

DECLARATION  
OF  
COVENANTS, EASEMENTS AND RESTRICTIONS

For the land and all improvements thereon known as Lakewood Meadows located on the east side of Middle Cheshire Road in the Town of Canandaigua, County of Ontario and State of New York, as more particularly described in Schedule A attached hereto and made a part hereof.

WITNESSETH:

S & J MORRELL, INC., a New York corporation with its office at 1478 Marsh Road, Pittsford, New York 14534 ("Sponsor"), hereby declares on behalf of itself, its successors and assigns:

The land described in Schedule A attached, together with all improvements thereon and interest therein shall be held, sold, conveyed, owned, leased, mortgaged and otherwise transferred subject to the covenants, restrictions, easements and conditions established by this Declaration and By-Laws attached hereto. The Declaration and By-Laws shall run with the land and be binding upon as well as inure to the benefit of any and all persons who acquire a right, title or interest in and to such land, or part thereof, from the date of the recording of the Declaration and By-laws until the date on which they are terminated.

The land and all improvements thereon are part of a homeowners association called Lakewood Meadows Homeowners Association and the name of the governing body of Lakewood Meadows Homeowners Association shall be Lakewood Meadows Homeowners Association, Inc.

ARTICLE I  
DEFINITIONS

1.1 "Association" shall refer to Lakewood Meadows Homeowners Association, Inc., its successors and assigns, which shall own the Association Property and the Facilities and maintain the Property and Facilities as hereinafter provided.

1.2 The "Association Property" the Association Property is more fully described in Schedule B attached.

1.3 The "Board" shall mean the Board of Directors of the Association.

1.4 The "Facilities" shall mean the Development identification sign, shrubs, trees, and other landscaping located and installed in the cul-de-sac areas within the Association Property.

1.5 "Development" shall mean the real property described in Schedule A, together with all improvements thereon.

1.6 "Dwelling Unit" shall mean any single family residential dwelling located in the Development on a Lot. The size, shape, design and location, of any Dwelling Unit within the Development shall rest within Sponsor's sole discretion, subject only to applicable local and state building codes, laws, rules and regulations, and Sponsor's contractual obligations to the purchaser of any Lot or Dwelling Unit.

1.7 "Lot" Shall refer to any plot of land shown upon any filed plot map or subdivision map of the Property, or any resubdivision map of all or a portion of the same, with the exception of the Association Property.

1.8 "Member" shall mean all those Owners who are members of the Association as provided in Article III hereof, including the Sponsor, its successors and assigns, as long as Sponsor is the record Owner of the fee simple title to any Lot or real property within the Development, whether or not improved by a Dwelling Unit.

1.9 "Owner" or "Homeowner" shall refer to the record owner, whether one or more persons or entities, of the title to any Lot which is part of the Property, but the excluding those having such interest merely as security for the performance of any obligations.

1.10 "Section 2" shall mean the section of the Development subdivided by Sponsor into twenty-seven (27) lots on which Dwelling Units shall be constructed, together with various easements and subdivision identification. Section 2 is shown on a subdivision map duly filed in the Ontario County Clerk's Office.

1.11 "Property" shall refer to the real property located in the Town of Canandaigua, Ontario County, New York, as more particularly described in Schedule A attached hereto and made a part hereof.

1.12 "Sponsor" shall refer to S&I Morrell, Inc., and its successors and assigns.

1.13 "HUD/VA" shall mean and/or refer to the United States Department of Housing and Urban Development and/or the United States Veterans Administration.

**ARTICLE II**  
**ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION**  
**AND SPONSOR'S RIGHT TO RE-SUBDIVIDE**

2.1 Lot Resubdivision by Sponsor. Sponsor reserves the right to re-subdivide Lots shown on the subdivision map of Section 2 when filed for the purpose of adjusting Lot boundary lines to accommodate the dimensions and placement of the Dwelling Units as constructed. This right of resubdivision shall not apply to Lots which Sponsor has transferred to a new "Owner".

2.2 "Additions to the Development by the Association". After the termination of the Class B Membership, annexation of additional property shall require the consent of two-thirds (2/3) of the Class A Members entitled to vote thereon, at a special meeting duly called for this purpose. There shall be no such annexation while there is a Class B Membership.

2.3 "Mergers". Upon a merger or consolidation of the Association, with another association, the properties, rights and obligations of the Association may, by operation of Law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of the other association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Development, together with covenants and scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Development except as hereinafter provided.

