
DECLARATION

Establishing the St. Elmo Condominium, Town of Chautauqua, New York, Pursuant to Article 9-B of the Real Property Law of the State of New York.

NAME: *ST. ELMO CONDOMINIUM*

SPONSOR: St. Elmo Associates
11 Roberts Avenue
Chautauqua, New York 14722

DATE OF
DECLARATION: _____

LAW OFFICES OF GEORGE R. GRASSER

Attorneys for Sponsor
3350 Marine Midland Center
Buffalo, New York 14203

*DECLARATION OF
ST. ELMO CONDOMINIUM*

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I.	SUBMISSION OF PROPERTY.....	1
Section 1.01	Submission.....	1
ARTICLE II.	NAME OF CONDOMINIUM.....	1
Section 2.01	Name.....	1
ARTICLE III.	BUILDING.....	1
Section 3.01	Building.....	1
ARTICLE IV.	UNITS.....	1
Section 4.01	Number and Address of Units.....	1
Section 4.02	Designations, Plans and Location of Units.....	1
Section 4.03	Changes in Size and Number of Units.....	2
Section 4.04	Dimensions of Units.....	3
Section 4.05	Ownership of Units.....	3
Section 4.06	Use of Units.....	3
Section 4.07	Partition of Units.....	4
ARTICLE V.	COMMON ELEMENTS.....	5
Section 5.01	Definition of Common Elements.....	5
Section 5.02	Interest in Common Elements.....	5
Section 5.03	Eminent Domain.....	5
Section 5.04	Common Elements to Remain Undivided.....	7
Section 5.05	Abandonment, Subdivision, Encumbrance, or Transfer of Common Elements.....	7
Section 5.06	Limited Common Elements.....	7
ARTICLE VI.	EASEMENTS AND OTHER RIGHTS.....	8
Section 6.01	Access, Utilities, Pipes and Conduits, Support.....	8
Section 6.02	Access of Board of Managers.....	8
Section 6.03	Easement for Encroachments.....	9
Section 6.04	Easement of Necessity.....	9
Section 6.05	Right to Maintain Tables and Chairs on Concourse Level Common Element Areas.....	9

TABLE OF CONTENTS (continued)

ARTICLE VII.	VOTING RIGHTS	9
Section 7.01	Voting Rights.....	9
ARTICLE VIII.	COMMON CHARGES	9
Section 8.01	Allocation of Common Charges.....	9
Section 8.02	Common Charges – Personal Obligation of Unit Owner	10
ARTICLE IX.	BOARD OF MANAGERS	11
Section 9.01	Incorporation of Board of Managers.....	11
Section 9.02	Board of Managers.....	11
Section 9.03	Administration.....	11
Section 9.04	Power of Attorney to Board of Managers.....	11
Section 9.05	Acquisition of Units by Board of Managers	12
Section 9.06	Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Managers.....	12
ARTICLE X.	OBLIGATIONS, RESPONSIBILITIES, COVENANTS AND RESTRICTIONS.....	13
Section 10.01	All Owners, Tenants and Occupants Subject to Condominium Documents Which Run With the Land.....	13
Section 10.02	Units to Be Properly Maintained.....	13
Section 10.03	No Structural Alterations	13
Section 10.04	No Nuisances.....	13
Section 10.05	No Sale Without Permission of Chautauqua Institution	13
Section 10.06	No Immoral or Unlawful Use.....	13
Section 10.07	Obligation to Maintain Utility Service.....	14
Section 10.08	Porches, Balconies and Patio Areas	14
Section 10.09	Rules and Regulations.....	14
ARTICLE XI.	SELLING, LEASING AND MORTGAGING OF UNITS.....	14
Section 11.01	Right of First Refusal on Sale or Lease of Commercial Units by Adjoining Unit Owners and the Board of Managers	14
Section 11.02	Unauthorized Sale, Transfer, Lease or Mortgage is Voidable.....	15
Section 11.03	Notice.....	15
Section 11.04	Unit Owner's Right to Withdraw Unit from Proposed Sale or Lease.....	16
Section 11.05	Form of Consent.....	16
Section 11.06	Mortgaging of Units	16
Section 11.07	Other Restrictions on Sale, Lease or Mortgaging of Units.....	16
Section 11.08	Situations to Which Restrictions on Selling Leasing and Mortgaging of Units Do Not Apply	17

TABLE OF CONTENTS (continued)

ARTICLE XII.	AMENDMENT AND TERMINATION	17
Section 12.01	Amendment	17
Section 12.02	Termination	18
ARTICLE XIII.	GENERAL	18
Section 13.01	Service of Process	18
Section 13.02	Invalidity	18
Section 13.03	Waiver	18
Section 13.04	Captions	1918
Section 13.05	Gender	19
SCHEDULE A	DESCRIPTION OF CONDOMINIUM PROPERTY	20
SCHEDULE B	DESCRIPTION OF THE BUILDING	21
SCHEDULE C	UNIT DESIGNATION/PERCENTAGE INTEREST/SQUARE FOOTAGE/ROOMS/ACCESS TO COMMON ELEMENTS/TAX ACCOUNT NOS.	
SCHEDULE D	PLOT PLANS SHOWING DESIGNATION AND LOCATION OF UNITS WITHIN BUILDING	
SCHEDULE E	BYLAWS	

DECLARATION

Establishing

ST. ELMO CONDOMINIUM

For the Premises described on Schedule A attached hereto in Chautauqua, New York, pursuant to Article 9-B of the Real Property Law of the State of New York.

St. Elmo Associates, a New York limited partnership, having an office at 11 Roberts Avenue, Chautauqua, New York 14722, hereinafter referred to as the Sponsor does hereby declare:

*ARTICLE I
SUBMISSION OF PROPERTY*

Section 1.01. Submission. The Sponsor hereby submits the land described on Schedule A attached hereto and made a part hereof, together with all improvements thereon erected (hereinafter called the *Property*), to the provisions of Article 9-B of the Real Property Law of the State of New York and declares that the Property shall be a Condominium pursuant to said Article 9-B. The Property is within the enclosed grounds of Chautauqua Institution, Chautauqua, New York.

*ARTICLE II
NAME OF CONDOMINIUM*

Section 2.01. Name. This Condominium shall be known as the *St. Elmo*, sometimes hereinafter referred to as the *Condominium*. The Condominium Property shall be comprised of the *Units* (see Section 4.01 below) and the *Common Elements* (see Section 5.01 below) on the Property.

*ARTICLE III
BUILDING*

Section 3.01. Building. There is one building (the *Building*) located on the Property. Schedule B attached hereto and made a part hereof contains a description of the Building, including the number of stories, basement, and the materials of which the Building is constructed.

*ARTICLE IV
UNITS*

Section 4.01. Number and Address of Units. There are 60 residential apartment Units, hereinafter sometimes referred to as the *Residential Units*, and 7 Units designed for commercial use, hereinafter sometimes referred to as *Commercial Units*. The Units are designated by number. The address of all Units is One North Pratt Avenue.

