

NIAGARA COUNTY CLERK RECORDING PAGE  
OFFICE OF THE CLERK COUNTY OF NIAGARA  
WAYNE F. JAGOW, COUNTY CLERK  
County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095  
Phone (716) 439-7027 Fax (716) 439-7066

INSTRUMENT DATE 09/26/03

DOCUMENT TYPE Declaration 60

Parties: (Print Names In Full)  
1<sup>st</sup> Part F.C. Wheatfield Inc.  
2<sup>nd</sup> Part NVR, Inc., a Virginia Corp, d/b/a Ryan Homes of NY  
Town/City Wheatfield

Return To:  
Carly Wikman / Holland & Robinson  
5999 Main St  
Williamsville NY 14221

THIS SPACE RESERVED FOR COUNTY CLERK

MORTGAGE# \_\_\_\_\_

MORTGAGE AMOUNT  
\$ \_\_\_\_\_

One/two family  Other  
 Check if to be apportioned

DOCUMENT # 1009458  
BOOK 3254 PAGE 379 DEEDS  
NUMBER OF PAGES 60  
RECORDED 10/16/2003 09:57:31 A.M.  
RECEIPT # 27630 DOCUMENT TOTAL: \$207.00  
PAID - COUNTY CLERK  
WAYNE F. JAGOW

RECORDING TAX RECEIPT

BASIC \$ \_\_\_\_\_ State of New York) ss  
ADDITIONAL \$ \_\_\_\_\_ County of Niagara)  
SPECIAL \$ \_\_\_\_\_ I do hereby certify that I have  
TOTAL \$ \_\_\_\_\_ Received on the within Mortgage, being  
the amount of the Recording Tax  
Imposed thereon & paid at recording.

Dated \_\_\_\_\_, 20\_\_

Mortgage Tax Clerk of Niagara County

REAL ESTATE TRANSFER TAX  
\$ \_\_\_\_\_  
11  
NIAGARA COUNTY

DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
WHEATFIELD LAKES HOMEOWNERS' ASSOCIATION, LTD.  
(WHEATFIELD LAKES ASSOCIATION DECLARATION)

Made By: F.C. WHEATFIELD, INC. and  
NVR, INC., a Virginia corporation, d/b/e Ryan Homes of New York

Dated: September 26, 2003

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HOLLAND & ROBINSON  
5888 Main Street  
Williamsville, New York 14221  
716-565-1567  
Fax: 716-565-1575

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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES  
AND LIENS -WHEATFIELD LAKES HOMEOWNERS' ASSOCIATION, LTD.**

**(WHEATFIELD LAKES ASSOCIATION DECLARATION)**

This Declaration, made this        day of       , 2003, by F. C. Wheatfield, Inc., having an office at 50 Public Square, Suite 1160, Cleveland, Ohio, being referred to hereinafter as "the Sponsor" and also by NVR, Inc., a Virginia corporation, d/b/a Ryan Homes of New York, having an office located at 1026 Union Road, Suite 4, West Seneca, New York, the Owner of Subdivision Lot 1 according to a certain subdivision map filed in the Niagara County Clerk's Office under Book 59 of Microfilmed Maps at page 5905, being referred to hereinafter as "NVR, Inc."

**WITNESSETH:**

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

WHEREAS, the Sponsor plans to sell the real property shown on Schedule A attached hereto to purchasers, builders or developers, as individual building sublots and as larger tracts of land upon which the purchaser may develop condominiums, townhouses, single family houses or apartment buildings, all to be part of a community to be known as Wheatfield Lakes; and

WHEREAS, NVR, Inc. is the owner of one Lot included in the property described in Article II of this Declaration and shown on Schedule A attached hereto, said Lot being more particularly described on Schedule C attached hereto, and NVR, Inc. wishes said Lot to be subject to the covenants, conditions, restrictions, easement, charges and liens set forth herein;

WHEREAS, the Sponsor desires that certain lakes, open spaces and other common facilities shall remain available for the benefit of all members of the community; and

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

WHEREAS, the Sponsor has incorporated Wheatfield Lakes Homeowners' Association, Ltd., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Sponsor, for itself, its successors and assigns, and NVR, Inc., for itself, its successors and assigns, both declare that the real property described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth. Notwithstanding anything set forth herein, it is understood that NVR, Inc. is not related to the Sponsor and does not have the rights or liabilities of the Sponsor under this Declaration, even though NVR, Inc. is the owner of one Lot as of the date of recording this Declaration. NVR, Inc. shall only have those rights, liabilities and obligations of an Owner, except to the extent this Declaration expressly states otherwise.

LIBER 3254 PAGE 385  
ARTICLE I  
DEFINITIONS

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

"Additional Property" - property not currently subject to the Declaration but which may be added to the scope of the Declaration as provided by Section 2.02 hereof.

"Assessments" - the Maintenance Assessments and the Special Assessments. The purpose of the assessments shall be as set forth in Section 5.02 of this Declaration.

"Association" - the Wheatfield Lakes Homeowners' Association, Ltd., its successors and assigns.

"Association Property" - all land, improvements and other properties heretofore or hereafter owned by the Association, including but not limited to the "tot lot," North Lake and development entrance marker.

"Board of Directors" or "Board" - those persons appointed by the Sponsor or, as applicable, elected by the Owners to govern the Association pursuant to the Declaration, By-Laws and Certificate of Incorporation.

"By-Laws" - the By-Laws of the Association, as amended from time to time, which set forth basic rules regarding the corporate governance of the Association, including the election of directors and officers and the holding of meetings.

"Certificate of Incorporation" - the Certificate of Incorporation for Wheatfield Lakes Homeowners' Association, Ltd. filed with the New York Secretary of State pursuant to Section 402 of the New York Not-for-Profit Corporation Law.

"Declaration" - this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Wheatfield Lakes Association, as it may from time to time be supplemented, extended or amended in the manner provided for herein.

"Improved Lot" - (I) any Lot having sanitary sewer, storm sewer, water lines and paving abutting thereon, and for which a building permit is available or (II) any Lot upon which a dwelling has been or is being constructed.

"Lot" - any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration either initially, or upon extension of this Declaration, and (i) identified as a separate parcel on the tax records of the Town of Wheatfield; or (II) shown as a separate Lot upon any recorded or filed subdivision map.

"Maintenance Assessments" - annual assessments computed pursuant to Section 5.03 of the Declaration and payable as set forth in Section 5.06 of the Declaration.

"Member" - the Owner of a Lot or Unit, whether an Owner of a Lot initially under the Declaration pursuant to Section 2.01 hereof or whether an Owner of a Lot on the Additional Property added to the scope of the Declaration pursuant to Section 2.02 hereof. In the case of joint ownership of a Lot or Unit, the Member with respect to such Lot or Unit shall be determined pursuant to Section 3.04 hereof.

"Owner" - the holder of record of the fee interest in any Lot or Unit. The term "Owner" includes the Sponsor. However, the Sponsor has reserved certain easement rights, veto rights, amendment rights and voting rights in the Declaration and By-Laws which do not apply to other Owners. Additionally, there are certain provisions of the Declaration and By-Laws which apply to the Owners generally but not to the Sponsor.

**"Property"** - all properties as are subject to this Declaration, whether now subject to the Declaration pursuant to Section 2.01 or whether hereafter added to the scope of the Declaration pursuant to Section 2.02.

**"Rules"** - rules enacted by the Board of Directors pursuant to Section 3.12 of the Declaration.

**"Sponsor"** - F. C. Wheatfield, Inc., its successors and assigns.

**"Sponsor Approved Builder"** - a person, partnership, corporation or limited liability company which builds homes as part of its business and which has been approved in writing by the Sponsor to build a home on a Lot or Lots.

**"Unit"** - each completed dwelling Unit (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Wheatfield) situated upon a Lot. The term "Unit" shall also include a condominium, townhouse, patio home or other "unit" as defined in the Declaration for any cluster development created as a second-tier association within the Property.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.01. Property.** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Wheatfield, County of Niagara and State of New York, all of which property shall be hereinafter referred to as the "Property." The real property subject to this Declaration is more particularly described in Schedule A attached hereto.

**Section 2.02. Additional Property.** Other lands ("Additional Property"), in addition to the lands described in Schedule A, may become subject to this Declaration in the following manner:

(a) **Land Added with Consent of Owners.** The Owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration, but such amendment must be approved by eighty (80%) percent of the members of the Association. The Sponsor cannot vote on such amendment, but may veto such amendment pursuant to its rights under Section 3.11 of this Declaration.

(b) Such additional lands shall be added to this Declaration by the recording in the Niagara County Clerk's Office of a supplemental extending declaration which shall extend the scope of this Declaration to such additional lands. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with provisions of this Declaration.

**Section 2.03. Mergers.** Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

**Section 2.04. Developers.** It is the Sponsor's intention to convey portions of the Property (with the exception of the Association Property) as blocks to various developers/builders for the subdivision and improvement of the blocks with various types of residential buildings, including but not limited to apartment



buildings, condominiums, attached and detached single family housing and patio homes. Each Developer may create his or her own second tier of homeowners' or condominium association to develop, maintain and administer the common areas of the individual developments and may also impose covenants and building use restrictions to supplement those contained in this Declaration, pertaining to such development. Such additional covenants and restrictions shall not conflict with those contained herein and, in the case of any conflict, the provisions herein shall control. Any such second-tier homeowners' or condominium association and its documents must first be reviewed and approved by the Sponsor.

ARTICLE III  
THE ASSOCIATION  
STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

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

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

**Section 3.03. Voting.** Each Owner, including the Sponsor, shall be entitled to one vote. Notwithstanding such right to vote, the Sponsor shall have the exclusive right to select the initial three-member Board of Directors of the Association and shall have the sole right to select all of the members of the Board of Directors until the transfer of title, to individual purchasers or developers, of 100 percent of the Lots offered for sale. After such time, the Owners shall have the right to elect all members of the Board of Directors. The Sponsor shall have the right to transfer control of the Board of Directors to the Owners at an earlier date, in its discretion.

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

In the case of a corporate Member, votes may be cast by an appropriate officer of such corporation. A vote of a Member which is a limited liability company may be cast by a member of the limited liability company. The Board of Managers shall have no responsibility to determine whether such member has the specific authority to cast the vote.

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

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

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

**Section 3.08. Selection of Directors.** The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association, and by Section 3.03 of this Declaration.

