Common Facilities without limiting the foregoing, the payment of insurance thereon and repair, replacement, and additions thereto, and the cost of labor, equipment, materials, management and

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supervision thereof, and the landscaping of the Common Elements of the Condominium and other condominium developments on the Phase II Properties.

**Section C. Sponsor's Liability on Planned Phase II Property Units.** The Sponsor shall initially be considered a Class C Member with respect to each of the 168 planned but unbuilt Units on the Phase II Property. As a Class C Member, the Sponsor shall be liable for maintenance assessments on said Units, as hereinafter provided. In the event, however, that the Sponsor decides to build fewer than 168 Units on the Phase II Property, it shall have the right, at any time within five (5) years of the filing of this Declaration, to notify the Secretary of the Association in writing of the irrevocable surrender of its right to build one or more of said Units. The Sponsor shall not be considered a Member as to any planned Phase II Property Units to which it irrevocably surrenders its right to build as aforesaid. The Sponsor, based upon the provisions of this Section, shall not be considered a Class C Member as to any Phase II Property Unit to which title has been conveyed, as the owner of such Unit, will automatically hold a membership interest in the Association in its own right.

**Section D. Assessments.** The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Member prior to assessing the Members thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual requirements and any supplemental requirements shall be allocated between, assessed to and paid by the Member as follows:

a. Each Class A Member shall pay a portion of said requirements, which shall be computed by applying the Member's percentage of common interest in his condominium regime to a fraction of said requirements, the numerator of which fraction shall equal the number of Units in his condominium and the denominator of which shall be equal to the number of Units on The Properties, exclusive of the unbuilt Units the Sponsor plans to construct on the Phase II Property and the Units the Sponsor irrevocably surrenders its right to build as provided for in Section 3 of this Article VI. Payments of assessments by Class A Members shall be made to the Association through the Board of Managers of their respective condominiums (Class B Members). Each Class B Member shall collect the Association's assessments from its Unit Owners together with, but not as a

REEL 2737 PG 570

part of, the condominium's common charges. The sum due the Association from each individual Unit Owner shall constitute an assessment of the Board of Directors and unpaid assessments shall constitute liens on the individual Units, subject to foreclosure as hereinafter provided;

b. Each Class C Member shall pay a fraction of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Units on The Properties, exclusive of the unbuilt Units the Sponsor plans to construct on the Phase II Property, the Units the Sponsor irrevocably surrenders its right to build as provided for in Section 3 of the Article VI and the built unsold Units owned by Sponsor in any condominium on The Properties.

In supplying services to the Members, the Owner and/or the Sponsor as the case may be may direct the Association not to supply maintenance or other services to any portions of The Properties to which title remains in the Sponsor or Owner.

c. Each Class D Member shall pay a portion of said requirements which shall be computed by applying the Member's former percentage of common interest in his condominium for the last full year prior to the withdrawal of the property from the provisions of Article 9-B of the Real Property Law to a fraction of said requirements, the numerator of which shall equal the number of Units in his old condominium and the denominator of which shall be equal to the number of Units on The Properties, exclusive of the Units the Sponsor plans to construct on the Phase II Property and the Units the Sponsor irrevocably surrenders its right to build as provided for in Section 3.

Notwithstanding anything to the contrary contained in this Declaration or the By-Laws, the Sponsor's covenant and obligation to pay assessments shall be limited to the lesser of the following sums:

(1) the maximum assessment payable by Sponsor determined in accordance with subsections (i) and (ii) above of this Section 4; and

(2) (i) the actual costs of operation, maintenance, reserves and repair of the Common Facilities for each fiscal year of the Association, less (ii) all assessments levied against all other Members for such fiscal year. If (a) is greater than (b) for any fiscal year, the Sponsor shall be entitled to credit such difference against its obligation to pay assessments in any subsequent fiscal year.

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Section E. Due Dates; Duties of the Board of Directors.

All assessments shall be payable monthly in advance as ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Unit and shall prepare a roster of the Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid charges due from such Member.

Section F. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien; Remedies of the Association.

If an assessment is not paid on the date when due, as fixed by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Member's Unit which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to, City and State taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering the Unit. The personal obligation of the Member who was the Owner of the Unit when the assessment fell due to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest rate chargeable to individuals pursuant to law and the Association may bring an action at law against the Member or former Member personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court together with the costs of the action.

Each Class B Member shall be individually liable, as agent for its Unit Owners as a group only and not in the board members' personal capacities, for collecting the Association's assessments against its Unit Owners and paying same to the Association. The individual liability of the Class B Members shall arise simultaneously with the commencement of the assessment by the Board of Directors against the Class A Members. The Board of

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Directors may bring an action at law against a Class B Member for the delinquent assessments of its Unit Owners if said assessments are not paid within thirty (30) days of the delinquency date and there shall be added to the amount of such assessments the costs of preparing and filing the complaint in the action, and in the event a judgment is obtained, such judgment shall include interest at the highest rate permitted by law on the assessments from the date of delinquency as above provided and reasonable attorneys' fees to be fixed by the court together with the costs of the action. In the event the Board of Directors recovers a judgment against a Class B Member, the Class B Member shall be empowered as successor to the rights of the Association, with full power of substitution, to bring an action at law against any such Class A Member who failed to pay it any amounts assessed by the Association as aforesaid to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and the answer in the Association's action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court together with the costs of the actions.