Section 4.02. Designations, Plans and Location of Units. Annexed hereto and made a part hereof as Schedule C is a list of all Units, their Unit designations, tax lot numbers, approximate areas, number of rooms, percentage of interest in the *common elements*, as hereinafter defined, and common elements to which each Unit has immediate access (all except the percentage interest in the common elements being shown on the floor plans of the Building, certified by J. Scott Lawson, registered architect, and filed in the Chautauqua County Clerk's office simultaneously with this Declaration). If

such floor plans do not include a verified statement by such architect that such plans fully and fairly depict the layout, location, Unit designations, and approximate dimensions of any particular Unit or Units as built, there shall be recorded prior to each first conveyance of such particular Unit or Units an Amendment to this Declaration, to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or filed simultaneously with such Amendment, fully and fairly depict the layout, location, Unit designations, and approximate dimensions of those particular Unit(s) as built.

The number of rooms in a Commercial Unit may be changed by the Owner of the Unit subject to, as provided in Section 10.03 of this Declaration, the consent of the Board of Managers of the Condominium if a structural change.

Section 4.03. Changes in Size and Number of Units. Notwithstanding anything to the contrary in this Declaration or Bylaws, the following shall be allowed subject to such (i) being permissible under the then current provisions of applicable New York law, and (ii) not affecting the structural soundness of the Building:

- a. The percentage interests in the common elements of two (2) or more Units may be altered with the consent of all Unit Owners whose percentages of common interest would be different after such alteration;
- b. Two (2) or more Units may have their boundaries relocated or may be combined into a lesser number of Units and one (1) or more Units may be divided into a greater number of Units, subject to (i) the consent of all Unit Owners whose Units are increased or decreased in size or altered as a result of such relocation, combination, or division, and (ii) a reallocation of the percentage interests in the common elements to reflect the effects of such relocation, combination, or division;
- c. Limited common elements may be reallocated among Unit Owners having the right to use same;
- d. A common hallway area may be incorporated into a Unit or Units provided such hallway space is no longer needed for ingress to or egress from any Unit or other portion of the Building (other than the Unit or Units into which such space is incorporated); such incorporation shall be deemed an *abandonment* and subject to Section 5.05 of this Declaration;
- e. A reallocation of the Condominium profits and expenses in a manner which is more fair and reasonable under the circumstances, which reallocation shall recognize the importance of having a restaurant area and commercial space in the Condominium.

In the event of any combination or division of Units or incorporation of a common hallway into a Unit or Units, a Unit Owner may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems of the Building or lessen the support of any portion of the Building.

The cost of any such alteration, relocation, combination, division, or incorporation shall, unless otherwise determined by the Board of Managers, be the responsibility of the Owner or Owners of the Units being altered, relocated, combined, or divided or into which a hallway is being incorporated.

All of the above shall require (i) the consent of the Board of Managers after reviewing plans

submitted to it in accordance with Section 10.03 of this Declaration, which consent shall not be unreasonably withheld, and (ii) an amendment to the Declaration executed by the Board of Managers and by all Unit Owners and their mortgagees of those Units being relocated, subdivided, combined, or into which a common hallway is being incorporated or whose interests in the common elements are being reallocated, which amendment shall contain any necessary words of conveyance between Unit Owners, and a filing in the Chautauqua County Clerk's office of new or revised floor plans, tax lot numbers, architect's or engineer's verifications and such other changes as are necessary to enable the Condominium Declaration to be in compliance with the then current provisions of applicable New York law.

After division, relocation, or combination of a Unit or Units, the common interests in the common elements appurtenant to such Units shall equal in total the common interests applicable to the Unit or Units prior to such division, relocation, or combination, and, in the event of the incorporation of a common hallway area into a Unit or Units, the interests in the common elements appurtenant to all Units will be adjusted in the amendment to the Declaration (see above) to provide for the increase in the percentage interest in the common elements of the Unit or Units which incorporated a portion of the common hallway.

Section 4.04. Dimensions of Units.

- a. Residential Units. Each Residential Unit consists of the area measured horizontally from the unexposed faces of the drywall at the exterior walls of the Building to the unexposed faces of the drywall at walls dividing the Unit from another Unit or from a hallway or other (e.g., closet, elevator, stairway) common element area and vertically from the lower surface of the subfloor forming the floor of the Unit up to the upper face of the drywall forming the ceiling of the Unit. All pipes, wires, and conduits from any gas, electric, or water meter servicing the Unit to the Unit are part of that Unit. Any and all heating units and hot water heaters (and the connections thereto) which serve only one Unit are part of the Unit served.
- b. Commercial Units. Each Commercial Unit consists of the area measured horizontally from the unexposed faces of the drywall at the exterior walls of the Building or at the wall dividing the Unit from another Commercial Unit to the unexposed faces of the drywall, dividing the Unit from another Commercial Unit or other (e.g., closet, elevator, stairway, hallway) common element area and vertically from the upper surface of the concrete forming the floor of the Unit up to the upper face of the acoustical tiles forming the ceiling of the Unit.

Commercial Units 1, 2, and 3 are measured horizontally from the unexposed faces of the drywall at the exterior walls of the Building to the unexposed faces of the drywall at walls dividing the Unit from another Unit or from the concourse hallway or other common element areas (e.g., closet, elevator, stairway).

Section 4.05. Ownership of Units. Each Unit will be sold or transferred to one or more parties (hereinafter referred to as the *Unit Owners*) with each Unit Owner obtaining fee ownership to the Unit acquired and the appurtenant undivided interest in the *common elements* (see Article V of this Declaration) of the Condominium, as set forth in Schedule C of this Declaration.

Section 4.06. Use of Units. Units 1 through 7 shall be used for commercial purposes only, and all other Units shall be used for residential purposes only, except that:

1. Residential Units on the first floor of the Building having access from Ames Avenue, Wyeth

Avenue, and Vincent Avenue, *i.e.*, Units 101, 103, 105, 106, 107, 109, 111, 115, 116, 117, and 118, may be used for professional offices, *e.g.*, doctor, dentist, lawyer, insurance agent, realtor, investment advisor, financial planner, etc., provided (i) access by the public to all Units except 101 shall be by exterior door entrances and not through the interior of the Building, and (ii) any signs shall be subject to the control and approval of the Board of Managers of the Condominium and also to any rules and regulations which the Board of Managers adopts from time to time with respect to signage on the Property.

2. Subject to the consent of the Board of Managers, a Commercial Unit may be converted to residential use, and, if so converted, the common elements applicable to such Commercial Unit shall become Residential Unit common elements (for all purposes under this Declaration and the Bylaws. The Commercial Units shall, unless otherwise determined in accordance with the following procedure, have the following uses: Unit 1 – storage room; Unit 2 – restaurant and meeting place; Unit 3 – health club; and all other Commercial Units – retail shops.

(a) Any Commercial Unit Owner(s), prospective Commercial Unit Owner(s), lessee, or prospective lessee of a Commercial Unit, seeking approval from the Board of Managers to use a Commercial Unit for a purpose not specifically permitted for such Unit in this subsection 2 above, shall request such approval by written notice to the Board of Managers. Such notice shall clearly state the use for which such approval is sought. The party seeking such approval shall also furnish the Board of Managers with such other information as it shall reasonably request, within ten (10) days after receipt of such request. The party seeking such approval shall use the form, if any, supplied by the Board in order to supply such information.