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

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

**Section 3.11. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.** Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to any lands described in Schedule A to this Declaration, the Board of Directors and/or Members of the Association may not, without the Sponsor's written consent, (i) except for necessary repairs or any repairs required by law, make any addition, alteration or improvement to the Association Property; or (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quality of services or maintenance of the Property. So long as the Sponsor holds title to any lands described in Schedule A to this Declaration, this section shall not be amended without the written consent of the Sponsor.

**Section 3.12. Enactment of Rules.** The Board of Directors may establish reasonable rules concerning the use of the Association Property and individual Lots (including the promulgation of rules as provided for in Article VIII of the Declaration), which Rules must be consistent with the rights and duties established by this Declaration. Copies of such Rules, and amendments thereto, shall be furnished by the Board to all Owners prior to the Rules' effective date. Such Rules shall be binding upon the Owners, their families, tenants, guests, invitees and agents until such Rules shall be specifically canceled or modified by the Board. Rules may also be canceled or modified by the vote of a majority of all of the Members (not just

a majority of Members present) cast at a Special Meeting or Annual Meeting. The Board shall have the authority to impose reasonable monetary fines and other sanctions to enforce the Rules, and such monetary fines may become a lien on the respective Unit as provided by Section 5.10 hereof and enforced pursuant to the provisions of Article V hereof. So long as the Sponsor holds title to any portion of the lands described in Schedule A to this Declaration, the Sponsor shall have the right to veto any rule or regulation so made by the Board.

**ARTICLE IV  
PROPERTY RIGHTS AND EASEMENTS**

**Section 4.01. Dedication of Association Property.** The Sponsor intends to convey to the Association, subsequent to the recording of this Declaration, and subject to the provisions of this Declaration, certain tracts of land and other facilities and property within the Property for the use and enjoyment of the Members. The Sponsor has the right to convey tracts of land and other facilities and property to the Association, and the Association must accept any such conveyance made by the Sponsor provided such conveyance is made for nominal consideration. The Sponsor is deemed to be authorized by this Section to execute on behalf of the Association any "transfer" forms, specifically including but not limited to the New York State Real Property Transfer Report (form number RP-5217) required to record the deed in the Niagara County Clerk's office.

**Section 4.02. Right and Easement of Enjoyment in Association Property.** Every Owner (and such Owner's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, and shall have an easement over all such property as may be necessary to access the Association Property, subject, however, to the right of the Association and the rights of the Sponsor as set forth in this Article IV and the rights of the Sponsor as set forth elsewhere in this Declaration. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I hereof.

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

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

(a) to promulgate rules and regulations relating to the use, operations and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Owners;

(b) to grant easements or rights of way, with or without consideration, to any public or private utility corporation, cable television company, governmental agency or political subdivision;

(c) to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility cable television company or for other public purposes, i.e., as set forth in subsection (b) above, consistent with the intended use of such land by or for the benefit of the Owners, which shall not require the consent of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Members who shall vote by written ballot which shall be sent to all Members then entitled to vote not less than thirty (30) days nor more than fifty (50)

days in advance of the date or initial date of the canvass thereof;

(d) to charge reasonable admission and other fees for the Use of Association Property;

(e) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date of the date set for voting thereon;

(f) to construct, modify, alter or demolish improvements on Association Property or change the use of Association Property upon the affirmative vote of a majority of the Board of Directors, provided that the Sponsor may veto any such action of the Board so long as it holds title to all or any portion of the lands on Schedule A to this Declaration.

**Section 4.04. Rights of Sponsor.** With respect to Association Property and in addition to the rights reserved in Section 4.09 below, so long as the Sponsor holds title to any of the lands described in Schedule A to this Declaration, the Sponsor shall have the right to:

(a) grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone and sewer;

(b) connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Property;

(c) use the Association Property for ingress and egress to the Property (as described in Section 2.01 of this Declaration);

(d) operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and

(e) grant to itself or to others such other easements and rights-of-way as may be reasonably needed for the orderly development of any Property.

The easements, rights-of-way and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor and their successors and assigns. With respect to its exercise of the above rights, the Sponsor agrees (i) to repair any damages resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Sponsor's exercise of its rights hereunder. This section shall not be amended without the written consent of the Sponsor.

**Section 4.05. Common Utility and Conduit Easement.** All pipes, wires, coaxial cables, conduits and public utility lines located on each Lot or within any Unit shall be owned by the Owner of such Lot or Unit. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, coaxial cables, conduits, drainage areas and public utility lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use pipes, wires, coaxial cables, conduits, drainage areas and public utility lines servicing, but not located on, such other Unit or Lot. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owners directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair or replacement of any pipes, wires, coaxial cables, conduits, drainage areas or public utility lines located on any Lot or within any Unit which are used for the provision of services to Association property. The cost of such repair, maintenance or replacement shall be a common expense funded from the

Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible, and such costs shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that assessment, shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof.

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

**Section 4.06. Common Access Easement.** The Sponsor and all Owners and their guests, mortgagees, licensees and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways and roadways located on the Association Property, and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of any property or facilities the maintenance of which is the responsibility of the Association.

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

**Section 4.08. Right of Association to Contract Duties and Functions.** The Association may contract with any person, corporation, firm, trust company, bank, property management company or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives.

**Section 4.09. Reserved for Future Use.**

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

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

**Section 4.11. Association Easement for Inspection, Maintenance and Repairs.** The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, excluding Units, to (i) inspect Lots for the purpose of ascertaining compliance with the provisions of this Declaration or with Rules and Regulations promulgated pursuant to this Declaration; and (ii) the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, excluding Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible for maintaining, repairing or replacing as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

**Section 4.12. Reserved for Future Use**

**Section 4.13. Hearing Procedures.** Where the Board of Directors is required in accordance with the provisions of this Declaration to hold a public hearing prior to taking certain action (hereinafter

referred to as a "Hearing"), the procedure set forth in this section shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than twenty (20) nor more than sixty (60) days after the Board of Directors has initiated the Proposal. Notice of the Hearing (the "Notice") shall be mailed to all Lot Owners in accordance with any provisions of this Declaration relating to the giving of such notice. The Notice shall describe in detail the Proposal, the Hearing procedure set forth herein, as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The Notice shall further provide that the Hearing will be held on the Property or in a place reasonably accessible to the Property. All Lot Owners and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a Proposal, a Hearing is required pursuant to more than one section of the Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

**ARTICLE V**  
**ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW**

**Section 5.01. Imposition, Personal Obligation, Lien.** Each Lot or Unit Owner (except for the Sponsor), by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association Maintenance Assessments and Special Assessments.

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof), together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Unit or Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot or Unit at the time the Assessment falls due.

**Section 5.02. Purpose of Assessments.** The purpose of Assessments shall be to fund the maintenance, preservation, operation and improvement of the Association Property, including but not limited to the maintenance and repair of the "tot lot" and appurtenant parking area, the North Lake and development entrance marker, and the promotion of the recreation, safety and welfare of the Owners, including but not limited to: the payment of taxes on Association Property; any utility services to the Property which are commonly metered or billed; all casualty, liability and other insurance covering the Association Property, and the Association's officers, directors and employees obtained pursuant to Article X of this Declaration; hiring of professional services, as needed, including but not limited to management, accounting, lawyers and engineers; the maintenance, repair and replacement of all Association Property and Association Maintenance Areas, and for such other needs as may arise. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots and Units.

**Section 5.03. Computation of Maintenance Assessment.** After the Sponsor has commenced the collection of Maintenance Assessments (per Section 5.04 below), it shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Lot or Unit for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the total Association membership.

Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until

such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 5.04. Date of Commencement and Notice of Maintenance Assessments.** The Assessments provided for herein shall commence on the date on which the first Lot or Unit is conveyed or on such date thereafter as determined by the Sponsor. The first Maintenance Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors, and such Assessments shall thereafter be determined on a full-year basis.

**Section 5.05. Payment of Assessments.** All Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, the acceleration of the annual Maintenance Assessment for any Owner delinquent in payments. Unless the Board otherwise provides, the Maintenance Assessment shall be paid once annually.

**Section 5.06. Basis for Maintenance Assessment and Initial Collection.**

A. **Basis.** The budget for Wheatfield Lakes Homeowners' Association shall be based upon the total anticipated number of Units at full build-out (500 Units). Each Unit shall be assessed one share of the total number of Units, i.e., 1/500th of the Association budget. (At full build-out, in the event that the total number of Units does not equal 500, the budget shall be equally divided among the total number of Units then existing. Any such adjustment shall not be deemed a change in the basis for Assessments, as the proportion shall remain one share of the budget per Unit.)

B. **Initial Collection.** It is anticipated that parcels or lots will be sold in groups to builders or developers for resale to the public. Thus, each builder or developer who purchases three or more lots for resale will be required to create its own sub-homeowners' association (or file an offering plan for any condominium or cluster development) in order to comply with NY law and the Attorney General's regulations for offering Lots/Units and interests in the such associations to the public. At the time any such builder or developer takes title to its Lots or land, such builder or developer shall be responsible for payment of Assessments to the Association for each Lot owned or for each proposed Unit, in the event the land is purchased for the development of a condominium, patio homes or other form of cluster development. Such builders or developers may then provide in their own offering documents that each individual purchaser to whom they sell Lots or Units shall reimburse said builder or developer for the proportionate share of the year's Assessment paid by the builder or developer at such time as title is transferred to the individual purchaser. After such time as the individual purchaser takes title to his or her Lot or Unit, he or she shall be responsible for the payment of all Association Assessments coming due thereafter.

C. **Limitation on Sponsor's Obligation.** The Sponsor shall be obligated to pay the lesser of (1) the difference between the actual Association expenses (excluding budgeted amounts for reserves) and the Association charges levied against builder/developer Owners and individual Owners or (2) the Assessments on all unsold Lots and proposed Units.

**Section 5.07. Change in Basis of Assessments.** The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than 2/3 of the total votes of all Members voting in person or by proxy, written notice of which change shall be sent to all Members at least forty (40) days in advance of the date set for voting thereon, except that so long as the Sponsor holds title to any lands described in Schedule A to this Declaration but not longer than twenty (20) years after the date of recording the Declaration, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold Lots or Units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Niagara.

Any change in the basis of Assessments shall be equitable and nondiscriminatory.