**ARTICLE III**  
**MEMBERSHIP-VOTING RIGHTS**

3.1 Association Members. The Association membership shall include the Sponsor and Owners of Lots. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no other qualification for membership. The foregoing is not intended to include persons or entities who hold an interest merely a security for the performance of any obligation. Membership shall be appurtenant to any may not be separated from ownership of any Lot which is subject to assessment by the Association. The Membership shall consist of two (2) classes, Class A Members and Class B Members.

3.2 Votes.

(a) Class A Members shall be all Lot or Homeowners, including the Sponsor. Each Class A Member shall have only one (1) vote regardless of the number of Lots owned.

(b) The Class B Member shall be the Sponsor, its successors and assigns.

(c) Until the termination of the Class B Membership, the Class B Membership shall be the only Class entitled to vote. After the termination of the Class B Membership, the Class A Membership shall be the only Class entitled to vote.

(d) After an Owner acquires title to a Lot from the Sponsor, such Owner shall thereupon become a Class A member and the membership of the Sponsor with respect to such Lot shall cease.

3.3 Voting Rules. All Members of the Association entitled to vote in accordance with Article 3.2 hereof, shall vote pursuant to the following rules:

(a) Each member, regardless of the number of Lots he or she owns or holds, shall be entitled to cast one (1) vote.

(b) When any Lot is owned by more than one (1) person or entity, as tenants by the entirety, or in joint tenancy, or tenancy in common, or any other manner of joint or common ownership or interest, such persons or entities, as Owners of a single Lot shall collectively be entitled to cast only one (1) vote, and if such person or entities cannot jointly agree as to how such vote should be cast, no vote shall be allowed with respect to such Lot.

3.4 Control by Sponsor. The Sponsor's Class B Membership shall be terminated and be converted to Class A Membership (as to each Lot then owned by Sponsor) immediately upon the expiration of five (5) years after the transfer of the first lot in the Development, or upon the transfer of the fourteenth (14<sup>th</sup>) lot contained therein, whichever event first occurs. As a result of such termination, Sponsor shall no longer be entitled to select the directors but they shall then be elected by the Class A Membership in accordance with the By-Laws.

There shall be a Board of Directors for Lakewood Meadows Homeowners Association.

Notwithstanding anything to the contrary in this Declaration or the By-Laws regarding the numbers of directors, requirements of a quorum or otherwise, for so long as Sponsor is entitled to select all of the directors there may be only three (3) directors selected, none of whom need be a resident of the Development. Similarly, for as long as Sponsor is entitled to select any of the directors, the directors selected by Sponsor need not be residents of the Development.

For so long as Sponsor owns two or more unsold homes, the number of directors on the Board of Directors shall not be increased without Sponsor's prior written consent.

Within thirty (30) days of the occurrence of the earlier of the following events: (a) one (1) year from the date of transfer of the first Lot; or (b) the date on which Sponsor has transferred title to the fourteenth (14<sup>th</sup>) home in the Development, Sponsor will, by written notice given in accordance with the terms of the By-Laws, convene a meeting of the Homeowners for the

purpose of electing the members of the Board of Directors. Thereafter, such election shall take place at an annual meeting of Homeowners each year. Sponsor shall be entitled to cast the votes for the election of directors until its Class B Membership shall be terminated.

#### **ARTICLE IV ASSOCIATION'S PROPERTY RIGHTS**

4.1 Association Property and the Facilities. The Association's Property shall consist of the land described in Schedule B attached and the Facilities (hereinbefore defined). The Facilities to be located on and within the Association Property, whether initially installed by Sponsor or subsequently replaced by the Association.

#### **ARTICLE V ADDITIONAL RIGHTS OF ASSOCIATION AND ASSOCIATION PROPERTY**

5.1 Additional Rights of Association in Association Property. The Association shall have the right to dedicate or transfer all or any part of the Association Property and the Facilities to any public agency, authority or utility, or such other transferee as the Association may determine, for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, transfer or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument, signed by Class A Members entitled to cast two-thirds (2/3) of the votes of Class A Membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action is sent to every such Class A Member not less than ten (10) or more than fifteen (15) days in advance of any action taken.

(a) The association shall have the right to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property and the Facilities, for the safety and convenience of the users thereof.