(b) The Board of Managers shall respond to the request in writing within 40 days after the receipt of such request or receipt of such further information as the Board of Managers shall reasonably require, whichever is later. The failure by the Board of Managers to respond within such 40-day period shall be deemed to constitute approval of such use. The party obtaining such approval may demand and shall be entitled to receive such approval from the Board of Managers in recordable form. The approval or disapproval of any such request shall be made by the Board of Managers in its sole discretion. Notwithstanding any such approval as obtained herein from the Board of Managers, no change in use to a restaurant or dispensary of prepared foods shall be permitted without the specific consent in writing of the Owner (and any lessee) of Unit 2 and of any other Unit which has previously obtained permission from the Board of Managers to be used as a restaurant or prepared food dispensary and which, at the time such request is made, is so being used. Any use of a Unit shall be subject to such use being permitted by applicable zoning and other governmental regulations and the enforceable restrictive covenants of Chautauqua Institution and any enforceable rules and regulations adopted by Chautauqua Institution pursuant to such restrictive covenants.

Section 4.07. Partition of Units. No Unit (including such Unit's interest in the common elements appurtenant thereto) shall be subject to partition by the Unit Owner; provided, however, that the foregoing shall not be construed as prohibiting any division or combination of Units or structural alterations or changes in the number of rooms in a Unit upon approval of the Board of Managers as provided for in Section 4.03 of this Declaration or in the Condominium Bylaws.

ARTICLE V

COMMON ELEMENTS

Section 5.01. Definition of Common Elements. The common elements consist of all the Property except the Units, including, but without limitation, the following: (i) all land within the boundaries of the Condominium Property; (ii) the roof, foundations, columns, girders, beams, elevators, stairways and stairwells accessing hallways, supports of exterior walls, porches, and balconies of the Building; (iii) all perimeter walls (but not drywall) of the Units; (iv) the common lobby area on the first floor of the Building; the halls, stairs, washrooms, mechanical room and utility closet on the lower or concourse level of the Building; the laundry areas on the first through fourth floors of the Building; (v) all utility or other pipes, wires, conduits, and other material which are not part of the Units, *i.e.*, which service two (2) or more Units, and are not owned by public utility companies, utility districts, independent authorities, or Chautauqua Institution; (vi) the open space or landscaped areas; and (vii) all other apparatus and installations on the Property for common use or which may be necessary or convenient to the existence, maintenance, or safety of the common property or two (2) or more of the Units.

Section 5.02. Interest in Common Elements. Each Unit Owner shall have such percentage interest in the common elements as is set forth on Schedule C attached hereto or as may result by reason of a division or combination of a Unit or Units or the incorporation of hallway space into a Unit in accordance with Section 4.03 of this Declaration or by eminent domain as provided in Section 5.03 below and shall bear such percentage of the common expenses of the Condominium subject to specific allocation of certain expenses as may otherwise be provided in this Declaration or in the Bylaws of the Condominium. The percentage of interest of each Unit in the common elements has been determined in accordance with Real Property Law Section 339-(iv) on the basis of the approximate square feet of floor area within each Unit as it relates to the total square feet of floor area of all Units in the same use classification or location, *i.e.* (i) Commercial Units, located on the concourse or lower level of the Building, designed for retail shop use; (ii) Commercial Units, located on the concourse or lower level of the Building, designed for uses other than retail shops; and (iii) Residential Units, all of which are located on floors one (1) through five (5) of the Building; and the additional factors, with respect to the Commercial Units only, of relative value including permitted use and the availability of common elements for exclusive or shared use.

Except as provided in Section 4.03 above and in Section 5.03 below, the interest in the common elements as expressed herein shall (i) have a permanent character, (ii) not be altered without the consent of all Unit Owners affected, as well as their mortgagees, expressed in a duly recorded amendment to this Declaration, (iii) not be separated from the Unit to which it appertains, and (iv) be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

Section 5.03. Eminent Domain. Notwithstanding Section 5.02 above, if a Unit or Units, or the common elements, or any portion thereof, is taken by eminent domain, the following shall apply:

- (a) **Action to Contest Condemnation.** The Board of Managers shall have the exclusive right to contest any condemnation or eminent domain proceeding which is directed at taking any portion of the common elements or which touches upon, concerns, or affects the use of the common elements. No Unit Owner or tenant of a Unit shall impair or prejudice the action of the Board of Managers in contesting such condemnation. Such restriction or prohibition shall not preclude a Unit Owner or tenant of a Unit from contesting the taking in such

condemnation or eminent domain proceeding of the Unit owned or rented by such Unit Owner or tenant. In any action contesting a taking by condemnation or eminent domain proceeding, the Board of Managers shall request the court to set forth the allocation of the condemnation award among the Unit Owners affected, taking into account the respective percentage interests in the common elements, the effect of the taking on each Unit affected thereby, and any other relevant factors.

- (b) Partition Action in Lieu of Continuation of Condominium After Partial Taking by Condemnation. If any condemnation or eminent domain proceeding results in a partial taking of the Property, the property or so much thereof as shall remain shall be subject to an action for partition as provided for by Section 339-t of the Real Property Law, in which event the net proceeds of sale, together with the net proceeds of the award from the condemnation or eminent domain, shall be distributed among the Unit Owners in proportion to their respective common interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of such Owner's share all liens on such Owner's Unit.
- (c) Distribution of Condemnation Awards for Taking of Common Elements. Except as provided in (b) above and any award obtained by a Unit Owner for the Unit as further provided in (a) above, in the event all or part of the common elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Board of Managers, which shall arrange for the repair, restoration, or replacement of such common elements to the extent reasonably possible and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments.

If there shall be a surplus of such proceeds or if the Board of Managers cannot reasonably repair, restore, or replace the common elements taken, the proceeds shall be distributed among the Unit Owners and the percentage interests in the common elements of the Condominium reallocated among the remaining Units as the court shall have directed, or as provided in (d) below if there was no direction by the court, taking into account the respective percentage interests in the common elements of the Units affected thereby, the effect of the taking on each Unit affected thereby after the completion of any repair, restoration, or replacement by the Board of Managers, and any other relevant factors. Any court direction as to such distribution shall be final. Any Unit Owner or tenant who wishes to contest a determination by the Board of Managers may do so by submitting the matter to the American Arbitration Association for a determination of a fair and proper distribution, or reallocation of percentage interests in the common elements, as the case may be, which shall be binding on the Board of Managers and on all Unit Owners and tenants. The cost of such arbitration shall be borne solely by the Unit Owner or tenant submitting the matter for arbitration.

After any determination for reallocation of percentage interests in the common elements, the Unit Owners shall promptly prepare, execute, and record an amendment to the Condominium Declaration reflecting such reallocation, which said amendment need only be executed by Unit Owners affected and by a majority of the Board of Managers.