**Section 5.08. Special Assessments.** In addition to the annual Maintenance Assessment, the

Association may levy in any assessment year one or more Special Assessments, payable in that year and/or the following year only. So long as the total amount of Special Assessments assessed do not exceed in one (1) fiscal year an amount equal to twenty percent (20%) of the total Maintenance Assessment for that fiscal year, the Board may impose a Special Assessment without holding a Hearing (pursuant to Section 4.13 hereof) obtaining the approval of the Members. Any Special Assessment that would exceed this limitation, either of itself or when added to any other Special Assessments imposed within that fiscal year, shall be effective only if the Board of Directors shall have held a Hearing on said proposed Special Assessment in accordance with the Hearing procedures set forth in Section 4.13 of the Declaration, and, if (i) said Special Assessment is for the construction, addition or alteration (rather than the reconstruction, repair or replacement) of any capital improvement, have obtained the approval by a majority of Members present at a special meeting called pursuant to Section 4.02 of the By-Laws and at which a quorum is present as required by the Quorum Requirements set forth in the By-Laws, and (ii) for any other such Special Assessment, shall have obtained the approval of not less than two (2) of the three (3) members of the Board of Directors. The Board of Directors shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first due date.

**Section 5.08. Nonpayment of Assessment.** If an Assessment, or installment thereof, is not paid on the due date established by the Board of Directors, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof, including attorney's fees, as herein provided, shall thereupon become a continuing lien on the respective Lot which shall bind such Lot in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. The Board of Directors may direct its managing agent or attorney to file any Notice of Lien as necessary.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten (10%) percent of the amount of such overdue Assessment or installment thereof, provided such late charges are equitable and uniformly applied. The Board of Directors, or its managing agent or attorney may send notice to the delinquent Lot Owner that the actions described in the next paragraph below will be taken (including acceleration of the remaining installments of Assessments for the relevant fiscal year) or will automatically occur if the overdue Assessments and applicable late charges are not paid within thirty (30) days of such notice. (This notice will be referred to below as the "Acceleration Notice".)

Any fine levied for the violation of any provision of this Declaration, By-Laws or any Rule or Regulation promulgated, or any other cost incurred by the Association and attributable to such violation, shall be deemed a lien upon the Unit of the Owner so sanctioned, and such unpaid fine or cost shall be collectable in the same manner and by the same means as set forth herein or the collection of unpaid assessments.

If the Assessment or any installment thereof is not paid within thirty (30) days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon Acceleration Notice thereof to the Owner as described above and (iii) the Association may retain attorneys to take any appropriate enforcement or collection action including, but not limited to, the commencement of lawsuit against the Owner personally obligated to pay the same and/or foreclosure of the lien against the Lot of such Owner. If the Association retains attorneys, the Owner shall pay all of the Association's costs, including all attorneys' fees, regardless of whether a suit at law or foreclosure action is commenced. IT IS SPECIFICALLY UNDERSTOOD AND ACCEPTED BY ALL OWNERS THAT THE ASSOCIATION SHALL NOT BE LIMITED IN RECOVERING SAID COSTS BY THE AMOUNT IN CONTROVERSY AND THAT ALL COSTS SHALL BE PAID BY THE OWNER, PROVIDED THAT THE COSTS WERE REASONABLE AS DETERMINED SOLELY BY REFERENCE TO THE AMOUNT OF WORK AND COSTS REQUIRED TO RESOLVE THE MATTER.



of Property (a) which it is obligated to maintain, repair or replace pursuant to Section 6.01, and (b) which individual Owners are obligated to maintain pursuant to Sections 6.01 and 6.02, or Article VIII, but only as to portions of the Property visible from the exterior of a Unit, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property. The Association may delegate to the Architectural Standards Committee the power and responsibility to establish such reasonable schedules and regulations for maintenance.

## ARTICLE VII INITIAL DEVELOPMENT OF PROPERTY

**Section 7.01. Control of Sponsor.** The initial construction of any Improvements on a Lot or other portion of the Property and the initial use of any such portion of the Property shall be under the exclusive control of the Sponsor until the initial development of such portion of the Property has been completed to the satisfaction of the Sponsor, as evidenced by the Issuance of a Certificate of Compliance pursuant to Section 7.09 hereof. After Issuance of a Certificate of Compliance with respect to a Lot or other portion of the Property, control of all further development or construction on said Lot or other portion of the Property and the use thereof shall be the responsibility of the Association, as set forth in Article VIII of this Declaration.

**Section 7.02. Submission of Plans for Initial Development.** No improvements shall be initially made to or constructed on any Lot or other portion of the Property unless and until plans for such improvements, in such detail as the Sponsor may require, have been approved by the Sponsor as to the proposed use and external design of the improvements as evidenced by a letter from the Sponsor or by Sponsor's stamp on the plans. All plans must comply with the Architectural Guidelines included as Schedule B to this Declaration. In addition, all plans and proposed improvements shall comply with the applicable zoning, building, health and other laws, codes and ordinances and all permits and approvals, if any, required by governmental agencies for such development shall be obtained. No such development shall be commenced except in accordance with such approved plans or a modification thereof similarly approved. The Sponsor may impose such other requirements with respect to the construction of such initial improvement or such other development of such Lot or other portion of the Property, as the Sponsor deems appropriate, provided that such requirements do not conflict with the provisions of this Declaration, applicable zoning and building codes, or any other applicable laws, codes or ordinances.

**Section 7.03. Mail-drop Facilities.** Mail-drop facilities for the single-family portion of the Properties shall be in accordance with the specifications outlined by the Sponsor in the Architectural Review Guidelines, attached hereto as Schedule B to this Declaration. The appearance and location of mailboxes and/or mail-drop facilities for cluster housing or other development within the Property must be approved by the Sponsor prior to installation.

**Section 7.04. Multiple Lots; Vacant Lots.** No Single-Family Dwelling may be constructed on more than one (1) subplot within the Property. No Owner may acquire adjacent Lot(s) with the intention of leaving said adjacent Lot(s) vacant for a period of more than six (6) months from the date of acquisition of the adjacent Lot(s), except that this restriction shall not apply to developers who purchase adjacent lots for resale to individual purchasers.

**Section 7.05. Trees.** Each Owner is required to plant at least one (1) tree per lot, two (2) trees per corner lot, at least two (2) inches in caliper within nine (9) months from the date an occupancy permit is issued to the Owner. Trees shall be located six (6) feet from the back of the curb. Trees must be one of the following types: Royal red maple, Cleveland select pear or Sunburst locust. Trees are to be maintained by the Owners and replaced when necessary.

**Section 7.06. Driveways.** Each Owner is required to install a concrete driveway apron and driveway within each lot. Concrete driveway aprons and driveways shall be installed from the garage to the street, within nine (9) months from the date an occupancy permit is issued to the Owner.

**Section 7.07. Outdoor Lighting Requirement.** Each Owner is required to have an electric light installed at the time of construction of single family and/or cluster homes. Such light for a single-family home shall be located five (5) feet from the edge of the driveway and one (1) foot from the right-of-way line. The location of lights for homes within a cluster area shall be approved by the Sponsor. The standard light shall be a colonial/coach-style black aluminum fixture with a minimum width of six (6) inches at its base, with a single 100-watt decorative bulb, photo light control for dusk to dawn operation, and mounted on a three-inch diameter black aluminum pole eighty (80) inches in height. Each Owner shall be responsible for maintenance, repair and replacement of his or her light. A cluster builder may request from Sponsor a variance from this standard light style to better conform to a theme within the whole cluster area.

**Section 7.08. Architectural Control Guidelines.** All development must comply with the Architectural Control Guidelines, which are included as Schedule B of this Declaration.

**Section 7.09. Certificate of Compliance.** Upon completion of the initial improvements on a Lot or any other portion of the Property to the satisfaction of the Sponsor, in accordance with the approved plans, this Declaration and such other requirements as the Sponsor may have imposed, the Sponsor shall issue a Certificate of Compliance identifying such improvements and stating generally that such improvements or development have been satisfactorily completed. Any Certificate of Compliance issued in accordance with the provisions of this Section 7.09 shall be prima facie evidence of the facts stated therein as of the date thereof, as to any purchaser, lessee or mortgagee or other encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all improvements on the parcel or portion of the Property as of the date thereof, and the use or uses described therein, comply with all the requirements of this Article VII, and with all other requirements of this Declaration. Prior to actual completion of certain improvements, the Sponsor may issue temporary Certificates of Compliance under such circumstances and on such terms and conditions as it deems appropriate.

**Section 7.10. Liability of Sponsor.** Except to the extent specifically provided in Section 7.09 above with respect to issuance of a Certificate of Compliance, no action taken by the Sponsor or any officer, employee or agent of the Sponsor pursuant to this Article VII shall entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of the Property, or any Lot or other portion thereof. All claims, demands or other causes of action arising out of any such action (including issuance of a Certificate of Compliance) by the Sponsor shall be deemed to be hereby waived. The Sponsor shall not be liable for any damages to anyone submitting plans to it for approval or to any Owner, Member of any other person, by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of such plans. Every person or other entity which submits plans to the Sponsor for approval agrees, by submission of such plans, that no action or suit will be brought against the Sponsor in connection with such submission.

**Section 7.11. Consent of Sponsor Necessary to Amend this Article VII.** Notwithstanding any other provision of the Declaration, any amendment to this Article VII which alters or abridges the rights or authority of the Sponsor shall not be valid without the consent in writing of the Sponsor. This section shall not be amended without the specific written consent of the Sponsor, which consent shall not be unreasonably withheld.

## ARTICLE VIII ARCHITECTURAL CONTROLS

**Section 8.01. Control by Board of Directors.** Until the Sponsor issues a Certificate of Compliance with respect to a Lot, Unit or other portion of the Property per Article VII hereof, the Sponsor shall have sole and exclusive control and jurisdiction over any construction, improvement, modification, alteration or other change to the Lot, Unit or other portion of the Property. The Board shall at all times

enforce and apply the architectural standards set out in this Declaration and in the Architectural Control Guidelines for Wheatfield Lakes Homeowners' Association, included as Schedule B to this Declaration. The Association, acting through its Board of Directors, shall have control over enforcement of the architectural control provisions of this Article VIII as to any Lot, Unit or other portions of the Property for which a Certificate of Compliance has been issued and to which architectural controls are applicable per Section 8.02. The Board of Directors may establish a committee, to be known as the Architectural Controls Committee, to assist and advise the Board in the enforcement of this Article VIII, including the promulgation of written standards to be followed with respect to modifications that would be allowed without the requirement of submitting to the procedure set forth in Article VIII, modifications that would generally be allowed after submitting to the provisions of this Article VIII and modifications that would be disallowed, the review of plans submitted by Owners to the Board as required by Article VIII, the establishment of maintenance schedules and regulations referred to in Section 6.04 hereof, and attendance at any hearings held by the Board with respect to proposed modifications or the promulgation of written architectural standards. If the Board does establish an Architectural Controls Committee, it shall be composed of no fewer than three (3) and no more than five (5) Owners, and it shall be advisory to the Board. All power pursuant to this Article VIII to approve or disapprove plans, to enforce violations and to promulgate or adopt rules and architectural standards hereof shall vest in the Board and not in the Architectural Controls Committee.