#### **ARTICLE VI MEMBERS' PROPERTY RIGHTS**

6.1 Grant of Owner's Easements. The non exclusive common perpetual easements herein provided for the benefit of each Lot Owner in the Development shall be granted to each such Lot Owner by appropriate language in such Lot Owner's deed of conveyance referring to the easements provided for in this Declaration.

6.2 Reservations Affecting Lot Owners' Easements Rights. the Lot Owner's easements herein provided for shall be subject nevertheless to the following:

(a) Covenants, conditions, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration;

(b) Any state of fact an accurate survey map show;

(c) Covenants, conditions, restrictions, easements, encumbrances, and liens set forth on the filed subdivision map of Section 2 when it is filed.

## **ARTICLE VII EASEMENTS AND LOT RESUBDIVISION RIGHTS RESERVED TO SPONSOR**

7.1 Construction Easement. During the period of time during which Sponsor is still constructing, maintaining or repairing Dwelling Units in any Section of the Development, Sponsor shall have a temporary easement in each Section of the Development over the Association Property and the Facilities for the purpose of constructing the Dwelling Units, and installing and completing the Facilities in each Section. Further, the Sponsor shall have the right to maintain a sales office on any Lot owned by Sponsor and shall include sponsor's right to post sales signs, erect and maintain at least one model Dwelling Unit. the easement herein shall terminate when sponsor has sold the last Dwelling unit in the Development.

7.2 Utility Easements. Sponsor reserves the right to grant and create easements, whether or not the same are shown on the filed subdivision maps to the Town of Canandaigua, any special improvement district thereof, any public or private utility, any public or municipal authority, or other entity for the installation, repair, maintenance, and replacement of sanitary and storm sewers, water lines, and hydrants, electricity lines, telephone lines, cable television lines, and all related pipes, cables, wires, conduits, grates, manholes, and other appurtenances; provided that any such easements shall not be located under or across the portion of a Lot covered by a Dwelling Unit.

## **ARTICLE VIII SPONSOR'S OBLIGATIONS**

8.1 Completion Property by the Sponsor.

(a) The Sponsor shall complete the following work to the Property at its sole cost and expense.

(i) The installation and construction of the Facilities (as hereinbefore defined);



(ii) The installation of all public sanitary and storm sewers, water lines, and hydrants, water drainage lines, pipes, conduits, facilities, appurtenances, and other utilities (where the same are not installed by the Town of Canandaigua, any special improvement district thereof, any municipal authority or any private utility company or other entity) which are required under the applicable provisions of the Town Law of New York, and other local and State zoning and building laws, rules, and regulations, in order to file a subdivision map of Section 2 in the said Clerk's Office.

(b) The Sponsor's obligation to complete such work shall survive and continue until the same is fully completed.

(c) Sponsor will place no mortgages on the Association Property. Any construction mortgages will be subordinate to the Declaration and will not be a lien against the Association Property.

## 8.2 Sponsor's Operation and Maintenance of the Association's Property and the Facilities.

(a) The Sponsor shall operate, repair and maintain the Association's Property and the Facilities in Section 2 until the sale of the first Dwelling Unit in Section 2, at which time the Association shall become responsible for such functions.

(b) While Sponsor controls the Board of the Association, it will provide an annual certified financial statement to the Association.

## **ARTICLE IX COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS**

9.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot within the Property, is hereby deemed to have covenanted and agreed, by acceptance of a deed therefor, and whether or not is shall be so expressed in such deed, to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest and costs, and reasonable attorneys' fees incurred in the collection of same shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

9.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively (a) to operate, maintain, repair, improve, construct, reconstruct and preserve, on a non-

profit basis, the Associations' Property or the Facilities; (b) to pay premiums for insurance as hereafter provided in Article XI; (c) to pay any and all taxes, if any; to provide all necessary and reasonable labor, equipment, materials, administrative and management services, legal and accounting services and for creating reserves for the purposes set forth herein.

9.3. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement located upon the Association's Property and the Facilities, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members present in person or by proxy, at a meeting duly called for such purpose.

9.4 Notice and Quorum for any Action Authorized Under Section 9.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 9.3 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of Members, in person or by proxy, entitled to cast two-thirds (2/3) of all of the votes of the membership shall constitute a quorum.

9.5 Commencement of Assessments. Subject to Sponsor's right to pay the difference between the Associations' actual operating expenses and the annual assessments collected from Lot or Dwelling Unit Owners other than Sponsor, as hereinafter set forth, both annual and special assessments provided for herein shall commence as to all Lots on the day the first Lot is transferred. All of said assessments shall be prorated according to the number of months remaining in the fiscal year.

