



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
REAL ESTATE FINANCE BUREAU

VIA EMAIL

April 1, 2019

Mark J. Longo, Esq.
Block, Longo, Lamarca
& Brzezinski P.C.
One Niagara Square
Buffalo, NY 14202

Re: Oakwood Hills
File No. HO-17-0027

Dear Mr. Longo:

The Department of Law has reviewed the proposed First Amendment, submitted on September 18, 2018, and supplemented on November 6, 2018, December 5, 2018, January 15, 2019, February 1, 2019, February 18, 2019, and March 25, 2019 in association with the CPS-7 treatment for the above-referenced premises granted on February 14, 2018.

On the basis of the facts and circumstances stated in your letter and supporting documentation, the Department of Law has determined that the amendment shall be incorporated into, and made part of, the original filing. The amendment discloses a new builder co-sponsor.

This position is based solely upon the limited information supplied, and the representation made, in your letter and supporting documents. Any different set of facts or circumstances may result in the Department of Law taking a different position.

The issuance of this letter shall not be construed to be a waiver of, or limitation on, the Attorney General's authority to take enforcement action for violations of Article 23-A of the General Business Law and other applicable provisions of law.

Sincerely,

seba C. wattace

Lisa C. Wallace
Assistant Attorney General
(212) 416-6384

Lisa.Wallace@ag.ny.gov

**FIRST AMENDMENT TO CPS-7 FILING
FOR
OAKWOOD HILLS**

File No. H017-0087

**THIS FIRST AMENDMENT WAS ACCEPTED FOR FILING BY THE
NEW YORK STATE DEPARTMENT OF LAW ON _____**

This is the FIRST Amendment to the CPS-7 Filing for Oakwood Hills. The CPS-7 Treatment was granted on February 14, 2018.

Closing of First LOT

The closing of title to the first lot in this Section to the Builder Co-Sponsor has not yet taken place. There are no lots under contract with prospective home owners of the Builder Co-Sponsor as of yet. There have been prior sales of subdivision sublots 14, 15, 21, 23, 24, 35 and 81 to other homeowners. Owners of sublots 14, 15, and 35 have consented to subject their lots to the provisions of the Declaration of Restrictive Covenants creating the Oakwood Hills Association, Inc., and will be members of the HOA. There are a total of 100 lots remaining in the section of the subdivision.

New Co-Sponsor

NVR, Inc. d/b/a Ryan Homes of New York, will be added as the Builder Co-Sponsor. Oakwood Hills LLC remains as the Developer Co-Sponsor and will remain as such for any and all future sections in this subdivision. NVR, Inc. d/b/a Ryan Homes of New York has a contract to purchase up to 58 lots in this development. NVR Inc., d/b/a Ryan Homes of New York is a homebuilder and will build all the homes in this section. NVR, Inc. D/b/a Ryan Homes of New York Inc., is a Builder Co-Sponsor in numerous other CPS-7's filings in New York State.

Certificate of Occupancy

Certificate of Occupancy from the Town of Batavia will be granted once the homes are completed and prior to the transfer of title. Depending upon the time a home is completed a temporary certificate of occupancy will be issued by the Town which will then require the Co-Sponsor Builder to complete the remaining items for a final Certificate of Occupancy to be issued. A homeowner can occupy a house with a temporary certificate of occupancy once it has been issued by the Town of Batavia.

Recording of Declaration and By-Laws

The Declaration and By-Laws has already been filed on February 2018, in the Office of the Clerk of Genesee County.

Working Capital and Reserve Funds

The amount of the working capital and reserve funds will be established pursuant o the budget attached hereto. The funds will be deposited in a checking account at Keybank, 69 Main Street, Batavia, New York 14020.

Unsold Lots

The Developer Co-Sponsor owns all 100 lots. (Up to 58 lots to be purchased by the Builder-Co-Sponsor).

Board of Managers

The Sponsor is in control of the Board of Managers.

First Meeting of Home Owners

The first meeting of the Home Owners has taken place on May 10, 2018.

Common Charges

The aggregate monthly common charges for Homes shall be \$200.00 per month. Until the sponsor starts to charge the homeowners the budget shall be paid for entirely by the sponsor. The amount outlined in the budget is for this section of the subdivision only.

Leased Units

There are no lots/homes owned by the Co-Sponsor's which are occupied by tenants.

Financial Obligations of Co-Sponsor/Sources

There are currently no repair and improvement obligations of the Co-Sponsors. The Co-Sponsors will pay its obligations for unsold lots out of its own funds. The Co-Sponsors are current in all financial obligations relating to the HOA.

Unsold Lots Subject to Mortgages

None

Tax Cuts and Jobs Act

On January 1, 2018, the Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changed the previously existing Internal Revenue Code, including the taxes and deductions related to home ownership. Accordingly, the tax information and projections disclosed in this offering plan may be inaccurate because such are based on federal tax law as it existed prior to 2018. Purchasers are advised to consult with a tax expert regarding whether the new law will affect the purchaser's taxes. Purchasers should not rely on any representations in this offering plan addressing taxes without first consulting a tax expert.

No Other Material Changes

There are no other material changes of facts or circumstances affecting the property or the state of facts set forth in the original Offering Plan except as indicated herein.

Oakwood Hills LLC

AMENDED ESCROW AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2018; by and among OAKWOOD LULLS LLC, as Co-Sponsor of The Cottages at Auburn Meadows CPS-7 application (the "Developer Co-Sponsor, NVR, INC., d/b/a Ryan Homes of New York, as Co-Sponsor of The Cottages at Auburn Meadows CPS-7 application (the "Builder Co-Sponsor"), BLOCK, LONGO, LAMARCA & BRZESINSKI, P.C. (the "Escrow Agent") and _____ (the "Purchase").

WHEREAS, the Co-Sponsors are the co-sponsors of a CPS-7 Application (the "Plan") filed with the Attorney General to oiler for sale homeowners association membership interests in the premises located at 7 Springs Road, Town of Batavia, New York, which premises are known as Oakwood Hills and subject to the terms and conditions set forth in the Application; and

WHEREAS, Block, Longo, LaMarca & Brzezinski, P.C. is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-e(2-b), 352-(h) and The Attorney General's Regulations promulgated thereunder; and

WHEREAS, the Co-Sponsors and Purchaser desire that Escrow Agent act as escrow agent for deposits, down payments and advances (referred to herein as "Deposit"), pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW ACCOUNT

1.1 Escrow Agent shall/has establish(ed) an escrow account for the purpose of holding the Deposit made by Purchaser pursuant to that certain Purchase Agreement between the Builder Co-Sponsor and Purchaser (the "Purchase Agreement")

at Citizens Bank, a bank, authorized to do business in the State of *New York*, at its branch located at 414 Main Street, Buffalo, New York 14202, The name of the escrow account is Oakwood Hills Escrow Account (the "Escrow Account"), The account number is _____

1.2 The Escrow Agent has designated Mark J. Longo, Esq. and/or his agents in the law firm of Block, Longo, LaMarca & Brzezinski, P.C, to serve as signatories on the account. All designated signatories are admitted to practice law in the State of New York, All of the signatories on the Escrow Account have an address of One Niagara Square, Buffalo, New York 14202, and a telephone number of (716) 854-4080,

1.3 Escrow Agent and all authorized signatories hereby submit to the Jurisdiction of the State of New York and its courts for any cause of action arising out of this Agreement or otherwise concerning the maintenance of or release of the Deposit from escrow.

1.4 Neither Escrow Agent nor any authorized signatories on the 'Escrow Account are a Co-Sponsor, Selling Agent, Managing Agent (as those terms are defined in the Plan), or any principal thereof, or have any beneficial interest in any of the foregoing,

1.5 The escrow account **is** an IOLA account established pursuant to Judiciary Law Section 497.

2. DEPOSITS INTO THE ESCROW ACCOUNT

2.1 All Deposits received from Purchaser prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be placed into the Escrow Account, All instruments to be placed into the Escrow Account shall be payable directly to the order of Block, Longo & LaMarca, P.C. as Escrow Agent for Oakwood Hills, pursuant to the terms set forth in the Plan. Any instrument payable to, or endorsed other than as required hereby, and which cannot be deposited into such Escrow Account, shall be returned to

Purchaser promptly, but in no event more than (5) business days following receipt of such instrument by Escrow Agent. In the event of such return of the Deposit, the instrument shall be deemed not to have been delivered to Escrow Agent pursuant to the terms of this Agreement.

2.2 Escrow Agent is hereby obligated to send a notice of all Deposits received by Escrow Agent to Purchaser within ten (10) business days of receipt of same. Such notice shall set forth the bank, the account number and the initial interest rate. If the Purchaser does not receive notification of such deposit within fifteen (15) business days after tender of the Deposit, the Purchaser may cancel the purchase and rescind within ninety (90) days after tender of the Deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, New York 10005. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was were timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning the Deposit and the requisite notice was timely mailed to the Purchaser.