**Section 8.02. Applicability of Architectural Controls to the Property; Submission of Plan.**

(e) Scope of Architectural Controls. The scope of architectural controls set forth in this Article VIII are intended to apply to structural additions to Units, fences, sheds, swimming pools, and walls, and not to any other additions, alterations, improvements or modifications. With respect to those portions of the Property over which the Association has jurisdiction, no structural addition shall be made to any Unit, no swimming pool shall be constructed or installed and no other garage or other exterior structure shall be constructed or placed on the Property until the architectural compliance provisions of this Article VIII, specifically including but not limited to submission of plans as set forth in this Section and below, have been complied with.

(b) Submission of Plans. With respect to any action set forth in this Section 8.02 which requires the submission of plans, no such action shall be taken unless and until a plan or plans therefor, in such form and detail as the Board of Directors requires, have been submitted to, and reviewed and approved by, the Board of Directors. The Board of Directors may charge and collect a reasonable fee for examination of plans submitted for approval. The only exception to this requirement to submit plans will be as to those categories of modifications, if any, set forth in rules and regulations adopted by the Board of Directors as authorized by Section 8.07 which specifically allow those categories of modifications to be made without the requirement of following the procedure set forth in this Article.

**Section 8.03. Basis for Disapproval of Plans.** The Board of Directors may disapprove any plans submitted pursuant to Section 8.02 above for any of the following reasons:

- (a) failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- (b) failure to include information in such plans as requested;
- (c) objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking;
- (d) incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- (e) failure of proposed improvements to comply with any zoning, building, health or other

governmental laws, codes, ordinances, rules and regulations;

(f) any other matter which in the judgment and sole discretion of the Board of Directors would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

**Section 8.04. Approval of Board of Directors.** Upon approval or qualified approval by the Board of Directors of any plans submitted pursuant to Section 8.02 above, the Board of Directors shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property, and such approval may not be revoked or rescinded thereafter provided that: (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

**Section 8.05. Written Notification of Disapproval.** In any case where the Board of Directors disapproves any plans submitted hereunder, the Board of Directors shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based as set forth in Section 8.03. In any such case, the Board of Directors shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

**Section 8.06. Failure of Board to Act.** If any applicant has not received notice of the Board of Directors approving or disapproving any plans within sixty (60) days after submission thereof, said applicant may notify the Board in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. If the applicant sends such notice by certified mail, return receipt requested, the plans shall be deemed approved by the Board fifteen (15) days after the date of receipt of such notice, unless the Board provides applicant with written notice of disapproval prior to the expiration of the fifteen (15) day period.

**Section 8.07. Board's Right to Promulgate Rules and Regulations.** Subject to the provisions of Section 8.10 below, the Board of Directors may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulations. The Board may also promulgate rules and regulations governing the types of alterations, additions or modifications that may be made without the requirement of submitting to the provisions of this Article VIII.

**Section 8.08. Liability of Board.** No action taken by the Board of Directors or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Board of Directors, nor any member, subcommittee, employee or agent, shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment negligence or nonfeasance. Every person or other entity submitting plans to the Board of Directors agrees, by submission of such plans, that no action or suit will be brought against the Association or the Board of Directors (or any member,

subcommittee, employee or agent thereof) in connection with such submission.

**Section 8.09. Architectural Compliance Certificate.** Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Board of Directors shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Compliance Certificate") signed by a member of the Board or the managing agent of the Association stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violate any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Compliance Certificate. Any such Architectural Compliance Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

**Section 8.10. Restrictions on Change of Architectural Controls, Rules and Regulations.** The controls set forth in this Article VIII, the Architectural Control Guidelines set forth as Schedule C to the Declaration, and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Members voting in person or by proxy, written notice of which change shall be sent to all Members at least forty (40) days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. This provision shall not apply to Rules enacted by the Board pursuant to Section 8.07, which shall be governed by the provisions of Section 3.12 of the Declaration.

#### **ARTICLE IX RESERVED FOR FUTURE USE**

#### **ARTICLE X INSURANCE AND RECONSTRUCTION**

**Section 10.01. Insurance to be Carried.** To the extent reasonably obtainable and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (i) fire and casualty insurance covering Association Property; (ii) liability insurance for occurrences on the Association Property; (iii) directors and officers liability insurance and (iv) fidelity insurance covering those who handle Association funds, with coverages to be as follows:

(a) **Fire and Casualty.** Coverage shall be for the full replacement value (without deduction for depreciation) of all improvements on the Association Property.

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

**[NOTE: THE ASSOCIATION DOES NOT INSURE THE INDIVIDUAL LOTS, HOMES OR UNITS.]**

**Flood Insurance.** If any portion of the Property is located in an area identified by the federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the insurable improvements on the Association Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the

maximum coverage available under the National Flood Insurance Program or 100% of the current replacement cost of all such Units and other insurable property, whichever is less.

The proceeds of all policies of physical damage insurance, if \$100,000.00 or less, shall be payable to the Association, and if more than \$100,000.00, to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Unit Owners. This \$100,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than 2/3 of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear, subject, however, to the loss payment provisions in favor of the Board of Directors. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Duplicate originals of the policy, all renewals thereof, and any certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished to all mortgagees of Units requesting the same.

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

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days prior written notice to the insured. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

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

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

(d) Fidelity Insurance. The fidelity insurance shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The insurance shall be initially in the amount of \$50,000.00 and shall not be less than a sum equal to one year's aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the insurance may not be canceled or substantially

modified (including cancellation for Nonpayment of premium) without at least thirty (30) days' prior written notice to the Association.

(e) Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage, workers compensation and officers and directors liability coverage.

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

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

Section 10.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Unit or Lot Owner or any other party shall have priority to receive any portion of such surplus over such Unit or Lot Owner's mortgagee.

Section 10.03. Insurance Carried by Unit Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty and theft coverage for such Owner's personal property, (2) coverage for such Owner's personal liability within the Owner's Unit on such Owner's Lot, and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire or casualty insurance obtained by or through the Association, provided, however that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

Section 10.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article X, such insurance may be obtained by one or more mortgagees of Units, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes or other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

#### ARTICLE XI GENERAL COVENANTS AND RESTRICTIONS

Section 11.01. Residential Use. No dwelling or Lot shall be used for other than residential purposes. The exceptions to this shall be for (1) dwellings used as model homes on Lots by Sponsor, and/or Sponsor-approved builders, (2) dwellings owned by individual Members which may be used on a part-time basis as administrative offices of the Association, and (3) construction and sales trailers used by builders

for the construction and sale of homes. In any event, there shall be no more than one trailer per builder at any time located within the development, provided that the same is permitted under the Town of Wheatfield's Zoning Regulations. Said trailers' sizes, locations and upkeep must be approved by the Board of Directors.

**Section 11.02. Setback.** No structure shall be placed nearer to any street line than the "set back" line as shown on the filed map(s).

**Section 11.03. Unit Size.** The minimum area requirements for single-family homes shall be as set forth in the Architectural Control Guidelines promulgated by the Sponsor and included as Schedule B to this Declaration. The Sponsor may, in its discretion and in keeping with the character of the development, approve variations from the area requirements.

**Section 11.04. Surplus Earth.** Any surplus earth left from basement excavations or grading shall be hauled off site or dumped in specified areas where fill is needed as directed by the Sponsor in its sole and absolute discretion.

**Section 11.05. Fences and Sheds.** Fences and sheds are permitted. No chain-link fences are permitted on the Properties. Specifications and restrictions with respect to fences and sheds are included in the Architectural Guidelines included as Schedule B to this Declaration. The architectural control provisions of Article VII or Article VIII, as applicable, must be followed prior to installation of any fence or shed.

**Section 11.06. Signs and Advertising.** No sign or advertising device of any nature shall be placed upon any Lot or Living Unit, except for signs placed by the Sponsor or by Sponsor-approved builders and developers and approved by Sponsor, promoting the development and providing information to Owners and prospective purchasers. "House for sale" signs, a maximum of one per Lot, may be permitted with the approval of the Board of Directors of the Association.

**Section 11.07. Offensive Activities.** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done which may be or become an annoyance or nuisance to Owners or residents of the other Lots.

**Section 11.08. Motor Vehicles.** No automobile, truck, boat, recreation vehicle, airplane, or vehicle of any kind, licensed or unlicensed, may be stored on any street or driveway in or upon the Properties except in the confines of the garages or parking areas approved by the Board of Directors of the Association. Only machinery customarily required for the maintenance of private residences and conventional home and hobby machinery may be placed or operated on a lot ("Permitted Machinery"). The Permitted Machinery must be stored out of sight of adjoining residences, unless such machinery is necessary for use in the construction, reconstruction or repair of any building or structure.

**Section 11.09. Refuse or Trash.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any property. Trash, garbage or other waste shall be kept in sanitary containers, and if they are to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made, at such location on the Lot as to provide access to persons making such pickup. At all other times and within twenty-four hours after such pickup, such containers shall be stored in such manner so that they cannot be seen from adjacent and surrounding property.

**Section 11.10. Storage of Construction Materials.** Notwithstanding any provisions in this Declaration, during the course of construction of the original improvements on the lots, Sponsor, or Sponsor Approved Builders with authorization from Sponsor, may store construction materials and place temporary structures or trailers on any Lot. Sponsor and Sponsor Approved Builders with authorization from Sponsor may use any dwelling on any Lot owned by it as a model unit or sales office and may erect such signs as Sponsor deems, in its absolute discretion, to be necessary or desirable.