- (d) Partial or Total Taking of Units. Subject to the direction of any court as described in (c)

above for the reallocation of the percentage interests in the common elements, if an entire Unit is so taken, or if part of a Unit is taken such that the remaining portion may not be practically or lawfully used for any purpose permitted by this Declaration, that Unit's entire interest in the common elements shall be automatically reallocated to the remaining Units in proportion to the respective common elements interests of those Units before the taking. If part of a Unit is so taken, such that the remaining portion may be practically and lawfully used for a purpose permitted by this Declaration, that Unit's interest in the common elements shall be reduced in proportion to the reduction and size of the Unit in a manner consistent with the manner in which common element interests were originally determined under Section 5.02 above; the portion of the interest in the common elements so divested shall be automatically reallocated to that Unit and to the remaining Units in proportion to the respective common element interests of those Units before the taking, with the partially-taken Unit participating in the reallocation on the basis of its reduced interest in the common elements.

- (e) Condemnation Provisions Subject to Existing Law. All provisions of this Section 5.03 are subject to interpretation in accordance with the law in effect at the time of any condemnation or eminent domain proceeding. Should all or any portion of the provisions of this Section 5.03 be deemed illegal at such time, the distribution of proceeds, rights with respect to partition, and allocation of percentage interests in the common elements after a partial taking shall be as a court of law shall determine.

Section 5.04. Common Elements to Remain Undivided. Except as is permitted by Sections 4.03 and 5.03 above, the common elements shall remain undivided and shall not be subject to partition, except that the foregoing shall not be construed as prohibiting any division or combination of Units upon approval of the Board of Managers as provided in the Condominium Bylaws.

Section 5.05. Abandonment, Subdivision, Encumbrance or Transfer of Common Elements. The common elements shall not be abandoned, subdivided, encumbered, or transferred (except as may be permitted by Section 4.03 above or by a public utility or independent authority or for other public purposes consistent with the intended use of the common elements) without the consent of (i) Unit Owners having a majority in the aggregate of common interest who shall vote upon written ballot which shall be sent to every Unit Owner not less than 30 days nor more than 50 days prior to the date or initial date set for voting on the proposed abandonment, encumbrance, or transfer, and (ii) all Unit Owners whose percentage interest in the common elements is increased. No such abandonment or encumbrance shall be made if any lending institution first mortgagee of a Unit advises the Board of Managers in writing, prior to the date set for voting on the proposed abandonment or encumbrance, that it is opposed to such abandonment, subdivision, encumbrance, or transfer, which opposition shall not be unreasonable. Written notice of any such proposed abandonment, subdivision, encumbrance or transfer shall be sent to all lending institution first mortgagees whose names appear on the records of the Condominium not less than 30 days nor more than 50 days prior to the date set for voting on the proposed abandonment or encumbrance. A *lending institution first mortgagee* as referred to herein shall mean any bank, savings and loan association, life insurance company, or credit union which holds a mortgage on the Property or the holder of a true purchase money first mortgage.

Notwithstanding the foregoing, the Condominium Board of Managers shall have the power to grant easements, rights of way, or licenses for utilities or other similar services (e.g., cable television) across the common elements, with or without consideration.

Section 5.06. Limited Common Elements. Subject to (i) the right of the Board of Managers to

enter upon any restricted area for maintenance, repair, or improvement of a Unit or common element, and (ii) the rules of the Board of Managers (see Article VII of the Bylaws, attached hereto as Schedule E), the following portions of the common elements are limited in use as specified below:

- a. Each porch or balcony that is accessible from only one (1) Unit is restricted in use to that Unit.

*ARTICLE VI
EASEMENTS AND OTHER RIGHTS*

Section 6.01. Access, Utilities, Pipes and Conduits, Support. Each Unit Owner shall have such easement of access to other Units and to the common elements, and each Unit shall be subject to such easement, as is reasonably necessary for the Owners of Units to have ingress and egress to their Units and to maintain, repair, and replace, as necessary, their Units, including, if any, the ducts, pipes, wires, cables, and conduits running from the meters or equipment servicing their Units to the Units. Each Unit Owner shall have an easement in common with the Owners of all other Units to use, in accordance with present use and present available facilities, all pipes, wires, ducts, cables, conduits, utility lines, and other common elements located in any of the other Units and serving the Unit or Units of such Unit Owner. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use in accordance with present use and present available facilities, the pipes, ducts, cables, wires, conduits, utility lines and other common elements serving such other Units and located in such Unit. Each Unit Owner shall have, and each Unit and the common elements shall be subject to, such easements as are necessary for horizontal, vertical, and lateral support.

Each Unit shall be subject to an easement in favor of the Board of Managers to check or regulate the heating system of the other Units to assure that the temperature of such Units is not less than 55° Fahrenheit as required by Section 10.07 of this Declaration. (Each Unit Owner shall provide the Board of Managers with a key or keys to such Owner's Unit so that access may be readily obtained in an emergency and to check the temperature of the Unit for purposes of assuring that pipes do not freeze during the winter months.)

Section 6.02. Access of Board of Managers. The Board of Managers, its agents, contractors, and employees, shall have an easement and right of access to each Unit for the purpose of (i) making inspections; (ii) removing violations of the Declaration (including violations for failing to maintain the minimum temperature in a Unit as required by Section 10.07 of this Declaration) or the Bylaws or Rules and Regulations of the Condominium; (iii) correcting any condition originating in a Unit and threatening another Unit or a common element; (iv) performing installations, alterations, or repairs to the mechanical or electrical services or other common elements in a Unit or elsewhere; (v) correcting any condition which violates the provisions of any mortgage covering another Unit; (vi) making any maintenance or repair which pursuant to the Bylaws an Owner is required to make and which such Owner has failed to make; (vii) complying with any laws, orders, rules or regulations of any governmental body having jurisdiction thereof or of Chautauqua Institution; and (viii) maintaining, repairing, or replacing the common elements or any pipe, wire, duct, cable, conduit, or utility line located in any Unit or in the common elements and servicing two or more Units. The cost of such maintenance, repairs, improvements, or replacements shall be a common expense unless otherwise provided in this Declaration or in the Bylaws. The Board of Managers shall have a right of access to all common elements (irrespective of the restricted nature of such common elements) to remove violations and for inspection, maintenance, repair, or improvement. The rights of access are to be exercised

(unless in an emergency) at reasonable hours and upon reasonable notice to the Unit Owner involved. In the case of an emergency, the right of access shall be immediate, regardless of the presence of the Unit Owner involved.

Section 6.03. Easement for Encroachments. If any portion of a Unit or the common elements (whether restricted in use to an individual Unit Owner or not) encroaches or shall hereinafter encroach upon another Unit or the common elements as a result of: (i) the construction of the Building ~~by the Sponsor~~ or the settling or shifting of the Building, or (ii) any repair or restoration by the Board of Managers of the Building, any Unit, or the common elements, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall and does exist. Such easements as provided in this Section shall exist so long as the Building or its reconstruction shall stand.

Section 6.04. Easement of Necessity. Each Unit shall have and each Unit shall be subject to all easements of necessity in favor of such Unit or in favor of other Units and the common elements.