3. RELEASE OF FUNDS

3.1 Under no circumstances shall the Co-Sponsors seek or accept release of the Deposit of Purchaser to a Co-Sponsor until after consummation of the Plan, as evidenced by the acceptance of an effectiveness amendment by the New York State Department of Law (if applicable). Consummation of the plan shall not relieve Co-Sponsors or Escrow Agent of any obligation to Purchaser as set forth in GBL Sections 352-3(2-b) and 352-h.

3.2 Escrow Agent shall release the Deposit to Purchaser or a Co-Sponsor as directed:

3.2.1 pursuant to terms and conditions set forth in the Purchase Agreement, upon closing of title to the unit;

3.2.2 in a subsequent writing signed by a Co-Sponsor and Purchaser; or

3.2.3 by a final, non-appealable order or judgment of a court.

3.3 If Escrow Agent is not directed to release the Deposit pursuant to Paragraph 3.2 above, and Escrow Agent receives a request by a Co-Sponsor or the Purchaser to release the Deposit, then Escrow Agent must give Co-Sponsor and Purchaser prior written notice of not fewer than thirty (30) days before releasing the Deposit. If Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the deposit shall be released and Escrow Agent shall provide further written notice to Co-Sponsor and Purchaser informing them of said release. If Escrow Agent receives written notice from Co-Sponsor or Purchaser objecting to the release of the Deposit within said thirty (30) day period, Escrow Agent shall continue to hold the deposit until otherwise directed pursuant to paragraph 3.2 above. Notwithstanding the foregoing, Escrow Agent shall have the right to deposit the Deposit contained in the Escrow Account with the Clerk of the county where the unit is located and shall give written notice to Co-Sponsor and Purchaser of such deposit.

3.4 Co-Sponsors shall not object to the release of the Deposit to:

3.4.1 Purchaser, if Purchaser time& rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan; or

3.4.2 Purchase after an amendment abandoning the plan is accepted for filing by the New York State Department of Ia.

4. RECORDKEEPING

4.1 Escrow Agent shall maintain all records concerning *the* Escrow Account for seven (7) years after release of the Deposit

4.2 Upon the dissolution of the law firm which was Escrow Agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer,

4.3 Escrow Agent shall make available to the Attorney General, upon request, all books and records of Escrow Agent relating to the funds deposited and disbursed hereunder,

5. GENERAL OBLIGATIONS OR ESCROW AGENT

5.I. Escrow Agent shall maintain the Escrow Account under its direct Supervision and control.

5.2 A fiduciary relationship shall exist between Escrow Agent and Purchaser, and Escrow Agent acknowledges its fiduciary and statutory obligations pursuant to GBL Sections 352(e)(2-b) and 352(h).

5.3 Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

6. RESPONSIBILITIES OR CO-SPONSORS

6.1 The Co-Sponsors agree that the Builder Co-Sponsor and its agents, including any selling agents, shall deliver the Deposit received by them prior to the closing of an individual transaction to a designed attorney who is a member of or employed by Escrow Agent, within two (2) business days of the tender of the Deposit by Purchaser, using such transmittal forms as required by Escrow Agent.

6.2 The Co-Sponsors agree that they shall not interfere with Escrow Agent's performance of its fiduciary duties and statutory obligations as set forth in GBL Sections 352-(e)(2-b) and 352-(h) and the Attorney General's Regulations.

6.3 Co-Sponsor shall obtain a completed and signed Form W-9 or W-8, as applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and Purchase Agreement

7. TERMINATION OF AGREEMENT

7.1 This Agreement shall remain in effect unless and until it is canceled by either:

7.1.1 Written notice given by Co-Sponsors to Escrow Agent of cancellation of designation of Escrow Agent to act in said capacity, which cancellation shall take effect only upon the filing of an amendment to the Plan with the Department of Law providing for a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, Purchaser shall be deemed to have consented to such cancellation.

7.1.2 The resignation of Escrow Agent, which shall not take effect until Escrow Agent is replaced by a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, and notice is given to Purchaser of the identity of the successor escrow agent, the bank in the State of New York where the Deposit is being held, and the account number thereof.

7.2 Upon termination of the duties of Escrow Agent, as described in paragraph 7.1.1 or 7.2.2 above, Escrow Agent shall deliver the Deposit held by Escrow Agent and the Purchase Agreement any other documents maintained by Escrow Agent relating to the Deposit to the successor escrow agent.

B. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon Co-Sponsors, Purchaser and Escrow Agent and their respective successors and assigns.

9. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of New York,

10. ESCROW AGENT'S COMPENSATION

Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Co-Sponsors from the Deposit nor deducted from the Deposit by any financial institution under any circumstances.

11. SEVERADILITY

If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such provision to other persons or to other circumstances shall, not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12. INDEMNIFICATION

Co-Sponsors agree to defend, indemnify and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of this Agreement or the performance or non-performance of Escrow Agent's duties under this Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of this Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

13. ENTIRE AGREEMENT

This Agreement, read together with GEL Sections 352-e(2-b) and 352-(h) and the Attorney General's Regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written,

CO-SPONSORS:

OAKWOOD HILLSLL, LLC

By: 

Peter H. Zeff, Managing Member

NFR, INC., d/b/a Ryan Homes of New York

By: 

Toni Delaney, Vice President/
Market Manager

ESCROW AGENT:

**BLOCK, LONGO, LAMARCA &
BRZEZINSKI P.C.**


Mark J. Longo, Esq.

PURCHASER:

By: _____

CERTIFICATION BY BUILDER CO-SPONSOR

November 6, 2018

New York State Department of Law
Real Estate Finance Bureau
120 Broadway - 23rd Floor
New York, New York 10271

**Re: Oakwood Hills
7 Springs Road, Town of Batavia, Genesee County, New York**

To Whom It Concerns:

We are the Builder Co-Sponsor and the principals of the Co-Sponsor of the homeowners association ("HOA") for the above captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 22, and such other laws and regulations as may be applicable, including the application pursuant to CPS-7.

We have read the entire CPS-7 application, including the Supplemental Affidavit of Co-Sponsors and Principals of Co-Sponsors. We have investigated the facts set forth in the application and the underlying facts.

We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the application gives full disclosure as to the amenities included in the HOA, provides full disclosure as to the condition of the property, identity of the parties involved and any lawsuits, administrative proceedings, litigation or other proceedings the outcome of which may materially affect the offering, the property, or the Sponsors' capacity to perform all of their obligations to the HOA or the operation of the HOA, and complies with the Attorney General's requirements for granting a CPS-7 application.

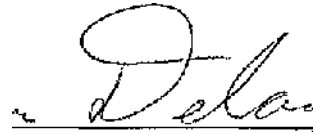
We certify that we shall correct any deficiencies in the original submission brought to our attention by the Department of Law, serve such revisions on all purchasers, and offer rescission to such purchasers if required by the Department of Law.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made.

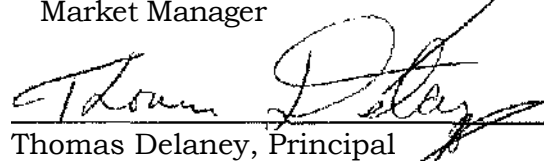
We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

NVR, INC.

By

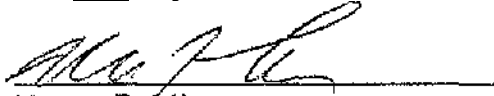


Thomas Delaney Vice President and
Market Manager



Thomas Delaney, Principal

Subscribed and sworn to before me
this 19 day of November, 2018



Notary Public

MARK J. LONGO, ESQ.
Notary Public, State of New York
Qualified in Erie County -7
My Commission Expires 2

**SUPPLEMENTAL AFFIDAVIT OF CO-SPONSORS AND PRINCIPALS OF
CO-SPONSORS FOR THE FIRST AMENDMENT TO THE CPS-7
APPLICATION**

**Re: First Amendment to CPS-7 Filing for Oakwood Hills
Original Acceptance of the CPS-7 was February 14, 2018
7 Springs Road, Town of Batavia, Genesee County, New
York File No. HO-17-0087**

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

Peter H. Zeliff and Thomas Delaney, being duly sworn, depose and say:

1. Oakwood Hills LLC, a New York limited liability company, with offices at 4559 W. Saile Drive, Batavia, New York 14020, is a Co-Sponsor of the homeowners association ("HOA") with a de minimis cooperative interest relative to the captioned property (hereinafter, the "Developer Co-Sponsor"). This is the First Amendment to the original CPS-7 Filing which was accepted on February 14, 2018.