The annual assessment for the first year shall be fixed by the Sponsor. The Board of Directors shall fix the amount of subsequent annual assessments for each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to ever Owner subject thereto. The due dates shall be established by the Board of Directors, and unless otherwise provided, the Association shall collect each month from the Owner of each Lot one-twelfth (1/12) of the annual assessment for such Lot.

9.6 Uniformity of Assessments. Each Lot Owner shall be responsible to pay a fraction of the total annual or special assessments levied by the Association after such Lot becomes subject to the payment thereof in accordance with the foregoing provisions hereof. Subject to Sponsor's right to pay the difference between the Association's actual operating expenses and the annual assessments collected from Lot or Dwelling Unit Owners other than Sponsor, as set forth in Section 9.7 below, each Lot or Dwelling Unit Owner shall be responsible to pay one-twenty seventh (1/27) of the special or annual assessments levied by the Association.

9.7 Assessments on Lots or Dwelling Units Owned by Sponsor. No Lot or Dwelling United owned by Sponsor in the Development which is subject to this Declaration shall be subject



to the payment of any annual assessments until Sponsor notifies the Association in writing that all the remaining and unsold Lots it owns in the Development shall immediately become subject to the payment of such annual assessment. Thereupon, Sponsor shall commence to pay the required monthly assessment installment for each Lot or Dwelling Unit covered by such notice. The annual assessment installments which are due for the month in which such notice is given shall be adjusted and prorated from the date of such notice to the close of such month. While the Lots or Dwelling Units owned by Sponsor in the Development are exempt from the payment of the annual assessments by virtue of the foregoing provisions of this action, Sponsor shall pay to the Association each month, a sum of money equal to the Association's actual monthly expenses, including all reserve contributions, reduced by a sum equal to the total assessments levied by the Association for that month upon the other Lots in the Development. Sponsor shall have the right, but not the obligation, to be reimbursed by the purchaser of a Lot for those portions of Sponsor's payments for such Lot which is reimbursement to Sponsor may be collected upon the transfer of such Lot.

9.8 Certificates of Payment. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing, signed by an officer of the Association, or an officer or employee of any independent manager properly retained by the Association, setting forth whether said assessment has been paid. The Association or property manager shall be entitled to levy an administrative charge for any such certificate requested by any such owner.

9.9 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, it shall bear a late charge as provided in the By-Laws of the Association, and if not paid within thirty (30) days after the due date the assessment shall bear interest from the date of delinquent at the rate specified in the Association By-Laws, but in no event in excess of the prevailing legal maximum rate per annum, and the Association may bring an action at Law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and late charges, interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, thereby expressly vests in the Association, or its agents, the right and power to bring all actions against Such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner is deemed thereby to have expressly granted to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in Favor of the Association and Shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the interest foreclosed at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its rights to such liens, as may be necessary or expedient, to an insurance company continuing to give total coverage (notwithstanding nonpayment of such defaulting Owner's portion of the premium) for fire and other hazard insurance. No Owner may waive or otherwise escape liability for the assessments provided for herein or abandonment of his

Lot, or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

9.10 Subordination of the Association Lien, to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage given to any bank, savings bank, savings and loan association, pension fund, or other institutional lender or to Sponsor. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage, given as above provided, and provided that the Association is made a party defendant in such foreclosure action, shall extinguish the lien of such assessments as to payments which become due prior to the foreclosure sale and transfer. No foreclosure sale or transfer shall relieve such Lots from liability for any assessments thereafter becoming due, or from the lien thereof.

9.11 Exempt Property. All properties, dedicated to, and accepted by, a local municipality or authority, the Association Property and the Facilities, shall be exempt from the assessments created herein.

9.12 Loans to the Association. The Board of Directors of the Association, within the limitations imposed by Section 9.2, may borrow monies from time to time, so long as the repayment of the principal borrowed and the interest thereon shall be accomplished within the term of five (5) years. Loans that shall require repayment over a longer term shall first be approved by two-thirds (2/3) of the votes of the Class A members present in person or by proxy at a meeting duly called for this purpose.