Section 6.05. Right to Maintain Tables and Chairs on Concourse Level Common Element Areas. The operator of any restaurant or prepared food dispensary on the concourse or lower level of the Building shall have the right to place and maintain tables and chairs for eating purposes within the interior of the concourse and outside the concourse on the bricked or paved patio area on the concourse level in the Vincent Avenue side of the Building. Such right shall be subject to such reasonable rules and regulations as to number of tables and chairs, placement, appearance, etc., established by the Board of Managers from time to time.

ARTICLE VII VOTING RIGHTS

Section 7.01. Voting Rights. Each Unit Owner shall be entitled to vote on all matters put to a vote at all meetings of Unit Owners in accordance with the percentage interest of the Unit owned in the common elements of the Condominium, unless otherwise provided herein.

ARTICLE VIII COMMON CHARGES

Section 8.01. Allocation of Common Charges. Except as otherwise permitted in this Section or the Bylaws, the common expenses shall be charged by the Board of Managers to the Unit Owners according to their respective common interests in the common elements. The common profits of the Property, after offsetting the common expenses relating to the common elements and making due allowance for the retention of a reserve or reserves to cover future common expenses, shall be distributed among the Unit Owners in the same manner. Notwithstanding the above, pursuant to Section 339-m of the New York Real Property Law, the following expenses shall be allocated only to the specific class, *i.e.*, Residential or Commercial, of Units having the exclusive use or control of the common element areas which such expenses or reserves are applied:

1. Electric costs for heating, cooling, and lighting the common element areas of the concourse level will be allocated among all Commercial Units only on the basis of the percentage interest in the common elements appurtenant to such Units in relation to one another;
2. Electric costs for (i) heating, cooling, and lighting all common element areas on floors one (1)

through five (5), including the lobby on the first floor, (ii) the operation of the elevator, and (iii) the lighting of exterior building entrances will be allocated among all Residential Units only on the basis of the percentage interest in the common elements appurtenant to such Residential Units in relation to one another;

3. Water and sewer charges for the public restrooms on the concourse level will be allocated among all Commercial Units only on the basis of the percentage interest in the common elements appurtenant to such Commercial Units in relation to one another;
4. Water, gas, and electricity utilized in the operation of laundry facilities, if not separately metered, will be charged to the Residential Units only. (Such charges shall be charged to such operator pursuant to agreement between the operator and the Condominium or, if no such agreement, pursuant to the reasonable determination of the Board of Managers of the Condominium).
5. One-half (1/2) of the cost of refuse removal will be allocated to the Residential Units and the other one-half (1/2) to the Commercial Units.
6. The cost to maintain and replace interior decorating items, such as carpeting, wall coverings, furniture, and furnishings, not owned by particular Unit Owners and the cost of repainting such areas shall be allocated among the Commercial Units for such items located in the concourse level and among the Residential Units for such items located on floors one (1) through five (5). Such allocated costs may not be limited to the items identified above in this subsection 6.

The Board of Managers may specially allocate and apportion such other expenses relating to common areas based on the special or exclusive use or availability or exclusive control of such common areas by the Owners or occupants of the Units to which such costs are allocated.

Section 8.02. Common Charges – Personal Obligation of Unit Owner. The common charges shall be paid when due. All sums assessed as common charges by the Board of Managers of the Condominium, but unpaid, together with any accelerated installments, late charges, and interest thereon as may be provided or adopted pursuant to the Bylaws and reasonable attorneys' fees and other costs and expenses incurred in efforts to collect such past due assessments, shall be the personal obligation of the Unit Owner and shall, to the extent allowed by law, constitute a lien upon the Unit 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, state, county, town, and school district taxing agencies, and (b) all sums unpaid on any first mortgage of record encumbering any Unit. The Board of Managers is obligated to enforce this lien for the payment of common charges.

A purchaser of a Unit shall be liable for the payment of unpaid common charges assessed against such Unit prior to such purchaser's acquisition, except that a lending institution first mortgagee or other purchaser who acquires title at a foreclosure sale, or a lending institution first mortgagee that acquires title to a Unit by a deed in lieu of foreclosure, shall not be liable for, and such Unit shall not be subject to a lien for the payment of, common charges against such Unit which became due prior to such acquisition of title. In such event, the unpaid balance of common charges shall be charged to all other Unit Owners as a common expense. The term *lending institution first mortgagee* is defined in Section 5.05 of this Declaration.

Except as provided above, in any conveyance of a Unit either by voluntary instrument, operation

of law, or judicial proceeding in accordance with this Declaration or the Bylaws, the transferee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid common charges against the Unit assessed and due up to the time of the conveyance or other transfer without prejudice to the transferee's right to recover from the former Unit Owner the amounts paid by the transferee therefor. *Transferee* as used herein shall not include either a lending institution first mortgagee of record or a purchaser of a Unit at a foreclosure sale of a mortgage held by a lending institution first mortgagee. No Unit Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer, or other conveyance of such Owner's Unit made in accordance with applicable laws or the provisions of this Declaration and the Bylaws.

No Unit Owner may be exempt from liability for payment of common charges assessed against such Owner's Unit by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Unit. Dissatisfaction with the quantity or quality of maintenance furnished to the Property shall not be grounds for the withholding or failure to pay any common charge or special assessment.

ARTICLE IX BOARD OF MANAGERS

Section 9.01. Incorporation of Board of Managers. The Board of Managers has been incorporated as a Type A corporation as defined under Section 201 of the Not-For-Profit Corporation Law of the State of New York. The name of the corporation is ST. ELMO CONDOMINIUM BOARD OF MANAGERS, INC. (the *Corporation*). The Certificate of Incorporation was filed with the State of New York on May 27, 1988, and the provisions thereof are incorporated by reference herein and hereat. For purposes of performing their duties and exercising the powers and authority granted to the Board of Managers in this Declaration and in the Condominium Bylaws, the Board of Managers are and shall act as the Board of Directors of the Corporation, the officers of the Condominium shall be the officers holding the same positions of the Corporation, the committees of the Board of Managers of the Condominium shall be committees of the Corporation, the provisions in the Declaration applicable to the Board of Managers shall apply to the Board of Directors of the Corporation, and the Condominium Bylaws, as amended, are and shall be the Bylaws of the Corporation. All actions taken by the Board of Managers and its officers and committees, pursuant to provisions of the Declaration and the Condominium Bylaws, shall conclusively be deemed to be the actions of the Board of Directors and/or officers and/or committees of the Corporation as if the same had been taken or authorized to be taken by such Board of Directors, officers, and/or committees.

Section 9.02. Board of Managers. The affairs of the Condominium shall be governed and controlled pursuant to the Condominium Bylaws (attached hereto as Schedule E and made a part hereof) by a Board of Managers who shall have the duties and powers as provided in the Bylaws. The Board of Managers shall have the responsibility for the maintenance, repair, replacement, management, operation, and use of the common elements and shall have the right to delegate its duties to a manager or agent.