2. Peter H. Zeliff is the managing member of the Developer Co-Sponsor.

3. NVR, Inc., d/b/a Ryan Homes of New York, a Virginia corporation authorized to do business in New York, with an office at 1026 Union Road, Suite 4, West Seneca, New York 14224, is a Builder Co-Sponsor of the HOA and the contract vendee under the contract described in paragraph 7 below, executed by the parties on July 18, 2018 (hereinafter, the "Builder Co-Sponsor"), Builder Co-Sponsor has not built homes in this subdivision. The Builder Co-Sponsor can purchase up to 58 of the 100 available lots. There is no requirement to choose the 58 out of the 100 pursuant to the contract terms. The Developer Co-Sponsor can sell lots to other builders or the public outside of the 58 the Builder Co-Sponsor will be purchasing.

4. Thomas Delaney is a Vice President and Market Manager of the Builder Co-Sponsor.

5. Peter H. Zeliff and Thomas Delaney join in this application in their capacities as principals of the Developer Co-Sponsor and the Builder Co-Sponsor, respectively.

6. The Developer Co-Sponsor is the owner of the above referenced property that is subject to this offering known as Oakwood Hills Subdivision. Attached hereto are copies of both deeds indicating the Developer Co-Sponsor as the present owner of the property. All lots/homes sold pursuant to this offering will be subject to that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration") and will include full membership rights in the HOA pursuant to the Declaration. A homeowner can move into a house with a Temporary Certificate of Occupancy issues by the Town of Batavia.

7. The Builder Co-Sponsor has a binding contract with the Developer Co-Sponsor for an option to purchase up to 58 of the 100 available of the lots within the development on an individual basis. Each lot will be in a fully developed state with all public utilities available for service to each lot at the time of purchase. The Builder Co-Sponsor will acquire fee simple title to each individual lot prior to commencement of construction of the home to be built thereon. When all lots are purchased and homes built by the Builder Co-Sponsor, the Developer Co-Sponsor shall remain owner of the balance of the lots (42 lots) and will remain involved with the Homeowners Association relative to this section of lands owned by the Developer Co-Sponsor until all lots are sold, If the Builder Co-Sponsor does not purchase 58 lots, the Developer Co-Sponsor can build homes if the Builder Co-Sponsor discontinues purchasing lots under the lot purchase agreement. Builder Co-Sponsor can enter into purchase contracts with prospective home owner/purchasers even though Builder CO-Sponsor does not yet own that particular lot. Once Builder Co-Sponsor enters into a contract with a prospective home owner/purchaser Developer Co-Sponsor will transfer title to that particular lot to Builder Co-Sponsor before the purchaser's closing date. The

Developer Co-Sponsor will not be obligated to build on any of the 58 lots NVR will purchase even if NVR withdraws from the contract.

8. The Co-Sponsors represent that homes or lots sold by the Builder Co-Sponsor to end-purchasers shall include the same full membership rights in the HOA as would be afforded to end-purchasers buying homes or lots directly from the Developer Co-Sponsor, in accordance with the terms and conditions of the Declaration. Individual lot purchasers will have to contract with a homebuilder in order to construct a home on any lot sold by the Developer Co-Sponsor outside of the 58 to be purchased by the Builder Co-Sponsor. To date the Developer Co-Sponsors have built 6 of the multi-family lots and have not determined at this time if they will build anymore. There are 24 multi-family lots available. The CPS-7 application shall be amended if the Developer Co-Sponsor decides not complete the build-out of the remaining multi-family lots. This would mean that there would be 42 lots available. If the Developer Co-Sponsor decides not to build the remaining multi-family lots and potentially allows a single family home to be built on that particular lot than the budget shall be amended and decreased proportionately.

9. The roads are public. The subdivision has been fully approved for single-family residential homes in conformance with the Town of Batavia zoning and residential development regulations. Co-Sponsors represent that to the best of their knowledge there are no lawsuits, administrative proceedings, litigation or other proceedings the outcome of which may materially affect the offering, the property, or the Co-Sponsors' capacity to perform all of its obligations to the HOA or the operation of the HOA.

10. The property that is to be cooperatively owned or maintained by the HOA consists of open space and storm water drainage and retention areas. All infrastructure development for this community has been completed.

Co-Sponsors represent that this development and the amenities contained in the property to be cooperatively owned or maintained by the HOA comply with the Attorney General's requirements for CPS-7 treatment in that the foregoing amenities represent a de minimis cooperative interest, as defined in CPS-7, and neither the HOA nor the foregoing amenities are excluded from CPS-7 treatment under paragraph 3 of CPS-7 under the Definition Section.

11. The number of homes or lots being offered in conjunction with membership in the HOA is 116, The Builder Co-sponsor is only purchasing 58 of the lots, The projected date of completion of the 58 homes is October 31, 2024. No bond has been posted to secure Co-Sponsors' obligation to complete construction, The contract for the option to purchase lots does not require or guarantee that the Builder Co-Sponsor will build any or all of the Homes. The Oakwood Hills subdivision is not a multi-phase development. Developer Co-Sponsor does not own additional lands that may be developed in the future.

12. The Co-Sponsors shall comply with the escrow and trust fund provisions of GBL Section 352-e(2-b) and Section 352-h and the regulations adopted by the Attorney General in 13 NYCRR § 22.3(k)(2-7), and shall hold down payments for the purchase of the property in trust for the benefit of purchasers. Such funds shall not be commingled with the monies of the Co-Sponsors and shall not be released from escrow until actually employed in connection with the consummation of the transaction.

13. The Sponsors will furnish each offeree a complete copy of the filed application for CPS-7 treatment and a copy of the letter granting such treatment prior to accepting any down payment.

14. The purchase price of the home(s) or lot(s) includes the cost of membership in the HOA, subject to the assessments described in paragraph 16 below.

15. The Developer Co-Sponsor owns all of the land which includes the fully approved lots, The Builder Co-Sponsor plans to purchase 58 lots pursuant to its Contract to Purchase lots from the Developer Co-Sponsor. The Developer Co-Sponsor is obligated to pay assessments on unsold lots, which it owns pursuant to 13 NYCRR § 22.3(p)(3), The Builder Co-Sponsor is obligated to pay assessments on unsold/homes or lots, which it owns pursuant to 13 NYCRR § 22.3(p)(3). Such payments shall not exceed the lesser of the amount calculated for: (1) HOA charges, including supplemental charges on all unsold home or lots; or (2) the difference between the actual expenses, including reserves applicable to completed improvements as provided for in the HOA's budget, and the HOA charges levied on owners who have closed title to their homes or lots as projected in the budget, that shall be paid to the HOA on a monthly or annual basis.

16. Assessments will first be levied against owners on the day on which the first home is conveyed or on such date thereafter as determined by the Developer Co-Sponsor. The first assessment 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 on a full year basis. The Board of Directors of the HOA shall fix the amount of the assessment against each home at least thirty (30) days in advance of each monthly assessment period. The assessments shall be due and payable monthly unless the Board of Directors establishes other periods of payment. Written notice of the monthly assessments shall be sent to every owner subject thereto.

If the assessment is not paid within (10) days after the due date, the HOA will impose a late charge not to exceed 2% per month of the amount of such overdue assessment. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date due at a rate not to exceed the maximum rate of interest then permitted by law, and the HOA may bring legal action

against the owner personally or foreclose the lien against the home of such owner, and the cost of such proceedings, including reasonable attorney's fees shall be added to such assessments, late charges and interest. Any lien for unpaid assessments shall be subordinate to the lien of any first mortgage on such home/lot. An owner with unpaid assessments may use cooperatively owned or maintained property until any lien for unpaid assessments is foreclosed.

17. Any mortgages or liens which remain on the property after closing on the first home or lot shall be subordinate to the Declaration and will be released once a house is built, sold and closed upon,

18. The Co-Sponsors will provide to each offeree the following:

- (a) If applicable, a copy of any mortgage or ground lease that will remain on HOA property after it is transferred to the HOA;
- (b) If applicable, a copy of any contract between a Co-Sponsor and the HOA;
- (c) A copy of the recorded deed to the HOA property or, if the deed has not yet been recorded, the proposed form of deed;
- (d) The estimated monthly or annual assessment and the proposed budget prepared in compliance with the requirements set forth in 13 NYCRR Section 22.3(g) including back-up documentation for all budget items associated with maintenance of the common amenities. As an alternative to including back-up documentation for each item in the budget, Developer Co-Sponsor may provide a certification of the adequacy of the budget in conformity with the requirements set forth in 13 NYCCR Section 22.4(d) (previously submitted and accepted in original CPS-7 filing)
- (e) Disclosure of the escrow account as required by Section 22.3(k)(2); and

(f) Such other information as the Department of Law may require to be presented to each offeree.