**Section 11.11. Completion of Buildings.** All exterior portions of any building shall be completed



within nine (9) months from the date of commencement thereof, and finished landscaping shall be completed within one (1) year from the date of commencement of construction. In the event of failure to comply with the provisions of this paragraph, Sponsor and/or any person or persons acquiring title to any of the Lots to which these restrictions apply shall have the right to enforce the provisions of this paragraph by an action for an injunction and such other temporary relief as may be appropriate, or in the alternative, by completing the work, whereupon the party or parties so completing the same shall have a lien upon the subject premises equal to the cost of such completion. Notice of intention to invoke the provisions of this paragraph and the securing of any such lien may be given in addition to all other means provided by law by the recording of an instrument in the Niagara County Clerk's Office acknowledged in the same manner as a Deed to be recorded, referring specifically to the provisions of this paragraph.

**Section 11.12. Article XI Does Not Apply to Sponsor.** Notwithstanding anything else herein contained, and except for rights reserved to the Sponsor herein, the provisions of this Article XI shall not apply to the Sponsor.

**Section 11.13. Pets.** Except for dogs or cats (maximum of two in total - e.g. one dog and one cat, or two cats or two dogs), fish or birds kept in a cage, no animals birds or insects shall be kept or maintained in any Unit or other portion of the Property except with the consent of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely, and (iii) impose fines upon Unit Owner(s) for failure to comply with this section and further rules and regulations promulgated under this section. Pets are not permitted on the grounds any time other than on a leash. Unit and Lot Owners are responsible for ensuring that their pets behave in an appropriate manner with due consideration to noise, health and the general well-being of other members of the Association. The Unit or Lot Owner which houses the pet (or any visiting pet) shall be responsible for cleaning up after the pet and keeping the animal within the confines of his or her Unit or Lot. The Association shall have the further right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, bird or insect, if, in the opinion of the Association, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled.

**Section 11.14. Regulation of Association Property.** The Sponsor and the Association shall have the right to make rules and regulations regarding the use of the lakes, "tot lot," green space, and any other Association Property, by Owners and other occupants of the Units.

**Section 11.15. Antennas and Satellite Dishes.** No external or outside antennae of any kind shall be maintained, except that an antenna for normal television reception may be used not in excess of 35 feet in height above ground level; provided, however, that in the event a cable transmission system is available to Owners, said Owners must, within 90 days after the availability of such cable system, discontinue the use of the external television antenna and remove the same from the exterior of any Living Unit or Lot. Except as otherwise provided by the Telecommunications Act of 1996, satellite dishes under 39" in diameter shall be permitted for the transmission or reception of television or radio signals, provided that the Owner obtains written permission from the Architectural Review Committee.

**Section 11.16. Clotheslines.** No clothing or other household fabric shall be hung outside of any dwelling.

**Section 11.17. Firearms and Explosives: Wildlife.** No discharge of guns, ammunition or explosives will be permitted. No fishing, hunting, trapping or poisoning of wildlife is permitted, except for rodent control or except upon prior written approval of the Board of Directors of the Association.

**Section 11.18. Motorized Vehicles.** No motorized vehicles (mini-bikes, motorcycles, mopeds, ATVs, etc.) shall be permitted on the Association property.

**Section 11.19. Use of Lakes: Projections over Lakes.** No boating, swimming, fishing, wading or any use requiring entry into the retention basins is permitted. Dumping of refuse or any other form of

pollution or waste into the retention basins or surrounding areas is also prohibited. No dock, deck, pier or other projection may be constructed over, onto or in any Lake or other Association Property.

**Section 11.20. Swimming Pools.** No above-ground swimming pools are permitted. Wading pools no more than two (2) feet in height, installed temporarily during the summer months, are permitted in rear yards.

**Section 11.21. Alteration of Association Property.** The Association Property may not be altered in any way without the written approval of the Sponsor or Board of Directors of the Association.

**Section 11.22. Outdoor Lighting.** With respect to outdoor lights installed pursuant to the requirement set out in Section 7.07 of this Declaration, the Association shall have the authority to maintain, repair, or replace any light not maintained by an Owner after thirty (30) days' notification to the Owner by the Association. The Owner shall be billed for the repair or replacement of the light.

## ARTICLE XII ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

**Section 12.01. Declaration Runs With the Land.** Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument, incorporates or refers to the Declaration) covenants and agrees for him, her or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

### **Section 12.02. Enforceability.**

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

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

**Section 12.03. No Waiver by Failure to Enforce.** The failure of any beneficiary hereto to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or

subsequent thereto. No liability shall attach to the Sponsor, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

**Section 12.04. Obligation and Lien for Cost of Enforcement by Association.** If the Association retains attorneys to enforce the provisions of this Declaration, or the rules and regulations promulgated thereto, all legal fees and other costs so incurred by the Association shall become a binding, personal obligation of the violator, regardless of whether a suit at law or in equity is commenced. IT IS SPECIFICALLY UNDERSTOOD AND ACCEPTED BY ALL OWNERS THAT THE ASSOCIATION SHALL NOT BE LIMITED IN RECOVERING SAID COSTS BY THE AMOUNT IN CONTROVERSY AND THAT ALL COSTS SHALL BE PAID BY THE VIOLATOR, PROVIDED THAT THE COSTS WERE REASONABLE AS DETERMINED SOLELY BY REFERENCE TO THE AMOUNT OF WORK AND COSTS REQUIRED TO RESOLVE THE MATTER. If such violator is (i) the Owner, or (ii) any family member, tenant, guest or invitee of the Owner, or (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (a) any member of such Owner's family, or (b) any family member of the tenant of such Owner, such costs shall also be a lien upon the Unit or other portion of the Property owned by such Owner, if any.

**Section 12.05. Special Rights of Insurers or Guarantors.** Provided that the respective entity or person has first sent a written request for the following information to the Association's Board of Directors, stating both its name and address and the Lot or Unit number or address in which it holds a mortgage or insures or guarantees a mortgage, such insurer or guarantor of the mortgage shall have the right to timely written notice of the following (as may be set forth more fully in the Association Declaration or By-Laws): (a) any condemnation or casualty loss that affects either a material portion of the Association or the Lots or Units that secure its mortgage; (b) any sixty (60) day delinquency in the payment of Assessments owed by the Owner of any Lot or Unit on which it holds a mortgage; (c) a lapse, cancellation or material modification of any insurance policy maintained by the Association's Board of Directors.

**Section 12.06. Amending or Rescinding.** Until such time as the Sponsor, or Sponsor's designated successors or assigns, has completed the sale of all Properties offered hereunder, the Sponsor shall have the sole right and power of granting waivers to provisions of this Declaration and to amend this Declaration, provided that no such amendment shall, in the Sponsor's reasonable determination, materially and adversely affect the value of the existing dwellings or prevent a dwelling from being used by the Owner in substantially the same manner as it was being used prior to the adoption of such amendment. Amendments made by the Sponsor within the scope of this paragraph shall require only the signature of the Sponsor.

In the event that New York law is changed to permit Members to cast the same amount of votes as the number of Units such Member owns, the Sponsor reserves the right to amend such provisions of this Declaration as are necessary to allow Members to cast the same amount of votes as the number of Lots owned, pursuant to the provisions of such law.

All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of not less than two-thirds (2/3) of all of the Members. In addition, and notwithstanding the above, so long as the Sponsor holds title to any lands described in Schedule A to this Declaration but not longer than twenty (20) years after the date of recording the Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

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

**Section 12.07. When Amendment or Rescission Becomes Effective.** Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Office of the Clerk of the County of Niagara. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed

with the Board.

**Section 12.08. Duration.** The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and Owners thereof until December 31, 2030, and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten years.

**Section 12.09. Construction and Interpretation.** The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof, except that no such construction or interpretation shall be effective as against the Sponsor.

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

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

**Section 12.10. Conflict with Municipal Laws.** The protective covenants, conditions and restrictions set forth therein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority or by specific restrictions imposed by any deed or lease.

**Section 12.11. Change of Conditions.** No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

**Section 12.12. Invalidity of Provision of Declaration.** The determination of any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

### **ARTICLE XIII GENERAL**

**Section 13.01. Headings and Captions.** The headings and captions contained in this Declaration are for convenience only and shall not effect the meaning or interpretations of the content thereof.


**Section 13.02. Right Reserved to Sponsor to Impose Additional Protective Covenants.** The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

**Section 13.03. Notice.** Any notice required to be sent to the Sponsor or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

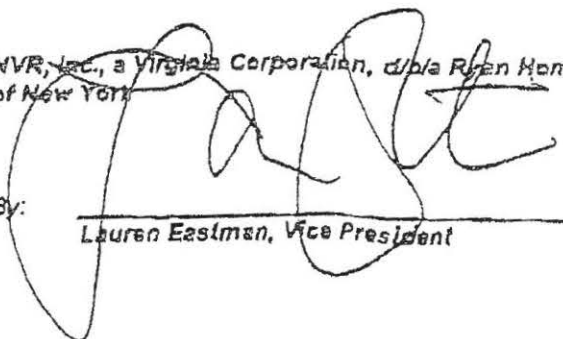
Section 13.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue, and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 13.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

F.C. Wheatfield, Inc.

By:   
Samuel H. Miller, President

NVR, Inc., a Virginia Corporation, d/b/a Risen Homes of New York

By:   
Lauren Eastman, Vice President

STATE OF OHIO )  
COUNTY OF Cuyahoga ) ss:

On the 26th day of Sept. in the year 2003 before me, the undersigned, a notary public in and for said state, personally appeared Samuel H. Miller, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument and that such individual made such appearance before the undersigned in the State of Ohio.