In order to secure the repayment of any and all sums borrowed by it from time to time, the Association is hereby granted the right and power (a) to assign and pledge revenues received, and to be received, by it under and provisions of this Declaration, provided that no such assignment or pledge shall be made without the prior consent of two-thirds (2/3) of the votes of the Members of the Association entitled to vote thereon, cast at a meeting duly called for such purpose in accordance with the By-Laws, and (b) to enter into an agreement with the note holder(s) with respect to the collection and disbursements of funds, and (c) to apply funds received by the Association first to payment of principal and interest, when due, on such loans; and (d) to establish such collection, payment and lien enforcement procedures as may be required by the note holder(s).

9.13 Reserves and Surplus. The Board of Directors of the Association may establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine to be necessary and desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend, in any fiscal year, all the sums collected in such year, and may carry forward as surplus, any balances remaining; nor shall the Association be obligated to apply any surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

9.14 Contractual Authority. The Association shall be entitled to contract with any corporation, firm or other entity for the performance of various duties imposed on the Association.

## **ARTICLE X GENERAL COVENANTS - USE RESTRICTIONS**

10.1 Residential Lots. Each Lot, improved with a Dwelling Unit, shall be conveyed as a separate designated and legally described freehold estate subject to the terms, conditions and provisions hereof, and shall be used for single family residential purposes only.

10.2 Model Units. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Sponsor or the builder of the Dwelling Units to maintain during the period of construction and sale of said Dwelling Units, upon any Lot as Sponsor deems necessary, such facilities as in the sole opinion of Sponsor may be reasonably required, convenient or incidental to the construction and sale of said Dwelling Units, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

## **ARTICLE XI ZONING AND SPECIFIC RESTRICTIONS**

11.1 Zoning Requirements. This Declaration shall not be taken as permitting any action prohibited by the applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions of records. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, restrictions of record, or this Declaration shall be taken to govern and control.

## **ARTICLE XII INSURANCE**

12.1 Public Liability Insurance. The Association shall obtain broad form public liability insurance covering the Association Property and the Facilities in a single limit amount of not less than One Million Dollars (\$1,000,000.00) covering claims for bodily injury, death and property damage arising out of any one occurrence. Premiums for public liability insurance shall be part of the Common Expense payable out of annual assessments provided under Article VIII hereof. All policies of liability insurance may contain endorsements to cover liabilities insurance may contain endorsements to cover liabilities of the Homeowners as a group (and/or the Association) with respect to the Association Property and the Facilities.

12.2 Other Insurance.

(a) Workmen's Compensation. Should workers' compensation insurance be required by law for the Association, a workers' compensation insurance policy meeting any such requirement shall be produced by the Association.

(b) Fidelity Insurance. The Board of Directors of the Association is free to decide whether or not it will obtain insurance against misappropriation of Association funds.

(c) Directors' Liability Insurance. The Association may secure directors' liability insurance or such other forms of insurance coverage as its Board of Directors may direct from time to time, to be paid for as an expense of the Association.

### ARTICLE XIII ADMINISTRATION

The administration of the Association shall be governed by the following provisions:

13.1 Governing Body. The Association shall be governed by the Board of Directors of the Association, which shall consist of three (3) directors elected in accordance with the By-Laws.

13.2 By-Laws. The By-Laws are attached to this Declaration and shall become effective upon their recording in Ontario County Clerk's Office. They may be amended and new By-Laws may be adopted in accordance with terms thereof.

13.3 Powers and Duties of Board of Directors. The Powers and duties of the Board of Directors are established by this Declaration and the By-Laws. In addition, the Board shall have such implied powers as may reasonably be required for the effective administration of the Association.

The powers and duties of the Board shall be exercised in the manner prescribed by the By-Laws, provided that any duties or rights of the Board which are granted by or are to be exercised in accordance with the provisions of this Declaration, shall be so exercised.

13.4 Determination by the Board of Directors. Unless the vote of a greater number is required by this Declaration or the By-Laws, the votes cast by a majority of the directors at a meeting at which a quorum is present, or the unanimous written consent of the directors, shall constitute the decision of the Board of Directors. A quorum shall consist of the presence of three (3) directors at such meeting.

13.5 Notice of Demands. Notice of demands for any purpose shall be given in the manner provided in this Declaration and the By-Laws.

13.6 Service of Process. Service of process in connection with any legal action commenced against the Association may be made upon the President or Secretary of the Association.