19. All of the roads within the subdivision are public roads and have been built by the Developer Co-Sponsor. The public roads will be maintained by the Town of Batavia and County of Genesee.

20. The Co-Sponsors shall not amend the application in a manner that causes the HOA property to be more than de minimis, as defined in CPS-7.

21. The Co-Sponsors shall promptly amend the application in accordance with the CPS-7 Amendment Procedure if the changes in facts or circumstances described in those instructions exist, If the changes are material and adverse to purchasers, a right of rescission will be granted and a reasonable period of time not less than fifteen (15) days to exercise such right.

22. Co-Sponsors shall serve filed amendments on all purchasers and the HOA Board.

23. Co-Sponsors may be required to obtain the consent of the affected homeowner members of the HOA for any material and adverse changes prior to amending the CPS-7 Application, the fact of which shall be disclosed in the submitted amendment.

24. The Builder Co-Sponsor reserves the right to withdraw as the Builder Co-Sponsor if it decides to no longer build homes in this project. The CPS-7 Application would then be amended to remove NVR, Inc, as the Builder Co-Sponsor,

25. Accompanying this affidavit are:

(a) A transmittal letter addressed to the Department of Law that is signed and affirmed under penalty of perjury by the individual attorney who prepared the CPS-7 application, and that complies with the applicable provisions of CPS-7.

(b) A copy of the site plan indicating the property which is to be commonly owned and/or maintained by the HOA, (Previously submitted in original filing)

(c) A copy of the subdivision approval or other equivalent approval for the development from the local government. (Previously submitted in original filing)

(d) A copy of the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, which establishes the obligations of the home or lot owners with respect to commonly owned or maintained property. (Previously submitted in original filing)

(e) A budget of projected income and expenses for the first year of HOA operation. (Previously submitted in original filing)

(¹) A Certification of Adequacy of Budget pursuant to 13 NYCRR § 22.4(d). (Previously submitted in original filing)

(g) A Broker-Dealer Statement (Form M-10) for Developer Co-Sponsor (Previously submitted in original filing) and a Supplemental Broker-Dealer Statement (Form M-3) for NVR Inc., d.b.a Ryan Homes of New York Builder Co-Sponsor (already on file with the Attorney General's Office),

(h) A statistical information card available from the Department of Law. (attached hereto)

(¹) A copy of the recorded deeds to the property by which the Developer Co-Sponsor derived title, and a copy of the lot purchase agreement between the Developer Co-Sponsor and the Builder Co-Sponsor. (attached hereto).

(j) Forms RI-1 signed by the Developer Co-Sponsor (already on file with Attorney General's office) the Builder Co-Sponsor (attached hereto).

26. The purchase price of the homes or lots includes the cost of membership in Oakwood Hills Homeowners Association, Inc, (the "HOA")

(b) Developer Co-Sponsor certifies and states that no mortgage will remain on the HOA property after transfer to the HOA,

(c) Developer Co-Sponsor certifies and states that the attached copy of the deed from the Developer Co-Sponsor to the HOA is accurate and complete.

(d) Attached hereto is a copy of the recorded deed(s) indicating Developer Co-Sponsor is the owner of the property and a copy of the Lot Purchase Agreement indicating Builder Co-Sponsor NVR, Inc., as contract vendee of the individual lots.

(E) There have been no prior amendments submitted to the Department of Law.

(F) The Co-Sponsors and their principals are not aware of lawsuits, administrative proceedings, investigations, litigation or other proceedings pending by the Department of Law against the Co-Sponsors, their principals or of the HOA.

Developer Co-Sponsor
Oakwood Hills LLC

By: _____
Peter H. Zeliff, Managing Member

Peter H. Zeliff

Subscribed and sworn to before
me this ____ day of November 2018

Notary Public

Builder Co-Sponsor
NAM Inc.d/b/a Ryan Homes

Thomas Delaney, VP/Marketing

Thomas Delaney

Subscribed and sworn to before me
this 7th day
of November

2018.x/ et

Notary Public

26. The purchase price of the homes or lots includes the cost of membership in Oakwood Hills Homeowners Association, Inc. (the "HOA")

(b) Developer Co-Sponsor certifies and states that no mortgage will remain on the HOA property after transfer to the HOA.

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(E) There have been no prior amendments submitted to the Department of Law.


(F) The Co-Sponsors and their principals are not aware of lawsuits, administrative proceedings, investigations, litigation or other proceedings pending by the Department of Law against the Co-Sponsors, their principals or of the HOA.

Developer Co-Sponsor
Oaltwoob Dills LLC
By: 
Peter H. Zeliff, Managing Member
Peter H Zeliff /
Peter H. Zeliff

Builder Co-Sponsor
AMR Inc.d/b/a Ryan Homes
By: _____
Thomas Delaney, VP/Market
Manager

Thomas Delaney

Subscribed and sworn to before
me this 8th day of November 2018
tamh 0 NOTO



Notary Public AMEL SALOME

Subscribed and sworn to before
me this ___ day of November
2018

Notary Public

NOTARY PUBLIC
QUALIFICATION RECORD
MY COMM. EXP. 10/24/20



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
REAL ESTATE FINANCE BUREAU

Writer's Direct Info:
(212) 416-6384
Lisa.Wailace@ag.ny.gov

February 14, 2018

William H. Mattrey, Esq.
The Williamsville Law Center
17 Beresford Court
Williamsville, NY 14221

Re: Oakwood Hills HOA
File No. H017-0087

Dear Mr. Mattrey:

The Department of Law has reviewed your application for CPS-7 treatment submitted on June 15, 2017, and supplemented on September 8, 2017, September 22, 2017, September 27, 2017, October 31, 2017, November 29, 2017, January 9, 2018, and February 5, 2018 for the above-captioned homeowner's association.

Based upon the affidavit and supporting documentation submitted in connection with the application, such CPS-7 treatment is granted as of February 14, 2018. Accordingly, no enforcement action will be taken for failure to file an offering plan in compliance with General Business Law Section 352-e, provided that you are in full compliance with the representations made in the CPS-7 application.

The granting of CPS-7 treatment is on such terms and conditions as the Department of Law may impose, in its discretion, in order to protect the public interest. It is based solely on the information provided in the application. Any material misstatement or omission of a material fact in the application may render the CPS-7 treatment void ab initio and may subject you to enforcement action.

The granting of this CPS-7 treatment shall not be construed to be a waiver of, or limitation on, the Attorney General's authority to take enforcement action for violations of Article 23-A of the General Business Law and other applicable provisions of law.

Sincerely,

Lisa C. Wallace

Lisa C. Wallace

Assistant Attorney General

OAKWOOD HILLS ASSOCIATION, INC.
INDEX OF DOCUMENTS FOR FCC II SETS

1. Purchaser Affidavit
Affidavit to be executed by Purchaser(s).
2. Statement of Sponsor that Purchase Price of Lot Includes Membership Oakwood Hills Association
3. Declaration
Declaration of Covenants, Conditions, Restrictions, Basements, Charges and Liens — Oakwood Hills (the "Declaration") recorded or to be recorded in the Genesee County Clerk's Office.
4. By-Laws
By-Laws of Oakwood Hills Association, Inc.
5. Budget
The current or proposed budget for the Oakwood Hills Association with the annual assessment charged by the Association to each Lot (Home) owner.
6. Budget Certification
Certification as to the adequacy of the Association's budget dated February 23, 2017 made by George R. Grasser.
0. Financial Statement of the Association
A copy of the most recent financial statement of the Association. (No financial statement is included if the Association has not yet completed one full year of operation.)
1. Deed Conveying Property to Developer
A copy of the deed pursuant to which the Developer ("Sponsor") acquired title to the lands to be conveyed to the Association. *Note: Developer ("Sponsor") acquired title as "Oakwood Hills LLC."*
2. Deed Conveying Property to Association
A copy of the deed pursuant to which the Developer transferred (or will transfer) ownership of common areas to the Oakwood Hills Association, Inc.
3. Town of Batavia Approval of Subdivision
A copy of the approval of the Oakwood Hills subdivision from the Town of Batavia (see copy of site plan with approvals from appropriate authorities).

OAKWOOD HILLS DEVELOPMENT
PURCHASER'S AFFIDAVIT

Address of Lot (Home) purchased _____, Batavia, New York

_____, being duly sworn, deposes and
(name of purchaser)
says as follows:

1. I am the contract purchaser or one of the contract purchasers of the above-referenced Lot (Home).
2. The contract purchaser(s) of the above-referenced Lot (Home) is (are):

3. I reside at: _____

(street)

(city, state, zip)
4. I have read the affidavit of Peter Zeliff, Managing Member of Oakwood Hills, LLC (the "Sponsor") which was submitted to the New York State Department of Law as part of the Sponsor's application for a "CPS-7 Approval" letter, enabling the Sponsor to offer interests in the Oakwood Hills Association, Inc. without filing with the New York State Department of Law (and distribution to purchasers of Lots) an offering plan or prospectus setting forth all material facts concerning the offering of such interests in the Association.
5. I understand that no offering literature other than as is required by the "CPS-7 Approval" letter will be provided by the Sponsor.
6. I have inspected the above-referenced Lot on which a Home has been or will be constructed.