#### ARTICLE VII. ARCHITECTURAL CONTROL

No building, fence, wall or other structure, or change in landscaping, shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, shape, height, 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, or by an architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be required and this Article will be deemed to have been fully complied with. The provisions of this Article VII shall not apply to the Declarant.

#### ARTICLE VIII. USE OF PROPERTY

Section A. Repairs and Maintenance. It shall be the responsibility and obligation of the Association to insure that The Properties are kept free of snow, that the internal drains and storm water detention system and walkways, seating areas, tot lots and parking areas are maintained and repaired and that the landscaping is maintained. The cost of all such landscaping, snow removal, and maintenance and repairs shall be paid for out of the general Association assessments.

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The Association and its agents are hereby afforded control and all necessary easements to enable the Association to discharge this maintenance obligation. The cost of such maintenance and related insurance premium and expenses shall be paid for out of the general Association assessments. This section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the internal drains and storm water detention system.

Section B. Subject to Covenants and Restrictions. The use of a Unit by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Directors and the following covenants and restrictions:

1. The Unit and area restricted to the Member's use shall be maintained in good repair and overall appearance;
2. Any Member who mortgages his Unit shall notify the Board of Directors providing the name and address of his mortgagee;
3. The Board of Directors shall, at the request of the mortgagee of the Unit, report any delinquent assessments due from the Unit Owner;
4. No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents;
5. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances the regulations of all governmental bodies having jurisdiction thereof shall be observed;
6. Regulations promulgated by the Board of Directors concerning the use of the property shall be observed by the Members; provided, however, that copies of such regulations are furnished to each Member prior to the time the said regulations become effective; and
7. The maintenance assessments shall be paid when due.

ARTICLE IX. GENERAL PROVISIONS

Section A. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for

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the benefit of, and restricted solely to, the Association, the Declarant and the owners of Units constructed on The Properties; and any owner may grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject in the case of the Common Facilities to the Rules and Regulations of the Board of Directors, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section B. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Sponsor, any Member, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until December 31, 2055, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by eighty percent (80%) of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective, however, unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Common Facilities, the Condominium and the Phase II Property by Sections 3 and 4 of Article V shall be perpetual, shall run with the land and shall survive destruction, reconstruction and relocation of the physical structures, unless said provisions are abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, Articles I through III and Article VI of this Declaration may be amended by an instrument signed by Members holding not less than ninety percent (90%) of the votes of the membership at any time until December 31, 2035 and thereafter by an instrument signed by Members holding not less than eighty percent (80%) of the votes of the membership. Any amendment must be properly recorded to be effective.

Notwithstanding anything herein to the contrary, so long as the Sponsor continues to hold 25 or more Class C Memberships, said Sponsor's prior written consent shall be required in order to amend either this Declaration or the By-Laws of the Association and, if the resulting cumulative financial cost to the Association for the year inclusive of any resulting deficiency or liability, would exceed 10% of the Association's prior year operating budget, to take any action to (a) make capital additions or improvements; (b) increase the level of services over those provided for in the prior year's operating budget; (c) establish additional reserve funds; (d) borrow money;

or (e) hire additional employees (except to fill existing staff vacancies).

Section C. Merger. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to The Properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with The Properties together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants, and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to The Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

Section D. Intentionally Omitted.

Section E. Notices. Any notice required to be sent to any Member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or owner on the records of the Association at the time of such mailing.

Section F. Administration. The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Schedule "B".

Section G. Severability. Invalidation of any of the covenants, limitations or provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions hereof, and the same shall continue in full force and effect.

Section 8. Subordination. This Declaration is and shall continue to be subject and subordinate to the lien of that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated April 9, 1990 made and delivered by Declarant to Citibank, N.A. and every other serial building loan mortgage which may hereafter be recorded as a lien against The Properties by Citibank, N.A., and to the lien of that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated April 9, 1990 made and delivered by Declarant to Citibank, N.A., and to any renewals, amendments, increases, modifications or extensions of any of the foregoing.

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IN WITNESS WHEREOF, the Declarants have hereunto set their hands and seals.

FRESH CREEK LANDING  
ASSOCIATES, L.P.

By: Fresh Creek Estates, Inc.,  
general partner

By: *J. R. [Signature]*  
President

REALTY AND EQUIPMENT CORPORATION

By: *J. R. [Signature]*

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STATE OF NEW YORK )  
COUNTY OF NEW YORK )

ss.:

On the 28 day of August, 1991, before me came Harvey Rudman, to me known, who being by me duly sworn did depose and say that he is the President of Fresh Creek Estates, Inc., the general partner of Fresh Creek Landing Associates, L.P., the limited partnership described herein, and which executed the foregoing instrument; and that he signed his name by like order of said limited partnership.

FRANCINE REFF  
NOTARY PUBLIC, State of New York  
No. 41-4883074  
Qualified in Queens County  
Commission Expires June 23, 1992

Francine Reff  
Notary Public

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

ss.:

On the 28 day of August, 1991 before me came Harvey Rudman to me known, who being duly sworn did depose and say that he is the vice President of Realty and Equipment Corporation, the corporation described herein, and which executed the foregoing instrument; that he signed his name by order of the board of directors of said corporation.

FRANCINE REFF  
NOTARY PUBLIC, State of New York  
No. 41-4883074  
Qualified in Queens County  
Commission Expires June 23, 1992

Francine Reff  
Notary Public

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