Section 9.03. Administration. The administration of the Condominium, the Building, and parcel of land (said Building and parcel being together referred to herein as the *Property*) shall be in accordance with the provisions of this Declaration and with the provisions of the Condominium Bylaws.

Section 9.04. Power of Attorney to Board of Managers. Each Unit Owner shall grant to the

persons who shall from time to time constitute the Board of Managers an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose Owner desires to surrender, sell, or lease the same, or which may be the subject of a foreclosure or other judicial sale, or any other Unit, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners and to convey, sell, lease, mortgage, vote the votes appurtenant thereto, or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Board of Managers.

Section 9.05. Acquisition of Units by Board of Managers. In the event: (a) any Unit Owner shall surrender such Owner's Unit, the Unit together with (i) the undivided interest in the common elements appurtenant thereto, (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers on behalf of all Unit Owners or the proceeds of the sale, or lease thereof, if any, and (iii) the interest of such Unit Owner in any other assets of the Condominium (hereafter collectively called the *Appurtenant Interests*) pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York; or (b) the Board of Managers shall purchase at a foreclosure or other judicial sale a Unit together with the Appurtenant Interests; or (c) the Board of Managers shall purchase any Unit pursuant to its *right of first refusal* as provided in Section 11.01 of this Declaration, title to any such Unit together with the Appurtenant Interests shall be held by the Corporation, on behalf of all Unit Owners, in proportion to their respective common interests. The lease covering any Unit leased by the Corporation on behalf of all Unit Owners shall be held by the Corporation on behalf of all Unit Owners in proportion to their respective common interests.

In order to enable the Board of Managers to carry out the provisions of this Section, each Unit Owner, upon becoming an Owner, shall grant an irrevocable power of attorney, coupled with an interest, to the Board of Managers and their successors to acquire or lease any such Unit under whatever terms the Board may, in its sole discretion, deem proper and to sell, lease, sublease, mortgage, vote, or otherwise deal with such Unit under such terms as the Board of Managers in its sole discretion shall deem proper.

~~**Section 9.06. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Managers.** Notwithstanding anything to the contrary contained in this Declaration, until the closing of title to Units having an aggregate interest in the common elements of 75 percent or more or five (5) years after the date of closing of title to the first Unit, whichever is sooner, the Board of Managers may not, without the Sponsor's written consent, (i) except for necessary repair or repairs, alterations, additions, or improvements required by law, make any addition, alteration, or improvement to the common elements or to any Unit owned by the Condominium, or (ii) assess any common charges for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Condominium bears to the total amount of such initial budget of estimated expenses, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Condominium, except as may be necessary to maintain the quantity or quality of service or maintenance, or (iv) enter into any maintenance of service contract not provided for in the initial budget of the Condominium, or (v) borrow money on behalf of the Condominium, or (vi) reduce the quantity or quality of services or maintenance of the Property. This section shall not be amended without the Sponsor's consent so long as the Sponsor owns Units having an aggregate interest in the common elements of 25 percent or more.~~

ARTICLE X

OBLIGATIONS, RESPONSIBILITIES, COVENANTS AND RESTRICTIONS

Section 10.01. All Owners, Tenants and Occupants Subject to Condominium Documents Which Run with the Land. All present or future Unit Owners, tenants, occupants, or any other person who might use the Units or the facilities of the Property in any manner are subject to the provisions of the Declaration, the Bylaws, the Rules and Regulations of the Condominium (as modified by agreement between the Sponsor-condominium and Chautauqua Institution) and the enforceable covenants, restrictions, rules, and regulations of Chautauqua Institution, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into of occupancy of any Unit shall signify that the provisions of this Declaration and the Bylaws and Rules and Regulations of the Condominium and the enforceable covenants, restrictions, rules, and regulations of Chautauqua Institution (as modified by agreement between the Sponsor-condominium and Chautauqua Institution entered into prior to the recording of this Declaration) are accepted and ratified by such Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. Copies of changes or additions to the Declaration, Bylaws, and Rules and Regulations shall be furnished to each Unit Owner prior to the time the said change or addition becomes effective or is sought to be enforced.

Section 10.02. Units to be Properly Maintained. Unit Owners shall maintain their Units in good repair and overall appearance and shall keep any porch or balcony which they have the exclusive right to use in a clean and neat condition.

Section 10.03. No Structural Alterations. No structural alterations to the Unit or other alterations which would impair the structural soundness of the Building or any Unit or which would cause an adverse material effect on the exterior appearance or the value of the Building may be made without the written consent of the Board of Managers, obtained as provided in the Bylaws. The plans for any structural alteration which would impair the structural soundness of the Building or which would have an adverse material effect on the appearance or value of the Building shall be submitted to the Board of Managers for review prior to the commencement of such work. The Board of Managers shall have the obligation to approve or disapprove such plans within forty (40) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. No approval may be unreasonably withheld.

Section 10.04. No Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to occupants or which interferes with the peaceful possession and proper use of the Property by its occupants.

Section 10.05. No Sale Without Permission of Chautauqua Institution. Unless otherwise waived by Chautauqua Institution (usually such waiver will occur in conjunction with the obtaining of mortgage financing), no Unit Owner may sell his Unit without first obtaining such written consent of Chautauqua Institution as may be legally required by the recorded covenants or restrictions imposed by or for the benefit of Chautauqua Institution.

Section 10.06. No Immoral or Unlawful Use. No immoral, improper, offensive, or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof and all enforceable covenants, restrictions, rules and regulations of Chautauqua Institution shall be observed.

Section 10.07. Obligation to Maintain Utility Service. Regardless of whether the Unit is

occupied, the Owner thereof shall be obligated to maintain sufficient utility service to prevent damage to other Units or to the common elements. *Sufficient utility service* as referred to herein shall be deemed to include maintenance of a minimum room temperature of 55° Fahrenheit when the outside temperature is 32° or lower. If such service is not maintained by the Owner, the Board of Managers shall have the right because of the potentiality of damage to other Units or to the common elements to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances, or without notice if notice is not practical. If such services must be arranged by the Board of Managers or by any other Unit Owner, any costs incurred shall be collectible in the same manner as common charges and shall constitute a lien on the Unit involved. Any Unit Owner whose willful or negligent failure to maintain the proper temperature to assure that the pipes do not freeze shall be responsible for any damages resulting from such failure to any Unit or the common elements and shall pay the cost of repairing any such damage to the Board of Managers within 20 days after request for same. Such obligation and the cost of collecting the same shall be liens on the Unit of such Owner and collectible in the same manner as common charges.

Section 10.08. Porches, Balconies and Patio Areas. All porches, balconies, and patio areas shall be compatible with the colors on the exterior of the Building. No furnishings or other items shall be permitted on porches, balconies, or patio areas that are prohibited by, or not in accordance with, the rules and regulations, if any, promulgated by the Board of Managers in the Condominium Rules and Regulations from time to time. The Board of Managers may establish rules and regulations as to the size, material, color, manufacturer, style, number, design, and model of such items and may prohibit specific items entirely.

Section 10.09. Rules and Regulations. Rules and regulations promulgated by the Board of Managers concerning the use of the Property shall be observed by the Unit Owners, provided, however, that copies of such rules and regulations are furnished to each Unit Owner prior to the time the said rules and regulations become effective or are sought to be enforced.