Subscribed and sworn to be before me
this ___ day of _____, 20

11-14-13

OAKWOOD HILLS DEVELOPMENT

PURCHASE PRICE OF LOTS INCLUDES MEMBERSHIP IN 1____
OAKWOOD HILLS ASSOCIATION, INC.

The purchase price of each Lot in the Oakwood Hills development includes an automatic membership interest in the Oakwood Hills Association, Inc., the homeowners association for the Oakwood Hills development.

The Oakwood Hills Association, Inc.:

owns and maintains the lands outside of the lots in the development including open areas and the stormwater detention or retention ponds;

maintains the lawn areas around the homes (except enclosed private outdoor areas and lot owner or resident plantings and except for lot owners who choose to maintain their own lawns);

is responsible for snow removal from driveways servicing individual Lots and homes;

maintains the storm water drainage system and that are not maintained by any utility company or by the Town of Batavia;

enforces restrictive covenants and architectural and design controls; and

collects assessments to enable the Association to fund the cost of its maintenance and administrative obligations.

**CORRECTING
AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS
- OAKWOOD HILLS
(THE OAKWOOD HILLS DECLARATION)**

01-29-18

THIS DECLARATION, made this 1st day of February, 2018, by Oakwood Hills, LLC, a New York limited liability company, having an office at 4559 W. Saile Drive, Batavia, New York 14020, hereinafter referred to as "Developer".

This is a correcting Amended and Restated Declaration given to correct the legal description attached hereto from the legal description attached to the Amended and Restated Declaration as previously recorded February 21, 2018 as Instrument # DE 2018-270 in the Genesee County Clerk's Office.

WITNESSETH

WHEREAS, Developer is the developer of real property (the "Developable Lands") described in Article II of this Declaration which Developer is in the process of developing into a residential development (the "Development") or community to be known as "Oakwood Hills"; and

WHEREAS, the Developable Lands have been subdivided into 90 individual lots ("Lots") of which thirty (30) were further subdivided into two (2) Lots each, upon each of which is or will be located a single family residential dwelling unit (a "Home") or a duplex building ("Duplex Building") containing two (2) Homes ("Duplex Homes"). Each building will be individually owned, except that if a lot with a Duplex Home is divided into two (2) lots as approved by the Town of Batavia, and each Duplex Home may be individually owned; and

WHEREAS, Developer has previously conveyed seven (7) Lots to purchasers (the "Prior Sold Lots"), of which three (3) have elected to be included in the HOA; and

WHEREAS, the Development has some open space land areas, including seven (7) open areas intended for active or passive recreational use; and

WHEREAS, Developer desires to provide for the preservation of values and amenities in the Development and for the maintenance of the open space areas and, to this end, desires to subject the Developable Lands (excluding four (4) Prior Sold Lots which have not elected to join the HOA) to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the lands subjected to this Declaration (the "Property") and each Owner thereof; and

WHEREAS, the owner of each of the Prior Sold Lots which have not elected to join the HOA shall be afforded the opportunity to subject such owner's Lot to the provisions of this Declaration, which opportunity may be for a limited time only, as determined by the Oakwood Hills Association, Inc. identified below, and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development to create an agency and to delegate and assign to such agency the powers of (I) maintaining and administering the open space areas and the lawns in front of or behind the Homes, (ii) administering and enforcing the covenants and restrictions contained in this Declaration, (iii) collecting and disbursing the assessments and charges established pursuant to this Declaration; and (iv) providing common maintenance services to the Homes and Lots.

WHEREAS, Developer has formed the Oakwood Hills Association, Inc. ("Association") under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, in order to subject (I) the Property to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as the "covenants, conditions and restrictions") and (ii) each Owner of a Lot to the legal requirements of membership in the Association as set forth in this Declaration, Developer, for itself, its successors and/or assigns, declares that the Property, excluding the Prior Sold Lots, is and shall be held, transferred, sold, conveyed and occupied subject to the provision of this Declaration and the Association joins in the execution of this Declaration for the purpose of acknowledging the provisions hereof and consenting to undertake the obligations given to the Association hereunder.

ARTICLE I DEFINITIONS

This Article defines words or terms used throughout this Declaration.

Section 1.01. 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:

- A. "Association" shall mean and refer to the Oakwood Hills Association, Inc.
- B. "Association Property" shall mean and refer to (I) all land and the improvements on such land presently or hereafter owned by the Association ("Association Owned Property"); and all lands that the Association does not own but has the obligation to maintain pursuant to this Declaration or any amendment to this Declaration ("Association Maintained Property").
- C. "Board of Directors" shall mean and refer to the persons elected or appointed pursuant to the by-laws of the Association to govern the Association as required by this Declaration, the by-laws and certificate of incorporation for the Association and the Not-for-Profit Corporation Law of the State of New York.
- D. "Builder" shall mean and refer to any person, partnership, corporation or other entity that undertakes the construction of a dwelling Unit on a Lot, whether or not the Lot was purchased directly from the Developer.
- E. "By-Laws" shall mean and refer to the written rules pursuant to which the Association functions.

- F. "Certificate of Compliance" shall mean and refer to the document issued by Developer with respect to a Lot or other portion of the Property acknowledging that the initial development thereof has been completed to the satisfaction of Developer in accordance with the requirement of this Declaration for issuance of such Certificate.
- G. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens — Oakwood Hills as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- H. "Developable Lands" shall mean and refer to those lands, described in Schedule A attached to this Declaration, owned by Developer and intended to be included in the Development. Developer intends to develop the Developable Lands in one (1) phase.
- I. "Developer" shall mean and refer to Oakwood Hills, LLC, a New York limited liability company, its successors and/or assigns.
- J. "Development" — shall mean and refer to the Lots and Association Owned Property and the Homes and other Improvements thereon, that comprise the Property. The Development is known as "Oakwood Hills."
- K. "Duplex Building" — shall mean a Building located on a Lot or Lots containing two (2) Homes attached to one another, each of which Homes is a Home for Association assessment, and all other purposes under this Declaration.
- L. "Duplex Home" and "Duplex Lot" — shall mean and refer to a Home attached to another Home on a Duplex Lot. A Duplex Lot is a Lot or Lots on which two (2) Homes may be constructed.
- M. "Home" — shall mean and refer to each completed dwelling situated on a Lot, including each dwelling in a Duplex Building.
- N. "Improvement" shall mean and refer to anything or device the placement of which upon a Lot may affect the appearance of the Lot, as viewed from one or more other Lots including, by way of illustration and not of limitation, any building, garage, porch, shed, greenhouse, coop or cage, playground equipment, covered or uncovered patio, clothes line, radio or television antenna, fence, curbing, paving, sidewalk, wall, signboard or any temporary or permanent living quarters or any other temporary or permanent improvement to the Lot.
- O. "Lot" shall mean and refer to any portion of the Property (with the exception of lands owned by the Association) subject to the provisions of this Declaration improved with or capable of being improved with a Home, and (i) identified as a separate lot on the tax records of the Town of Batavia, or (ii) shown as a separate lot on the Map.

- P. "Map" shall mean and refer to the map filed in the Genesee County Clerk's Office as Map Cover 2272, Slide No. 52, Cabinet 3 on March 31, 2014 and any amendments and replacements to such map, including any supplements or modifications to such Map to allow a Duplex Lot to be divided into two (2) Lots so as to allow separate ownership of Homes in a Duplex Building.
- Q. "Municipality" shall mean and refer to the Town of Batavia.
- R. "Owner" or "Lot Owner" shall mean and refer to the holder of record title, whether one person or persons or entities of the fee interest of any Lot, subject to the provisions of this Declaration, whether or not such holder actually resides on such Lot.
- S. "Prior Sold Lot" shall mean and refer to a Lot in the Development to which title has been transferred from the Developer prior to the recording of this Declaration. The Owners of three (3) of the prior sold Lots have consented to subject their Lots to the provisions of this Declaration as documented by execution of the attachment to this Declaration (See Schedule B to this Declaration).
- T. "Property" shall mean and refer to all land and the Improvements thereon as are subject to this Declaration. The Property initially subject to this Declaration is identified in Schedule A attached hereto. The Property initially subject to the provisions of this Declaration shall not include four (4) of the Prior Sold Lots, but shall, subsequent to the recording of this Declaration in the Office of the Genesee County Clerk, include any Prior Sold Lot whose owner, with the consent of the Association, submits such Prior Sold Lot to this Declaration and such submission is recorded in the Genesee County Clerk's Office
- U. "Recording Office" shall mean and refer to the official office for the recording of land documents in the County in which the "Property "is located, i.e. the Genesee County Clerk's Office.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

This Article identifies the area of land that is initially subject to the provisions of this Declaration. A legal description of such lands can be found in Schedule A at the end of this Declaration. A subdivision map that includes such lands has been filed in the Genesee County Clerk's Office as Map Cover 2272, Slide No. 52, Cabinet 3 on March 31, 2014. The lands initially subject to the provisions of this Declaration exclude Prior Sold Lots as defined in Section 1.01 above and as identified in Schedule A.