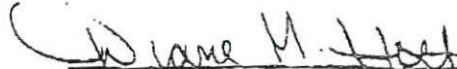
  
Notary Public

DAVID STILE, Attorney-At-Law  
Notary Public - State of Ohio  
My Commission has no expiration date  
Sec. 147.03 R.C.  
County of Cuyahoga

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

LIBER 3254 PAGE 410

On the 23 day of SEPTEMBER in the year 2003 before me, the undersigned, a notary public in and for said state, personally appeared Lauren Eastman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

DIANE M. HOLT  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-HO0084365  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 08-24-2005

LIBER 3254 PAGE 411  
SCHEDULE A

Property Subject to this Declaration Pursuant to Section 2.01

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Wheatfield, County of Niagara, State of New York, and being part of Lots 41 and 46, Township 13, Range 8 of the Holland Land Company's Survey, and being more particularly described as follows:

BEGINNING at a point on the south line of Jagow Road 424.75 feet westerly from the centerline of Sy Road; thence south 200.00 feet along the western boundary of that parcel of land conveyed by deed recorded in Liber 2495 of Deeds at Page 307; thence S89°03'46" E east a distance of 200.00 feet; thence S00°42'06"W south a distance of 1100.00 feet; thence S89°03'46"E east a distance of 200 feet; thence S00°42'06"W south a distance of 104.90 feet; thence N89°03'46"W west a distance of 200.00 feet; thence S00°42'06"W south a distance of 700.00 feet; thence east 200.0 feet along the southern boundary of that parcel of land conveyed by deed recorded in Liber 1526 of Deeds at Page 611; thence S00°42'06" south a distance of 55.92 feet; thence N88°36'38"E east a distance of 493.03 feet; thence S00°42'06"W south a distance of 275.23 feet along the western boundary of that parcel of land conveyed by deed recorded in Liber 2721 of Deeds at Page 14; thence N88°36'38"E east a distance of 621.33 feet; thence N00°42'06"E north a distance of 275.23 feet to the south line of Ferchen Street; thence east along said south line of Ferchen Street a distance of 83.60 feet; thence S00°42'06"W south a distance of 299.98 feet along the easterly boundary of that parcel of land conveyed by Liber 2312 of Deeds at Page 225; thence N88°36'38"E east a distance of 65.00 feet; thence N00°42'06"E north a distance of 149.88 feet; thence N88°36'38"E east a distance of 500.61 feet; thence S00°03'20"E south a distance of 1646.99 feet; thence S88°48'56"W west a distance of 91.93 feet; thence N01°11'04"W north a distance of 35.00 feet; thence S88°48'56"W west a distance of 66.00 feet; thence S01°11'04"E south a distance of 35 feet; thence S88°48'56"W west a distance of 160.00 feet; thence S01°11'04"E south a distance of 728.10 feet; thence S80°26'42"E southeast a distance of 216.71 feet; thence N87°51'56"E east a distance of 91.45 feet; thence S00°14'04"E south a distance of 958.74 feet; thence N84°46'14"W west a distance of 186.81 feet; thence N48°54'13"W northwest a distance of 2101.52 feet along the south line of Lot 41, Township 13, Range 8; thence N00°42'06"E north a distance of 30.20 feet; thence N48°54'13"W northwest a distance of 290.91 feet by measure (290.84 feet by deed); thence N59°19'07"W northwest a distance of 1082.66 feet by measure (1082.73 feet by deed); thence N00°57'22"E north a distance of 8.06 feet; thence N59°19'07"W northwest a distance of 486.40 feet; thence north 3262.67 feet along the easterly line of the lands owned by the Oppenheim Zoological Society of Niagara County, Inc.; thence S89°03'46"E east a distance of 422.40 feet; thence N00°57'22"E north a distance of 65.0 feet; thence S89°03'46"E east a distance of 200.0 feet; thence N00°57'22"E north a distance of 650.25 feet; thence east 65.0 feet along the south line of Jagow Road; thence S00°57'22"W south a distance of 400.0 feet; thence S89°03'46"E east a distance of 388.91 feet; thence N00°42'06"E north a distance of 400.0 feet; thence east 66.0 feet along the south line of Jagow Road to the point or place of beginning, containing 212.87 acres, more or less.

ARCHITECTURAL GUIDELINES

In an effort to maintain the aesthetic and economic value of the homes in Wheatfield Lakes, architectural standards and a design review procedure have been established. The architectural standards are designed to regulate the style, size, location, proportion, color, material and basic construction methods of all structures within Wheatfield Lakes.

The following design criteria is a guideline to encourage architectural continuity. These criteria are not meant to limit creative choices but to promote the feeling of quality within Wheatfield Lakes by means of design consistency.

When single family homes or a cluster development with either zero lot lines or single family lots, are permitted by the Zoning Code, the following criteria will be used to control the architectural design. This will be done so neighboring dwellings are harmonious with each other and compatible enough in appearance within the development as a whole, to provide an identifiable neighborhood in the community.



2/26/03  
Revised 9/18/03  
Revised 10/3/03

ARCHITECTURAL REVIEW PROCEDURE

ARCHITECTURAL REVIEW STANDARDS

DESIGN REVIEW APPLICATION

2/26/03

Revised 9/18/03

Revised 10/3/03

ARCHITECTURAL REVIEW PROCEDURE

For Architectural approval, the applicant shall submit a complete Design Review Application and 1 (one) set of prints for each house to be constructed to the reviewing architect as noted in the design review application. Incomplete forms will delay the review of the plans. All plans submitted shall be clearly marked as to building lot location, street and street number.

Submittals for additions to existing homes must comply with the above procedure and be submitted to the reviewing architect. This would include a completed application and plans.

2/26/03  
 Revised 9/18/03  
 Revised 10/3/03

ARCHITECTURAL REVIEW STANDARDS

I. ARCHITECTURAL STYLE OF THE DEVELOPMENT

A. Style of homes should match the regional vernacular architectural styles. The entire community must have a diversity of style. This diversity will work to break up any monotony of one predominant plan or style merely reversed back and forth throughout a street or area. Continuity must be maintained throughout the community which may seem contradictory to diversity. It is not and should not be confused as such. A single house plan and elevation, if varied slightly with respect to color, roof pitch, window style or size or type and facade can be diverse, yet maintain the continuous character of the development. Rear elevations facing major streets should receive additional architectural consideration.

B. Wheatfield Lakes will become a prestigious, desirable community if a character is developed and allowed to grow and is adhered to by all participants.

The intent of this Architectural Review is to foster creativity, individualism and a holistic community comprised of several architectural styles of houses, each one individual but with continuity and character throughout the development. The following outline will be used to review the plans submitted. The review includes but is not limited to the following:

II. SIZE AND LOCATION

The minimum dwelling unit area requirement for a residence on a single family subplot shall be 1600 square feet and have no less than a two car attached garage. Unit areas within cluster sites shall not be less than 1150 square feet. Square footages are exclusive of garages, basements, porches, breezeways, etc.

III. ARCHITECTURAL STYLE OF HOUSES

A. Homes should compliment the regional vernacular architectural styles.

Some examples include:

1. Cape Cod
2. Victorian
3. Georgian
4. Tudor
5. Normandy
6. Western Reserve
7. French Chateau
8. Colonial

B. Roofs and Pitches: Roof pitches should correlate with the style of architecture. A house should not have more than two different roof pitches. Too many different pitches create a cluttered unprofessional architecture.

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 Revised 9/18/03  
 Revised 10/3/03

1. Roof pitches are to have a minimum slope of six (6) vertical to twelve (12) units horizontal for the main body of the dwelling. Porches, garages, and extensions may have different slope when architecturally appropriate and/or when necessary to accommodate the placement of other architectural features such as windows, window shutters, and trim details, but are to be no less than three and one half (3½) vertical to twelve (12) units horizontal.
  2. Gutters and downspouts should match or complement the house exterior color scheme. They should match the trim color or the house siding color and be as unobtrusive as possible.
  3. Special attention should be paid to properly placed and proportioned dormers, reverse gables and special roof features as these elements add height and character to the house. These elements should be placed over entrances or feature window areas.
- C. Windows: Windows should be properly placed and well proportioned. On front elevations second floor windows should relate to what is occurring with the first floor and the rest of the house. Align windows on front elevations, where possible, with the first floor windows, and proportion them to compliment each other.
- D. Proportion Scale Massing: All houses will be checked for these most important architectural criteria. Houses should be well-balanced; symmetry is not required nor is symmetry necessarily balance. Windows, overhangs, projected areas or portions of houses are usually a desirable attribute in many styles as long as it is not overdone. Windows and decorative elements can break up large masses of the house so that a more human scale is perceived. Patterns, rhythms and articulation of architectural elements are encouraged as these usually make the style more interesting.
- E. Multiple Houses In A Non Thematic Residential Area: Identical Houses are not permitted adjacent to each other. No more than two houses in a row may have the same color and must have different trim colors. Builders are encouraged to vary and mix floor plans. The same house will not be permitted to be built repetitively down the street. It is recommended that the same house not be repeated within three houses in each direction.
- F. Thematic Neighborhoods: In recognition of the goal of fostering separate and distinct neighborhoods within the Wheatfield Lakes Community, same-style houses within a cluster residential area will be permitted. While same-style houses will be permitted to provide a residential area with its own theme and signature, both in design and architecture, builder(s) within the neighborhood are encouraged to vary the exterior colors and materials between houses, provided that both colors and materials for each individual house complement each other and each adjacent house.

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Revised 10/3/03

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#### IV. COLORS FOR THE EXTERIOR

- A. Houses submitted must have complete color schemes for all exterior components. Submit color samples of each material. (Builders may supply the Reviewing Architect with sample kits for reference for all homes in lieu of submitting samples each time).
1. Samples must be large enough to easily view the colors.
  2. Submit samples of all materials, including but not limited to; paint, stain, siding, trim, roof, shingles and face brick. Actual face brick samples do not have to be submitted. The manufacturer, the catalog number and name and description of the color may be sufficient.
- B. Colors for an individual house should complement each other and the adjacent house. Acceptance of color schemes shall be fully the authority of the Reviewing Agent and of the governing bodies. Each house will be checked against the adjacent house.
- C. All facades of a house are to be of the same color scheme. The only exception will be for dissimilar materials, such as a brick front with aluminum siding.

#### V. EXTERIOR MATERIALS

- A. Exterior surfacing materials shall be limited to no more than three on any one dwelling.
- B. The following list of materials shall be acceptable, including but not limited to:
1. Face brick, standard or modular size, stone or simulated stone if natural in appearance.
  2. Wood, horizontal lap, bevel, vertical "V" groove, exposure to suite style of house.
  3. Aluminum or vinyl siding horizontal lap style, exposure to suit style.
  4. Shingles; allowed on roof only, fiberglass, asphalt, wood, slate or composition. Roll roofing is expressly prohibited.
  5. Siding shingles (wood) will be permitted on the proper style house.
  6. Paints and stains including solid hiding and semi-transparent.
  7. Wood, fypon or vinyl trim work and decorative details.
  8. Wood and metal railings, balustrades, benches, millwork, etc.
  9. Wood, aluminum, PVC, clad and painted windows.
- C. The following list of materials and uses are expressly prohibited including but not limited to:
1. Diagonal siding, wood or aluminum.