ARTICLE XI

SELLING, LEASING AND MORTGAGING OF UNITS

Section 11.01. Right of First Refusal on Sale or Lease of Commercial Units by Adjoining Unit Owners and the Board of Managers. A Unit Owner has the right to sell or lease such Owner's Unit to anyone without restriction or limitation except that (1) all Commercial Units, other than Commercial Units 1, 2, and 3, shall be subject to the right of first refusal by (i) the Owners of the adjoining Units and (ii) the Board of Managers; and (2) Commercial Units 1, 2, and 3 shall be subject to the right of first refusal by the Board of Managers. A selling or leasing Unit Owner of any Commercial Unit other than Units 1, 2, and 3 must give notice of the bona fide terms of any proposed sale or lease to the Owners of all horizontally adjoining Commercial Units (not Units separated by a common hallway) and to the Board of Managers. The Owners of Commercial Units 1, 2, and 3 must give notice of the bona fide terms of any proposed sale or lease to the Board of Managers. The right to exercise the right of first refusal with respect to all Commercial Units, other than Units 1, 2, and 3, shall belong first to the adjoining Unit Owners and then to the Board of Managers. Any notification of disapproval of such sale or lease must contain a binding obligation (but may be subject to a financing contingency) to purchase or lease, as the case may be, the subject Unit on the same terms (as the terms in the acceptable offer from the proposed purchaser or lessee) or on other terms acceptable to the Owner of the Unit proposed for sale or lease. In the event more than one of the adjoining Unit Owners agrees to undertake such purchase or lease within 40 days from receipt of notice thereof, the sale or lease shall be made to the adjoining Unit Owner who has been the Owner of an adjoining Unit for the longest period of time. If

no immediately contiguous Unit Owner disapproves of the transaction but the Board of Managers disapproves of the transaction, the Board may, prior to the date of closing or commencement of the lease term, as the case may be, produce a purchaser or lessee approved by it who will accept the transaction on the same terms as the terms stated in the notice to the Board of Managers or on other terms acceptable to the Unit Owner selling or leasing. If neither the Board of Managers nor any adjoining Unit Owner notifies the selling Unit Owner of disapproval within the required 40-day period, the selling or leasing Unit Owner shall have the right to effectuate such sale or lease on the terms submitted, as more specifically set forth herein. Any subsequent material modification in the terms of the proposed sale or lease constitutes a new transaction for purposes of the right of first refusal set forth herein.

Subject to the terms of Section II.08 hereof, any contract to sell a Commercial Unit and any lease of a Commercial Unit to a prospective purchaser or tenant shall contain the following language: “*THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER ARE MADE EXPRESSLY SUBJECT TO THE RIGHTS, IF ANY, OF THE ADJOINING COMMERCIAL UNIT OWNERS, THE OTHER COMMERCIAL UNIT OWNERS, AND THE ST. ELMO CONDOMINIUM BOARD OF MANAGERS WITH RESPECT TO THE TRANSACTION EMBODIED HEREIN PURSUANT TO THE TERMS OF ARTICLE XI OF THE CONDOMINIUM DECLARATION OF THE ST. ELMO CONDOMINIUM, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.*”

The Board of Managers, or its designee, may elect to purchase or lease such Unit on behalf of all the Unit Owners, in the manner set forth herein, provided the approval for such purchase or lease is obtained from not less than two-thirds (2/3) of the Board of Managers. In the event the Board of Managers does not have sufficient funds from working capital on hand for such purchase or lease, it may either borrow such funds and/or assume an existing indebtedness secured by the Unit, provided such borrowing is secured only by a mortgage, or may assess the Unit Owners therefor in proportion to their respective common interest, or the Board may use any combination of these methods to undertake the acquisition.

In the event an adjoining Unit Owner or the Board of Managers shall notify the selling Unit Owner of its disapproval of the sale or lease of the Unit, then, within fifteen (15) days of such notification, the adjoining Unit Owner or the purchaser or lessee supplied by the Board of Managers shall execute a contract to sell or lease such Unit at the purchase price or rental and on the other terms set forth in the contract to sell or lease supplied with the notice of transfer, or on other terms more favorable to the Owner of the Unit.

Section II.02. Unauthorized Sale, Transfer, Lease or Mortgage is Voidable. Any sale, voluntary transfer, conveyance, lease, or mortgage which is not authorized by the terms of this Declaration or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by a certificate or an adjoining Unit Owner or of the Board of Managers duly recorded in the Chautauqua County Clerk’s office.

Section II.03. Notice. All notices referred to in this Article XI shall be given by registered or certified mail. Delivery shall be deemed made and notice shall be deemed given by such mailing and shall not be dependent upon acceptance by the addressee.

A Unit Owner intending to make a transfer, sale, or lease of a Commercial Unit or any part thereof, or interest therein, shall give notice to the Board of Managers of such intention (and, if a Commercial Unit other than Units 1, 2, and 3) to all adjoining Unit Owners. The Unit Owner shall furnish at that time, for the information of the adjoining Unit Owners and the Board, (i) the name and

address of the intended transferee or lessee, (ii) a statement of all the terms of the transaction, (iii) financial and professional references of the transferee or lessee, (iv) the specific business which the transferee or lessee intends to operate in the Unit, (v) an executed copy of the proposed sale contract or lease (such sale or lease agreement must contain the statement set forth in Section 11.01 hereof), and (vi) such other information as the Board of Managers (and any adjoining Unit Owners having the right of first refusal) may reasonably require. The Unit Owner shall use the form, if any, supplied by the Board of Managers in order to supply such information. Such notice, when given, shall constitute a representation, warranty, and offer to sell or lease to any adjoining Unit Owner who has the right of first refusal and to any purchaser or lessee produced by the Board and a representation that the selling Unit Owner believes the offer to be bona fide in all respects. Any subsequent material modification in the terms of the transaction constitutes a new transaction for purposes of the right of first refusal set forth in this Article XI.

Section 11.04. Unit Owner's Right to Withdraw Unit from Proposed Sale or Lease. Where the Board of Managers and any adjoining Unit Owner who has the right of first refusal have not yet acted to approve or disapprove a proposed sale or lease, the selling or leasing Unit Owner may withdraw the offer to sell or lease. When at least one adjoining Unit Owner who has the right of first refusal has agreed to purchase or lease as provided above or the Board of Managers has produced a purchaser or a lessee who fulfills the requirements set forth above and the purchaser or lessee so agrees, a binding contract or lease, as the case may be, shall be deemed to have come into existence and the selling or leasing Unit Owner shall be bound to consummate the sale or lease with such adjoining Unit Owner or, if none, with such purchaser or lessee furnished by the Board in accordance with the terms thereof.

Section 11.05. Form of Consent. The selling or leasing Unit Owner and the purchaser or lessee may demand, and shall be entitled to receive, a consent to the sale or lease from the Board of Managers. Any consent given by the Board shall be in recordable form, signed by a member of the Board, and attested to by another member of the Board. Such consent shall state therein that neither the Board of Managers nor any adjoining Unit Owner has exercised the right to disapprove of the sale or lease as provided in Section 11.01 hereof.