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 Batavia, County of Genesee 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 all those lands described in Schedule A attached, except the Prior Sold Lots which have not consented to subject their Lots to this Declaration. The Prior Sold

Lots which have not consented may be added to the Property, if and when permitted by the Oakland Hills Association, by a document submitting such Prior Sold Lot to the provisions of this Declaration executed by the owner of such Prior Sold Lot and then recorded in the Genesee County Clerk's Office. The Board of Directors of the Association may limit when the owners of Prior Sold Lots may submit such Lots to this Declaration.

Section 2.02 Merger with Another Association. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation of 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 effectuate any revocation, change or addition to the covenants established by this Declaration within the Property except pursuant to an amendment to this Declaration as provided in Article X below.

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

This Article (I) references the By-Laws of the Association for Lot Owner voting rights, meeting and voting regulations, the election, powers' and duties of Association directors, (ii) sets forth the Association's obligation to indemnify directors and officers of the Association and, (iii) for the purpose of protecting the Developer's financial interest in the Development identifies certain actions the Association cannot take without the Developer's written consent.

Section 3.01. Formation of the Association. Developer has formed the Association to own and maintain the Association Property, to 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, in the Association's Certificate of Incorporation and in the By-Laws of the Association, as such documents may be amended from time to time. The Association shall have all the powers and be subject to the limitations of the Certificate of Incorporation and of a not-for-profit corporation as contained in the New York State Not-For-Profit Corporation Law as such law may be amended from time to time.

Section 3.02. Membership. The Association shall have as members only Lot Owners and, as long as it owns a Lot, Developer. Upon becoming a Lot Owner, the person or entity becoming the Lot Owner, shall be deemed to have automatically become a member of the Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of a Lot or from the interest as 'Developer as defined in Article I of this Declaration. In the case of a Duplex Building, a sole owner of an entire Duplex Lot will have one vote. If the Duplex Lot is subdivided into two Lots, each containing one

Duplex Home, each Lot Owner will have a vote. An Owner of more than one (1) Lot shall only be entitled to only one (1) vote as a member of the Association.

Section 3.03. Voting Rights. Voting rights of Lot Owners shall be as provided in the By-Laws of the Association. Developer and any Lot Owner shall be entitled to assign voting rights by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.04. Holder of Security Interest Not a Member of Association. Any person or entity holding an interest in a Lot merely as security for the performance of an obligation shall not be a member of the Association.

Section 3.05. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation, the 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 Lot Owners, in regard to proof of membership in the Association, Lot ownership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot Owners 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 the Board of Directors shall deem appropriate.

Section 3.06. Selection. Powers and Duties of Directors. The appointment or nomination and election of directors, the filling of vacancies on the Board of Directors and the removal of directors shall be governed by the By-Laws of the Association. The powers and duties of the Board of Directors shall be as set forth in the By-Laws.

Section 3.07. Indemnification of Directors and Officers. Every officer and director of the Association shall be, and hereby is, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fines, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such officers or directors in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, 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, 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 settlement, the indemnification herein shall only apply when the Board of Directors of the Association approves such settlement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which such director or officer may otherwise be entitled. Funds to cover such expenses, including fees of counsel, may be advanced by the Association prior to final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that (i) the recipient is not entitled to indemnification hereunder or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

Section 3.08. Developer's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as Developer holds title to any portion of the Property, the Board of Directors of the Association may not, without Developer's written consent; which consent must not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; 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 quantity or quality of services or maintenance of the Property provided by the Association. So long as Developer holds title to any portion of the Property, this Section shall not be amended without the written consent of Developer, which consent shall not be unreasonably withheld.

Developer shall not, so long as Developer is in control of the Board of Directors of the Association, use its position of control to (i) reduce the level of services described in the initial budget for the Association filed with the New York State Department of Law and included in the package or binder of documents pursuant to which Developer offered Lots for sale together with interests in the Association, (ii) prevent capital repairs to Association Property, or (iii) prevent expenditures required to comply with applicable laws or other governmental regulations.

ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

This Article specifies the easements and other rights of Lot Owners, the Association and the Developer including the rights of the Developer to (i) cross Lots with utility lines to service other Lots, (ii) to connect with utility lines, sewer lines and drainage facilities for the benefit of lands to be developed in the future, (iii) to operate a sales center on the Property for the purpose of selling or leasing Lots and Homes and to have prospective purchasers or tenants use the parking spaces on the Property, (iv) establish "zero-lot line" or other set-back restrictions prohibiting the location of certain improvements on Lots, and (v) establishing exterior design standards and requirements for Homes and other improvements on each Lot, and (vi) to designate Lots for construction of duplex dwellings and division into two (2) Lots. Also included in this Article are (i) the right of the Association to hear and offer resolution to disputes between Owners, (ii) access over adjoining properties for the maintenance of sidewalks of Homes, and (iii) easement rights to the Town of Batavia and/or the Association for the maintenance of drainage areas and the obligation of the Developer or the Association to reimburse the Town for any expenses incurred in the maintenance of such drainage. This Article also identifies the Lot Owner approvals that must be obtained in order for the Association to transfer or encumber its land or to construct or demolish improvements on

its land and Town of Batavia approvals that must be obtained for any material change in the layout, improvements and easements affecting Association Property.

Section 4.01. Dedication of Association Property. Developer intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Owners as designated on the subdivision map of record. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Owned Property". The Association must accept any such conveyance made by Developer provided such conveyance is made without consideration. Developer has the obligation to complete all improvements on such tracts of land to be conveyed to the Association as shown on any subdivision map or plat approved by the Town of Batavia Planning Board and filed in the Genesee County Clerk's Office prior to the conveyance of such tracts of land to the Association. Such improvements shall include all grading, seeding and creation of certain drainage or detention areas shown on the subdivision map or plat.

Section 4.02. Rights and Easements of Lot Owners. Subject to the rights and easements of (I) the Association set forth in Sections 4.03 and 4.04 below and (ii) the rights and easements of Developer set forth in Section 4.05 below, each Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have the following rights and easements, provided no such easement shall interfere with the use of any Home as a dwelling:

A. Enjoyment — to right to enjoy all Association Owned Property;

B. Ingress and Egress — an easement by vehicle or on foot for ingress and egress by vehicle or on foot in common with other Lot Owners and Developer over all Association Owned Property;

C. Utility Lines - an easement for the installation, use, repair, maintenance and replacement of utility lines including water, electric, cable television, sanitary sewer, storm sewer and drainage to service the Lot of such Owner.

D. Maintenance of Sidewalls of Homes — an easement over the adjoining Lot or Association Property for the maintenance, repair and replacement of any sidewalk of a Home that is located on or near a Lot line if the sidewalk cannot be easily maintained, repaired or replaced without utilizing the adjoining land for such work or for ingress and egress to undertake such work. The exercise of this right shall be on reasonable notice to the Owner of the adjoining Lot over which such easement is to be exercised and the exercise of the easement shall be limited to reasonable times and shall not unreasonably impair the right of the adjacent Lot Owner to the use and quiet enjoyment of such adjacent Owner's Lot and Home.

E. Encroachments or Projections — If any Home or any deck, patio, entry way or roofed porch of a Home encroaches or projects up to two (2) feet on or over any other Lot as a result of (I) original construction, (ii) settling or shifting, or (iii) replacement, as a result of fire or other casualty, condemnation, eminent domain proceedings or proceedings of similar import and effect, such

encroachment or projection and the right to maintenance and repair of such encroachment or projection shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

All of such rights and easements shall be appurtenant to and shall pass with the interest of a Lot Owner as defined in Section 1.01 of this Declaration and shall be subject to the rights of the Association as set forth in Section 4.03 below, provided, however, that any conveyance or encumbrance referred to in Section 4.03(D) below shall be subject to the easements of the Lot Owners as provided in this Section above.