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 Revised 10/3/03

2. Mixed directions of siding on one house.
3. Asphalt or fiberglass shingles as wall cladding.
4. More than one color of face brick. (If the applicant has worked out a design scheme with more than one color, the Reviewing Architect will review the design, as long as it is an architectural design.)
5. More than one color of siding.
6. Concrete block and/or concrete walls.
7. Waterproofing or parge coats from grade to bottom of siding.
8. T-111 will not be permitted.

## VI. CONSTRUCTION

- A. No more than 6" of foundation shall be exposed on the front elevation. Side elevations on corner lots must have the exposed foundation screened with landscaping within one year of occupancy. Builder must inform homebuyer of said obligation. Concrete block foundation walls above grade are not permitted.
- B. All siding must be either horizontal or vertical. Do not mix directions on the same house.
- C. Trims to be as desired or to suit the architectural style of the house.
- D. Porches, patios, verandas, porticos and decks are encouraged as they add a great deal of character to a house.
- E. All decks must be included in the plans at time of submission. Show all railings, benches and stairs.
- F. Decks not included with plans must be submitted in writing to the management company to be forwarded to the Architectural Review Committee. A building permit is required by the City. All decks must be maintained and the wood must be sealed or stained a neutral color, as approved by the Architectural Review Board. Posts must be cemented in the ground.
- G. All homes must be designed to meet or exceed all applicable zoning and building codes and reviews of all authorities having jurisdiction over the Development.
- H. Nothing in this document shall be construed as conflicting requirements to the zoning and building codes governing the Development. Submissions will be reviewed for compliance to the exterior architecture of the building.
- I. Each home constructed within Wheafield Lakes shall be constructed on single lots only. No double or triple wide lots shall be permitted.

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- J. Each home shall utilize the approved Wheatfield Lakes mailbox design. (see exhibit attached)
- K. No above ground swimming pools are permitted on the Properties. Wading pools no more than two (2) feet in height, installed temporarily during the summer months, are permitted in rear yards.
- L. Any exterior modifications, additions or alterations made on existing residences including but not limited to decks and sun porches shall require the approval of the Declarant.
- M. No building of a temporary nature, shed, garage, basement or outbuildings or barns may be used as a residence, temporarily or permanently. This shall include, but not be limited to tents, shacks, trailer, tree houses, mobile homes and similar vehicles.

One story sheds are acceptable within the Wheatfield Lakes development. Sheds must not exceed a maximum of 144 square feet with a maximum height of 9 feet. Exterior materials (siding, roofing, soffits, fascia, trim etc) must match the residence. T-111 wood siding is not permitted. Roof style and pitch should match main roof pitch on the residence. Gambrel roofs are not permitted. Shed must have a door to keep stored items from view. Structure must not be located closer to the street than rear line of residence and must not extend beyond the plan of the sides of the residence.

- N. Fences are permitted within the Wheatfield Lakes development provided the meet the following criteria:
  - o Must follow all governmental requirements (including permitting)
  - o Must be maintained
  - o Fences must be a minimum of 3 ft. in height not to exceed 5 ft. in height. The following styles are acceptable:
    - o Picket fence
    - o Board on Board
    - o Open Board
    - o Wrought iron style are permitted upon approval only in white and black
  - o Fences can be vinyl or wood. Wood must be clear sealed or stained a neutral color, as approved by the Architectural Review Board.
  - o All fence post MUST be cemented in the ground
  - o Fences must not be located closer to the street than rear line of residence

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Revised 9/18/03  
Revised 10/3/03

DESIGN REVIEW APPLICATION  
Wheatfield Lakes  
Town of Wheatfield, NY

Submit all documents to:

Sandra Smith  
Forest City Land Group  
6929 Williams Road  
Wheatfield, NY 14304

Accompanying this application must be one (1) copy of the building floor plans, elevations, and the site plan. These items shall be submitted prior to the house plan submittal to the Town of Wheatfield Building Department. The Building Department will not review any plans not approved by Forest City Land Group.

Builder: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Drawings

Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Sublot No.: \_\_\_\_\_

Date Application Received: \_\_\_\_\_



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Revised 9/18/03  
Revised 10/3/03

List the type, manufacturer, and all possible colors and finish (if applicable) for all items listed below:

Roofing

---

---

Exterior Trim  
(Frieze, Corner  
Door, Window  
Surrounds, etc.)

---

---

Gutters  
And Downspouts

---

---

Siding

---

---

Brick or Stone  
(If used)

---

---

Decorative  
Features (Mantles,  
Shutters, etc.)

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Stucco:  
(If Used)

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Decks, Porches,  
Fences, etc.

---

---

Windows

---

---

Skylights

---

---

Garage Door

---

---

Square Footage (1600 Sq. Ft. Minimum Habitable for single family, 1150 Sq. Ft. for Cluster homes)

First Floor

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Second Floor

---

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TOTAL:

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**\*FOR USE BY DESIGN REVIEW COMMITTEE ONLY:**

Date Application Received: \_\_\_\_\_

Date Application Returned: \_\_\_\_\_

Disposition:

Approved By: \_\_\_\_\_

Approved as Corrected By: \_\_\_\_\_

Revise and Submit By: \_\_\_\_\_

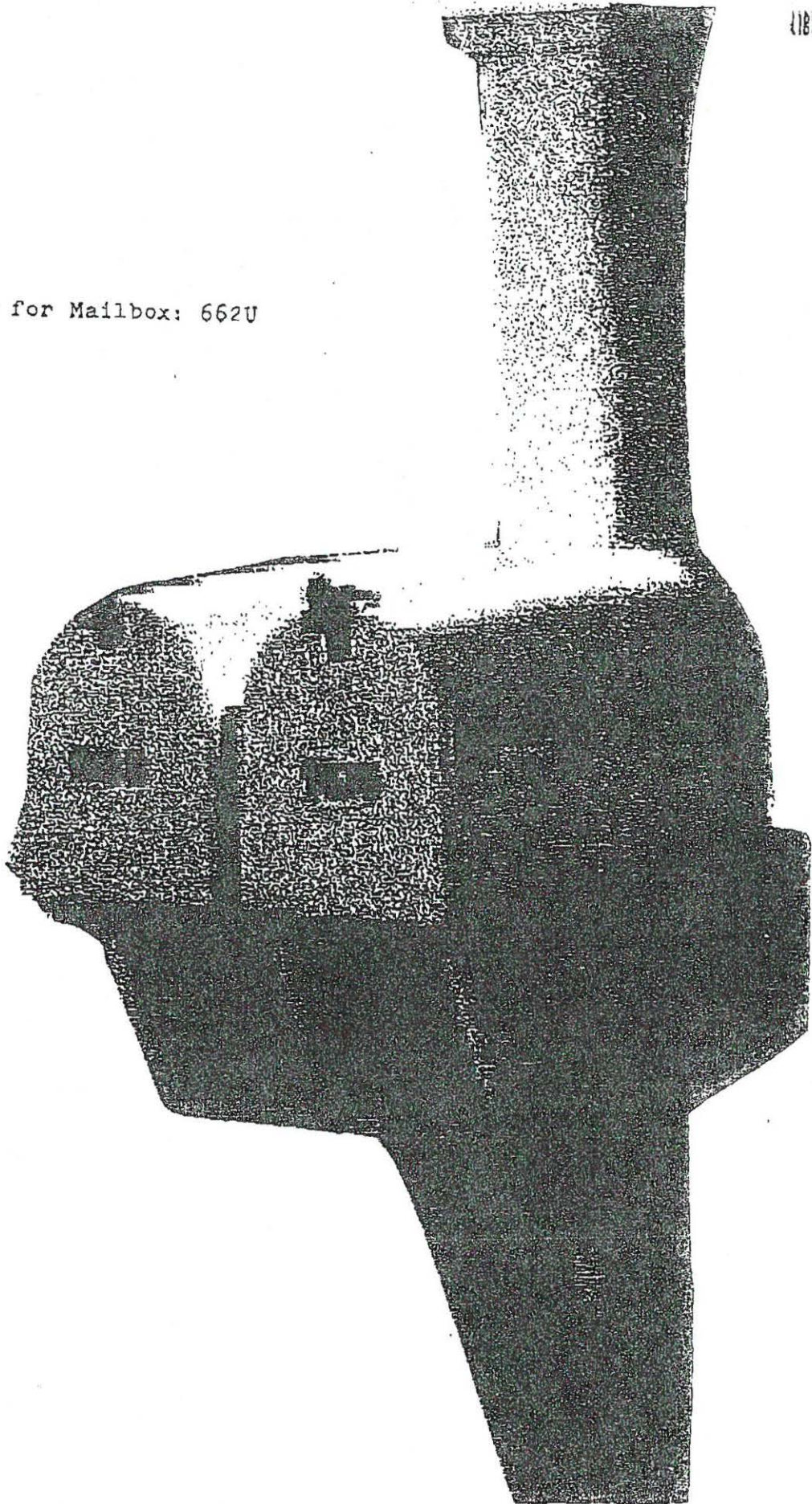
Revise and Corrected Plans By: \_\_\_\_\_

Remarks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N:\land\meredith\2003\architecturalguidelines\wheatfield

PMS Color for Mailbox: 662U



SCHEDULE C

*Property Owned by NVR, INC.,  
a Virginia corporation, d/b/a Ryan Homes of New York  
and Subject to this Declaration*

*All that tract or parcel of land, situate in the Town of Wheatfield, County of Niagara and State of New York, being part of Lot 46, Township 13, Range 8 of the Holland Land Company's Survey and according to a certain Map of Wheatfield Lakes Subdivision, Part 1, Phase 2, prepared by Richard A. Huth, filed in the Niagara County Clerk's Office on October 3, 2002, in Book 59 of Microfilmed Maps at page 5905, is known as Subdivision Lot 1 on the west side of Rock Dove Lane.*

BY-LAWS

OF

WHEATFIELD LAKES HOMEOWNERS' ASSOCIATION, LTD.

Sponsor: F.C. Wheatfield, Inc.

Dated: September 26, 2003

.....

HOLLAND & ROBINSON  
6888 Main Street  
Williamsville, New York 14221  
716-565-1567  
fax 716-565-1575

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BY-LAWS

OF

WHEATFIELD LAKES HOMEOWNERS' ASSOCIATION, LTD.

ARTICLE I

NAME AND LOCATION

The name of the Corporation is the Wheatfield Lakes Homeowners' Association, Ltd., hereinafter referred to as the "Association." The principal office of the Corporation shall be located in the Town of Wheatfield, County of Niagara and State of New York.