Section 11.06. Mortgaging of Units. No Unit Owner may mortgage his Unit or any interest therein without the approval of the Board of Managers, except as to a first mortgage lien made to an institutional mortgage lender (as defined in Section 5.05 of this Declaration). ~~or as to a first or second mortgage made to the Sponsor or to an affiliate of the Sponsor.~~ The Board may, and is hereby authorized to, impose reasonable conditions upon which approval as to any other mortgage shall be given. Every mortgage which is not held by an institutional lender as defined in Section 5.05 of this Declaration ~~or by the Sponsor or an affiliate of the Sponsor~~ shall be invalid as a lien against the Unit without the approval of the Board of Managers. The action of the Board of Managers consenting to the making of a mortgage shall be in recordable form, shall be signed by a member of the Board, and shall be attested to by another member of the Board. Any Unit Owner who mortgages his Unit shall promptly provide the Board of Managers with the name and address of the mortgagee.

Section 11.07. Other Restrictions on Sale, Lease or Mortgaging of Units. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell, or lease his Unit unless and until all unpaid common charges and other assessments against such Owner's Unit shall have been paid out of the proceeds of the sale or the Unit or by the grantee. A Unit Owner may convey his Unit and the common interest appurtenant thereto to the Board of Managers on behalf of all Unit Owners free of any cost to the Board

or the Unit Owners, and, upon such conveyance, such Unit Owner shall not be liable for any common charges thereafter accruing against such Unit. Any lease of a Unit shall provide for full compliance by the tenants with the Declaration, Bylaws, and Rules and Regulations of the Condominium. The Owner shall be responsible for violations by such Owner's tenant and shall be subject to actions by the Board of Managers in accordance with the Bylaws of the Condominium.

The above provisions of this Section shall not apply to the acquisition or sale of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. Such provisions shall, however, apply to any purchases from such mortgagee.

Section 11.08. Situations to Which Restrictions on Selling, Leasing and Mortgaging of Units Do Not Apply. The provisions of this Article XI shall not apply to:

~~a. the Sponsor;~~

ba. a bank, life insurance company, credit union, or savings and loan association holding title to a Unit or Units as a result of foreclosure sales or deeds taken in lieu thereof;

~~(The Sponsor and s~~Such institutions may, if they so desire, submit the name of their purchaser or lessee to the Board of Managers for its information, but the approval of the Board of Managers to such sale or lease shall in no event be required, nor shall the need therefor be inferred from any such voluntary submission.)

eb. the acquisition or succession to the going business, practice, or profession of the Unit Owner, the acquisition of all the assets of the Unit Owner, the acquisition of all the assets of the Unit Owner, or the merger or consolidation into or with the Unit Owner by a person, partnership, or corporation;

ec. the sale, lease, or sublease from a Unit Owner to a partnership or a corporation in which the Unit Owner is a partner or principal stockholder; from a partnership or corporate Owner to the partners or stockholders thereof; from partners who are Owners to new partners; from one co-Owner to another;

ed. a conveyance or transfer from a Unit Owner by gift, devise by will, or intestate succession.

ARTICLE XII AMENDMENT AND TERMINATION

Section 12.01. Amendment. Except for a division or combination of Units or the incorporation of a common hallway area into Units pursuant to Section 4.03 of this Declaration, or as otherwise provided in this Declaration, this Declaration may be modified, altered, amended, or added to at any duly called meeting of Unit Owners provided that:

a. A notice of the meeting containing a full statement of the proposed modification, alteration, amendment, or addition has been sent to all Unit Owners and first mortgagees of Units as listed on the books and records of the Condominium at least 30 and not more than 50 days prior to the date set for such meeting; and

- b. 67 percent or more in number and common interest of all Unit Owners approve the change; and
- c. The Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from first mortgagees of 51 percent or more in number and in common interest of all Units subject to mortgages as listed on the books and records of the Condominium, which opposition must not be unreasonable; and
- d. An instrument evidencing the change is duly recorded in the office of the Chautauqua County Clerk. Such instrument need not contain the written consent of the required number of Unit Owners but shall contain a certification by the Board of Managers of the Condominium that the consents required are filed with the Board of Managers; and
- ~~e. So long as the Sponsor shall continue to own a Unit, but in no event later than two (2) years from the date of recording of this Declaration, the Board of Managers obtains the Sponsor's written consent to the change.~~

Section 12.02. Termination. The Condominium shall not be terminated or abandoned except as provided for by law. In addition to any requirements by law, termination shall require the consent of at least 67 percent (or such higher percent as may be required by law at the time) of all Unit Owners in number and in common interest and the approval of first mortgagees of 51 percent or more in number and in common interest of all Units subject to mortgages as listed on the books and records of the Condominium.

*ARTICLE XIII
GENERAL*

Section 13.01. Service of Process. Service of process on the Unit Owners in any action relating to the common elements shall be made upon: Board of Managers of St. Elmo Condominium, One North Pratt Avenue, Chautauqua, New York 14722.

Section 13.02. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 13.03. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.04. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Declaration nor the intent of any provision hereof.

Section 13.05. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender whenever the context so requires.

IN WITNESS WHEREOF, the ~~Sponsor~~ has caused this Declaration to be executed on this ____ day of _____, 198__.

ST. ELMO ASSOCIATES

By _____
Joreta Speck, General Partner

STATE OF NEW YORK)
) ss.
COUNTY OF CHAUTAUQUA)

On this ____ day of _____, 198_, before me personally came JORETA SPECK, to me personally known to be the person who executed the foregoing instrument, and who, being duly sworn by me, did depose and say that she is a general partner of ST. ELMO ASSOCIATES, a New York limited partnership, and that she executed the foregoing instrument in the name of ST. ELMO ASSOCIATES, and that she had authority to sign the same, and she acknowledged to me that she executed the same as the act and deed of said partnership for the uses and purposes therein mentioned.

Notary Public

SCHEDULE A
TO DECLARATION

DESCRIPTION OF CONDOMINIUM PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Chautauqua, County of Chautauqua, and State of New York, being part of Lot 29, Township 3, Range 13 of the Holland Land Company's survey and being Lots 400 and 407 inclusive as shown on the Official Map of Chautauqua Institution, a copy of which map is filed in the office of the Clerk of Chautauqua County, Mayville, New York, under date of April 25, 1939, Cabinet #2, Section E, Map #159.

TOGETHER with the benefits and subject to the burdens of a Grant of Easement and Agreement for the Maintenance of Encroachments and Projections between Chautauqua Institution and St. Elmo Associates recorded in the Chautauqua County Clerk's office in Liber 2121 of Deeds at page 356.

SCHEDULE B
TO DECLARATION

DESCRIPTION OF THE BUILDING

The Building is a four and a half story plus concourse level noncombustible structure. The major structure is fireproofed steel with concrete poured steel pans. Interior partitions are steel stud and drywall.

The concourse level is mostly below grade and will have slab on grade for its floor.