Section 4.03. Rights and Easements of Association. The Association shall have the right:

A. Promulgate Rules and Regulations -to promulgate rules and regulations relating to the use, operation and maintenance of the Association Owned 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 Lot Owners;

B. Grant Easements to Utility Companies and Governmental Entities - to grant easements or rights of way, with or without consideration, to any public or private utility corporation, coaxial cable company or similar entity, governmental agency or political subdivision provided no such easement or right of way shall interfere with the occupancy of any Home as a dwelling; •

C. Transfer, Lease, Sell, Exchange or Encumber Association Owned Property or Acquire or Lease Real Property - to dedicate, sell, transfer, abandon, partition, encumber or otherwise dispose of all or any part of the land that the Association owns or to acquire or lease other real property for such purpose and subject to such conditions as may be agreed to by the Association and the transferee or transferor (except for a conveyance from Developer) which must be accepted pursuant to Section 4.01 above). Such action (except (I) for a transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Lot Owners, and (ii) any conveyance from Developer shall require a "Hearing" as described in Section 4.07 below and the consent of Owners of not less than two-thirds (2/3) of all Lots independent of Developer who shall vote by written ballot sent not less than 10 days nor more than 50 days in advance of the date of such vote, or the initial date of a canvass thereof, to all Lot Owners and to those holders of first mortgages on the Lots whose names appear as such on the books or records of the Association. No such conveyance or transfer shall be made if lending institutions (I) that together hold first mortgages on 33 1/3% or more of the Lots and (ii) that together comprise 51% or more of the Lots subject to first mortgages, advise the Association, in writing, prior to the date on initial date set for voting on the proposed conveyance or transfer, that they are opposed to such conveyance or transfer, which opposition must not be unreasonable.

D. Utilities and Conduits — to use, maintain, repair and replace any pipes, wires, cables, conduits, drainage areas and other lines providing services to two (2) or more Lots or to Association Owned Property. (See also Section 4.09 below regarding drainage easements to the Town of Lockport.)

E. Utility Banks and Telephone Pedestals — for installation, maintenance, repair and replacement of utility banks and telephone pedestals on the exterior walls of Buildings.

F. Construct Modify, Alter, or Demolish Improvements on Association Owned Property—to construct, modify or demolish improvements on Association Owned Property or to change the use of Association Owned Property, e.g., from "passive" to "active" recreational use or vice versa, provided that, with respect to any material construction, modification or alteration, any demolition without replacement and any material change of use (including, but not necessarily limited to a change of use from "active" to "passive" recreational use and vice versa), such action shall require the consent of (i) Owners of not less than two-thirds (2/3) of all Lots, exclusive of Lots owned by Developer, and (ii) Developer, if Developer owns more than ten (10) Lots, which consent of Developer shall not be unreasonably withheld.

G. Other Maintenance on Lots — for the installation, maintenance, repair and replacement of any improvements on the Lots and for snow removal and lawn care, to the extent the Association is obligated to undertake such installation, maintenance, repair or replacement under this Declaration or pursuant to the authorized vote of the Lot Owners as permitted by this Declaration or by the By-Laws of the Association.

H. Inspect Lots for Possible Violations of Provisions of this Declaration - to enter upon a Lot to undertake maintenance and repairs as provided in Article VI below including the installation and replacement of common utility lines, or to inspect a Lot, for the purpose of ascertaining compliance with the provisions of this Declaration or with rules and regulations promulgated pursuant to this Declaration.

I. Enter into Agreements for the Performance of Duties — the Association may contract with any person, corporation, firm, trust company, bank, 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 and maintenance agreements with other community associations.

J. In Conjunction with Maintenance by the Association — to enter upon any Lot to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvement on Association Property, or the exterior of any Building that the Association is obligated to maintain, repair or replace.

K. Water for Watering Lawns — to tie into and use water from any Home for the watering of any lawns or plantings that the Association is obligated to maintain on Association Owned Property subject to reimbursement by the Association to the Owner

of the Home for the cost of the water consumed. Lot Owners shall be responsible for watering on their own Lot(s).

L. Electricity — to use electricity from any Home for the lighting of any Association Owned Property or any Association Maintained Property, including streets, driveways, parking areas and sidewalks, subject to reimbursement by the Association to the Owner of the Home for the cost of electricity consumed.

M. Leasing - To lease a Home or Homes to third parties.

To the extent reasonably appropriate, any entry onto a Lot shall be on reasonable notice to the Owner of the Lot to be entered, except that, in an emergency, such entry may be without notice.

Section 4.04. Rights and Easements of Developer. With respect to Association Property and subject to the rights and easement set forth in Sections 4.02 and 4.03 above, so long as Developer holds title to any portion of the lands described in Schedule A to this Declaration, Developer shall have the right, provided the exercise of such right does not interfere with the occupancy of any Home as a dwelling:

A. Easements for Utility Lines — to grant and reserve easements and rights of way over the Property covered by this Declaration 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 to service the Property;

B. Connect with Utility Lines to Service the Property or Additional Property—to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property.

C. Ingress and Egress — to use the Association Property for ingress and egress to the Property; and

D. Sales Center and Signage — to operate a sales center, install and maintain signs, and 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 (other than parking spaces in garage access driveways of occupied Units).

E. For Construction and Completion — to grant a Builder the right of access to the Property to complete construction or to make-corrections or repairs to a Home.

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, Developer and their successors and assigns. With respect to its exercise of the above rights, Developer agrees 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. So long as Developer holds title to any portion of the Property, this Section 4.04 shall not be amended without prior consent of Developer.

Section 4.05. Damage Resulting from Use of Easement. Subject to rights of recovery under law or pursuant to other provisions of this Declaration, any damage to any Lot or other portion of the Property or to any improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement granted or reserved herein, shall be promptly repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, to the condition in which it existed immediately prior to the damage.

Section 4.06. 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 procedures set forth in this Section 4.06 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 or more than 60 days after the Board of Directors has initiated the Proposal. Notices 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 notice. The Notice shall describe in detail the Proposal, the Hearing Procedures 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 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.

Section 4.07. Acquisition, Conveyance, Improvement and Changes in Use of Association Property. Subject to the limitations and the approval of the Town of Batavia set forth in this Section 4.07, the Board of Directors of the Association, on such terms and conditions as it deems appropriate, may authorize:

1. the acquisition, through purchase, gift, lease or any combination thereof, of land or improvements of any combination thereof, as Association Property. Pursuant to Section 4.01 of this Declaration, the Board of Directors must accept conveyances from Developer given without consideration;
2. the transfer, conveyance, donation, lease or other disposition of any Association Property;
3. the construction of, or the making of additions, modifications of, alterations to, or the demolition of, improvements to Association Property. The layout, improvements and easements affecting Association Property, and any material change to such layout, improvements and easements is subject to the review and approval of the Town of Batavia Planning Board pursuant to the applicable provisions of the Town's ordinances;

4. the material change in the use of any Association Property (including, without limitation, construction of improvements so as to convert passive recreational or open space to active recreational use).

Upon the affirmative vote of the Board of Directors proposing any of the above, the Board of Directors shall hold a Hearing on the Proposal in accordance with the Hearing Procedures set forth in Section 4.06 above.

Not less than 15 nor more than 45 days after the Hearing, the Board of Directors shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than two-thirds (2/3) of the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall not be in violation of the zoning laws or any other laws, ordinances, rules or regulations of the municipality in which the Property is located or any other governmental authority having jurisdiction.

If a proposed acquisition of land or improvements or the construction, addition, modification, alteration to, or the demolition of Association Property, will result in the imposition of a Special Assessment as provided in Section 5.07 of this Declaration, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 4.06 hereof, and the provisions of Section 5.07 prior to finally authorizing such action.

Notwithstanding the provisions of this Section 4.07, the decision of the Board of Directors with respect to any Proposal may not be contrary to the position of Owners of 51% or more of the Lots, expressed in written petition or petitions signed by such Owners and delivered to the Board of Directors prior to its scheduled vote on the Proposal.

Section 4.08. Notice of Condemnation of Association Property and Resolution of Dispute as to Allocation of Award. The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding affecting Association Property to all Lot Owners and to those lending institutions holding first mortgages on Lots whose names appear as such on the books or records of the Association.