ARTICLE II

DEFINITIONS

The definition of terms as set forth in Article I of the Wheatfield Lakes Homeowners' Association Declaration (the "Declaration") and elsewhere in the Declaration shall automatically apply to all like terms used in these By-Laws.

ARTICLE III

MEMBERS

Section 3.01. Membership in the Association. The criteria and definition for membership shall be as set forth in Section 3.02 of the Declaration. The term "Member" is further defined to include classes of members all as set forth in Article I of the Declaration.

Section 3.02. Right of Sponsor to Assign. The Sponsor may assign its membership, in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 3.03. Voting Rights. Each Owner, including the Sponsor, shall be entitled to one vote. Notwithstanding such right to vote, the Sponsor shall have the exclusive right to select the initial three member Board of Directors of the Association and all replacements thereto until the transfer of title to individual purchasers or developers of one hundred percent (100%) of the Lots offered for sale. After such time, the Owners shall have the right to elect all members of the Board of Directors. Any Member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Member's voting rights be suspended for nonpayment of assessments.

Section 3.04. Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment

and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

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

Section 3.06. Joint or Common Ownership. If a Lot is owned or held by more than one person or entity, as joint tenants, tenants by the entirety or as tenants in common, such Owners shall agree among themselves as to which one of such Owners shall be a Member of the Association. The Association shall require a written statement (in such form as the Association may prescribe) to be signed by all of such Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no membership in the Association with respect to a jointly owned Lot unless such a written statement with respect to such Lot has been submitted to the Association.

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

#### ARTICLE IV

##### MEETINGS OF MEMBERS

Section 4.01. Annual Meeting. The first annual meeting of the Association shall be held within 30 days after the transfer of title to one hundred percent (100%) of the Lots offered for sale. Thereafter, there shall be an Annual Meeting of the Members on the second Monday in January at the hour of 7:00 p.m. or at such other date and time and at such place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the Annual Meeting shall be a legal holiday, the meeting shall be held on the first day following which is not a legal holiday. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 4.02. Special Meetings. Special Meetings of the Members may be called at any time by the President or by the Board of Directors or as otherwise required by the New York Not-for-Profit Corporation Law.

Section 4.03. Notice of Meetings. Notice of Annual and Special Meetings shall be given as required by the New York Not-for-Profit Corporation Law.

Section 4.04. Quorum and Voting. Except as may otherwise be provided in these By-Laws, the presence in person or by proxy of Members having ten percent (10%) of the total authorized votes of all Members shall constitute a quorum at any meeting of Members. If any meeting of Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present in person or by proxy. The act of two-thirds (2/3) of the Members present at a meeting at which a quorum was present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the

Certificate of Incorporation of the Association, the Declaration or these By-Laws.

Section 4.05. Action on Written Consent. Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken, as allowed by Section 614 of the New York Not-for-Profit Corporation Law.

Section 4.06. Waivers of Notice. The provisions of Section 606 of the New York Not-for-Profit Corporation Law shall apply as to waiver of notice of any meeting of the members.

## ARTICLE V

### BOARD OF DIRECTORS

Section 5.01. Number and Qualification of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three persons appointed by the Sponsor.

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

Section 5.02. Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairperson, who may or may not be a Director, and two or more other Members of the Association, at least one of whom shall be a resident Lot Owner. Nominations may also be made from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at the meeting.

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

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

Section 5.03. Election and Term. Except for Members of the Board of Directors appointed by the Sponsor, who shall serve for successive terms of one (1) year (unless earlier replaced by the Sponsor), at the first annual meeting of the Association, the initial term of the office of two (2) members of the Board of Directors shall be two (2) years, and the initial term of office of the remaining Member shall be one (1) year. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Owners. Voting shall be by secret written ballot which shall:

- (a) set forth the number of vacancies to be filled;

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

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

Section 5.04. Vacancies. Except for (i) Directors appointed by the Sponsor who shall be replaced by the Sponsor and (ii) Directors elected by the Owners other than the Sponsor, who shall be replaced by the majority vote of the remaining Directors similarly elected, or, if none, by a special election by the Owners other than the Sponsor, any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director so elected to fill a vacancy shall serve as such until the next annual meeting of Members at which the election of Directors is in the regular order of business and until his or her successor is elected and qualified. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors, and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualified.

Section 5.05. Removal. Subject to the limitations as provided in this Section 5.05, at any regular or special meeting of Members, any one or more of the Members of the Board of Directors elected by the Owners other than the Sponsor may be removed with or without cause by the affirmative vote of not less than a majority of the Owners other than the Sponsor, and a successor may then and there or thereafter be elected by the Owners other than the Sponsor to fill the vacancy thus created. Any Member of the Board of Directors whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed with or without cause only by the Sponsor. Successors to such removed Members of the Board shall be appointed by the Sponsor. In addition, the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three consecutive meetings.

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

Section 5.07. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly, without notice, at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

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

Section 5.09. Quorum and Voting. Except as may be provided elsewhere in the Declaration, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business at all

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

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

Section 5.11. Powers and Duties. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation, the Declaration or the By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to the following:

- (a) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by the other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.
- (b) Determine, levy and collect the Maintenance Assessments, Special Assessments and other charges as provided for in the Declaration.
- (c) Collect, use and expend the Assessments and charges collected for the maintenance, care and preservation and operation of the Property of the Association.
- (d) Subject to the provisions of the Declaration, to the extent it deems the same necessary and reasonable, procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees and procure and maintain adequate hazard insurance on such of the Association's real and personal properties.
- (e) Subject to the provisions of the Declaration, repair, restore or alter the Properties of the Association after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- (f) Adopt and publish Rules governing the use of the Association Property, and the personal conduct of the Members, occupants and other guests thereon, and establish fines and other penalties for infractions thereof.
- (g) Collect delinquent Assessments by suit or otherwise, abate nuisances and enjoin, or seek damages from or impose penalties on Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- (h) Pay all taxes owing by the Association.
- (i) Suspend the voting rights of a Member, after notice and hearing, for a period not to exceed thirty (30) days for infractions of published rules and regulations, provided that in no event shall the Board suspend the voting rights of a Member for nonpayment of Assessments.
- (j). Declare the office of a Member of the Board of Directors to be vacant in the event such Member

shall be absent from three consecutive meetings of the Board of Directors.

(k) Keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and present a statement thereof to the Members at the annual meeting of Members, or at any special meeting of Members which such a statement is requested in writing by not less than one-fourth (1/4) of the Members entitled to vote.

(l) Issue, or cause to be issued, upon demand by a person an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessments for any Lot.

(m) Employ a managing agent and/or a manager at compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the manager or managing agent all powers granted to the Board of Directors under the By-Laws, to the extent not otherwise prohibited by the By-Laws or Declaration, or otherwise prohibited by law.

## ARTICLE VI

### OFFICERS

Section 6.01. Officers. The officers of the Association shall be the President (who shall be a Member of the Board of Directors), one or more Vice Presidents (the number thereof to be determined by the Board of Directors), the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as it shall deem desirable, such officer to have the authority and to perform the duties prescribed from time to time by the Board of Directors. The President, but no other officer, must be a Member of the Board of Directors.

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

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

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

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

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

Section 6.07. Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal, if any, and corporate records of the Association, shall keep records of the Members of the Association and the mortgagees of dwelling Units on the Property, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

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

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

## ARTICLE VII

### COMMITTEES

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

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

Section 7.03. Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with Rules adopted by the Board of Directors.

## ARTICLE VIII

### FINANCE

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

Section 8.02. Fiscal Year. The fiscal year of the Association shall be twelve (12) calendar months ending December 31 of each year, unless otherwise provided by the Board of Directors.

Section 8.03. Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and financial statement of operation for the preceding fiscal year. Such report shall be distributed to all Owners and to all Eligible Mortgage Holders who have requested the same, promptly after the end of each fiscal year.

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

Section 8.05. Separate Account of Capital Reserve Funds. Any funds of the Association collected or designated as reserves for the replacement of capital items shall be segregated from all other funds of the Association in one or more separate accounts. This shall not preclude the Association from segregating other portions of its funds in separate accounts for a specific purpose (i.e., reserves for non-capital items) or otherwise.

#### ARTICLE IX

##### BOOKS, RECORDS AND LEGAL DOCUMENTS

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

#### ARTICLE X

##### CORPORATE SEAL OPTIONAL

If decided by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

#### ARTICLE XI

##### AMENDMENTS

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

(a) a notice of the meeting containing a full statement of the proposed modification, alteration, repeal, amendment or addition has been sent to all Owners not less than ten (10) days nor more than forty (40) days prior to the date of set for the vote thereon; and



(b) a majority of a quorum of Members then entitled to vote and present at the meeting in person or by proxy approve the change.

Section 11.02. Alteration, Repeal or Amendment by Board of Directors. These By-Laws may be modified, altered, repealed, amended or added to at any regular or special meeting of the Board of Directors.

Section 11.03. Consent of Sponsor. So long as the Sponsor holds title to any lands described in Schedule A to the Association Declaration (whether or not subject to the Declaration) but no longer than twenty (20) years after the date of recording the Declaration, Sections 3.02, 3.03, 5.01, 5.03, 5.04, 11.01, 11.02, 11.03 and 11.04 shall not be amended without the consent of the Sponsor.

Section 11.04. Amendment by Sponsor. The Sponsor, during the time the Sponsor owns any Lot or Unit, may make amendments to these By-Laws (i) to correct omissions or errors, or (ii) to bring the By-Laws into compliance with the requirements of the Federal Housing Administration, Federal National Mortgage Agency, Federal Home Loan Mortgage Corporation or State of New York Mortgage Agency, or (iii) to make changes to respond to market conditions, including but not limited to revisions to the restrictive covenants, which amendments shall not adversely modify substantial rights of any Unit Owner without such Unit Owner's written consent. Amendments made by the Sponsor within the scope of this paragraph shall require only the signature of the Sponsor

## ARTICLE XII

### MISCELLANEOUS

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

Section 12.02. Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control. All of the provisions of the Declaration shall be considered to be a part of and be incorporated in these By-Laws and shall be binding upon the Board of Directors of the Corporation and the members of the Corporation as if fully set forth herein.

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

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

Section 12.05. Captions. The captions herein are inserted only as a matter of convenience and for

reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

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