13.7 Funds and Titles Held by Board. All funds received by the Association and the proceeds of such funds shall be held by the Board for the benefit of the Homeowners and shall be used for the purposes stated in this Declaration and the By-Laws.

#### **ARTICLE XIV DURATION AND AMENDMENT**

14.1 Binding Effect. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Sponsor, the Association and the Owner of any Lot included in the Property, their respective legal representatives, distributees, successors and assigns until the 31st day of December in the year 2025 after which time said Restrictions shall be automatically extended for successive periods of ten (10) years.

14.2 Amendment. The Declaration may not be amended in any respect except by a vote of not less than two-thirds (2/3) of the Class A Members, present in person or by proxy, at a meeting duly called for such purpose at which a quorum is present and acting throughout. For purposes of this Section only, such a quorum shall be eighty percent (80%) of the votes entitled to be cast by Members of the Association as defined in Article III hereof. An amendment may also be adopted by the unanimous consent of the Owners, subject to the written approval by all mortgagees of record where such amendment would adversely affect them. No amendment shall be effective until recorded in the form of a duly executed Certificate of Amendment in the Office of the Clerk of the County of Ontario, New York, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

#### **ARTICLE XV TERMINATION**

The Association shall be terminated, if at all, in the following manner:

15.1 Voluntary Termination of Dissolution. The Association may be terminated and dissolved if at least sixty six and two-thirds (66 2/3%) of the Class A members vote in favor of such termination and dissolution at a special meeting called in accordance with the provisions of the By-Laws, subject, however, to the written approval of all first mortgagees. The termination and dissolution shall become effective upon the recording in the Ontario County Clerk's Office of a Certificate of Termination executed by the sixty-six and two-thirds percent (66 2/3%) or more of the Class A Members who voted in favor of the termination and dissolution, plus all first mortgagees.



15.2 Effect of Termination and Dissolution. Upon the termination and dissolution of the Association, the Association Property and Facilities shall be dedicated to an appropriate governmental body or agency to be devoted to purposes as nearly as practicable the same to which they were required to be diverted by the Association.

In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any Not-for-Profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as to which they were required to be devoted by the Association. No such disposition of the Association's Property shall be effective to divest or diminish any right or title any Member or Dwelling Unit Owner vested in or among this Declaration and deed applicable to his property, including particularly the said easements granted to each Dwelling Unit Owner, unless made in accordance with the provisions of this Declaration and deed. In the event of dissolution, the covenants, restrictions contained in this Declaration, other than those applying to assessments, shall remain in full force and effect. There shall be a requirement of the Association prior to its dissolution, to establish an appropriate authority or corporation for enforcing such covenants and restrictions.

## **ARTICLE XVI MISCELLANEOUS PROVISIONS**

16.1 No Waiver. The failure of Sponsor, the Association, or Owner of any Lot included in the Property, their respective legal representatives, distributees, successors and assigns, to enforce any Restriction herein contained, shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

16.2 No Reverter. No Restriction herein is intended to be, or shall be construed as, a condition subsequent to or as creating a possibility reverter.

16.3 Invalidity. The determination by a court that any provisions hereof is invalid for any reason shall not affect the validity of any provisions hereof.

16.4 Equitable Remedies. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, and any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

16.5 Attorneys' Fees. Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Lot Owner may be awarded reasonable attorneys' fees against such Lot Owner.



16.6 Interpretation. The Board of Directors of the Association where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and of the By-Laws, 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 such provisions. Any conflict between any construction or interpretation made by the Board of Directors and any other person or entity to enforce the provisions hereof and of the By-Laws shall be resolved in favor of the construction or interpretation by the Board.

The Board of Directors, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration and of the By-Laws. 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 and regulations, the Board shall take into consideration the best interests of the Owners and 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 defined, the Board 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.

16.7 Headings. The headings of the Articles or any Section herein are for convenience only and shall not affect the meanings or interpretations of the contents thereof.

16.8 First Mortgage Liens. No violation of any of these Restrictions shall defeat or render invalid the lien of any first mortgage or building loan made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee's foreclosure sale shall be bound and subject to these Restrictions as fully as any other Owner of any portion of the Property.

16.9 Covenants Run With Land. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot, whether or not the same is incorporated or refers to this Declaration, covenants for himself, his distributees, successors and assigns to observe, perform and be bound by this Declaration and the By-Laws and to incorporate the same by reference in any deed or other conveyance of all or any portion of his or her interest in any real property subject hereto.

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