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 4.09. Drainage Easements to the Town of Batavia. Notwithstanding any other provision of this Declaration, all easements granted by Developer or the Association to the Town of Batavia for drainage purposes shall contain a provision granting to the Town the right to enter upon Association Owned Property (or lands to be conveyed to the Association) for the purpose of maintaining the integrity of the "non-easement drainage plan" approved by the Town, including, but not limited to, drainage ponds, as set forth in the subdivision map or plat and supporting documents approved by the Town of Batavia Planning Board. Such entry right shall be exercised in the event the owner of the lands affected, whether Developer or the Association, fails to properly maintain such drainage area. Developer or the Association, whichever is the owner of

such affected lands at the time, shall be obligated to pay the cost of such maintenance to the Town.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

This Article imposes on each Owner of a Lot improved with a Home for which a temporary or permanent Certificate of Occupancy has been issued by the Town of Batavia (except that on Lots owned by the Developer or Builder the Home on such Lot must have been occupied) the obligation to pay assessments to enable the Association to fund the performance of its obligations and operations. Assessments are equal for all occupied Homes (except that, in lieu of paying full assessments for Homes which it owns, the Developer may elect to pay the deficit between the Association budget and the amounts assessed to Owners of Lots not owned by the Developer). If there are two (2) Homes on a lot, each Home shall be obligated to pay assessments. The Association can impose a Special Assessment to fund capital repairs or other unusual expenses. Liens for assessments and the costs of collecting the assessments can be placed against the Lots of Owners of Homes who do not timely pay their assessments. Assessments not timely paid are subject to late charges and interest. Certificates showing the status of the payment of assessments will be available to Lot or Home Owners selling or refinancing their Lots or Homes. This Article also gives the Association the right to borrow money and to secure the repayment of such borrowing by a mortgage on Association Property or by an assignment of assessments to be received in the future from Home Owners.

Section 5.01. Imposition: Personal Obligation; Lien. Subject to the other provisions of this Article V each Owner of a Lot improved with a Home (or two (2) Homes in a Duplex Building), 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 for each Home on such Owner's Lot:

A. annual assessments or charges for the maintenance and operation of Association Owned Property, the maintenance of Association Maintained Property and for other services performed by the Association ("Maintenance Assessments"); and

B. special assessments for capital improvements or repairs or for unbudgeted or extraordinary expenses of the Association or for other obligations owing by the Lot Owner to the Association as provided in this Declaration or the By-Laws of the Association ("Special Assessments");

said Maintenance Assessments and Special Assessments; together hereinafter being referred to as "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 provides, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due. Upon a transfer of title to a Lot, Assessments shall be adjusted as provided in Section 5.12 below.

Section 5.02. Purpose of Maintenance Assessment. Subject to such changes as may be made from time to time by the Lot Owners pursuant to Section 6.01 below, the purpose of the Maintenance Assessment shall be to fund (i) the maintenance, preservation, operation and improvement of Association Owned Property and the maintenance of Association Maintained Property, (ii) the promotion of the recreation, safety and welfare of the Lot Owners, (iii) the payment of taxes on Association Owned Property, (iv) the obtaining and maintaining of liability and other insurance covering the Association Owned Property and the Association's officers, directors, members and employees, obtained pursuant to Article IX of this Declaration, (v) such maintenance of the Lots and Homes as is authorized from time to time pursuant to Section 6.01 below, (vi) the maintenance, repair and replacement of a utility improvement which is not the obligation or responsibility of any public utility, governmental subdivision or independent authority, and (vii) such other needs as may arise. The amount of any reserves shall not be less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the earlier of (i) the day on which the first Lot is improved with a Home or (ii) the day on which a Lot previously conveyed by the Developer that is improved with a Home is subjected to the provisions of this Declaration, except that the Developer may elect to postpone commencement of Assessments by assuming responsibility for all Association expenses until such date thereafter as determined by Developer. If Developer elects to postpone such commencement of Assessments, the Owners of Lots improved with Homes as identified in Section 5.01 above, shall pay to the Association, an amount equal to a full Maintenance Assessment for the Lot on which such Home is located, which amount shall be retained by the Association for the purpose of reducing future payments to fund reserves for capital improvements, unless the Association's Board of Directors, after Developer is no longer in control of such Board, elects to apply such funds to a different purpose. The first 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 on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot, based on whether

the Lot is improved with one (1) or two (2) homes, at least 30 days in advance of each fiscal year Assessment period. The Assessments shall be due and payable annually, unless the Board of Directors establishes other periods or installments for payment. The Board of Directors may establish installment payments, which are not equal. Separate due dates may be established by the Board for partial annual Assessments as long as such Assessments are established at least 30 days before due. Written notice of the annual Assessments shall be sent to every Lot Owner subject to such Assessments.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above (except for Lots improved with Homes owned by the Developer or a Builder prior to the initial occupancy of such Home as provided in Section 5.05 below), the Owner of each Home on a Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments and Special Assessments, if any, except that Developer will be obligated for the lesser of (i) Maintenance Assessments and Special Assessments on all Homes on Lots owned by the Developer, or (ii) the difference between the actual Association expenses (including budgeted amounts for reserves applicable to completed improvements only) and the amount of Maintenance Assessments and Special Assessments for the Lots improved with Homes - such Maintenance Assessment amounts, for purposes of the calculation of this obligation only, to be based on the amount of Maintenance Assessments set forth in the initial budget of the Association at full occupancy or sell-out adjusted to reflect (i) then current cost and (ii) any increase or decrease necessary to accommodate any changes in the Association's maintenance obligations made in accordance with the provisions of Section 6.01 of the Declaration.

Section 5.05. Basis for Maintenance Assessments. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Home on a Lot subject to this Declaration shall be liable for all Maintenance Assessments and Special Assessments, if any, assessed against such Owner's Lot. If Developer elects to fund Association expenses in lieu of commencing Assessments as permitted pursuant to Section 5.03 above, for all Homes on Lots owned by Developer (other than Developer or any Builder unless a Home or the Lot is occupied) shall make payment to the Association of an amount equal to the Maintenance Assessment for such Lot with the funds being applied by the Association as provided in Section 5.03 above. Assessments shall be equal for all Homes, so that the number of Homes subject to Assessments divided into the total amount that the Board of Directors of the Association deems to be necessary to fully fund the Association's current budget of estimated expenses and reserves (and any operating deficit previously sustained) shall determine the annual Maintenance Assessment for each Home.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining Assessments by obtaining the written consent of Owners of not less than two-thirds (2/3) of all Lots, excluding Developer, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgage holders of Lots whose names appear on the records of

the Association at least 40 days in advance of the date or initial date set for voting thereon, except that: (i) so long as Developer holds title to any Lot on lands covered by this Declaration, but no longer than 12 years from the date of recording of this Declaration, any change in the basis of Assessments which adversely affects a substantial interest or right of Developer with respect to unsold Lots or to any lands owned by Developer, shall require the specific consent of Developer in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgage holders on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certificate of any such change shall be executed by the Board of Directors of the Association and recorded in the Recording Office.

ARTICLE VI MAINTENANCE

This Article identifies the maintenance responsibilities of the Association. These maintenance responsibilities include (1) the Association Owned Property including detention or retention ponds, and open space areas, (2) the Association Maintained Property including landscaped areas on the Lots (except (1) those areas that are enclosed by the Lot Owner, and (ii) any landscaping installed by the Lot Owner). Maintenance responsibilities of the Association with respect to property not owned by the Association are subject to change by the written consent of the Owners of Lots (Homes) as provided in Section 6.01 below.

Section 6.01. Maintenance, Repair and Replacement by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements on Association Owned Property and certain specific maintenance of improvements on the Lots (Association Maintained Property) shall be the responsibility of and at the expense of the Association; including: (i) snow plowing of the driveways used to access the Homes; (ii) the maintenance, repair and replacement of sanitary sewer, storm drainage, water distribution facilities and other pipes, wires and conduits servicing two (2) or more Lots and for which the Municipality, a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property), (iii) the maintenance of the water detention or retention areas; (iv) the maintenance (except watering) of all grass (but not any landscaping or plantings) on the Lot of each Owner, unless the grass is within a fenced in area, in any area enclosed or partially enclosed by the Owner as determined by Association policy established by the Board of Directors of the Association, and (v) the maintenance of open space areas owned by the Association.

Notwithstanding the foregoing, the Owner of a Lot may elect, by written notice to the Association, to maintain their own lawn(s). However, if they fail to do so in the reasonable judgment of the Association, the Association may perform such maintenance and charge the Owner for same, which charge shall be a lien on said Lot. If a Lot is owned but not built on by the Owner, the Owner must keep the Lot mowed at all times subject to the same rights of the Association to do so as aforesaid.

The Association may increase (or decrease) its maintenance responsibilities on Association Maintained Property (but not on Association Owned Property), by the written approval of Owners of two-thirds (2/3) of the Lots owned independently of Developer and if such increase or decrease is proposed while Developer holds title to any portion of the Property, the written consent of Developer will be required, which consent shall not be unreasonably withheld. Any such increase or decrease shall be reflected in an amendment to this Declaration that shall be distributed to all Lot Owners, i.e. sent to their last address as it appears on the records of the Association.

Any responsibility for maintenance, repair or replacement with respect to the Lots or the improvements thereon which is not the responsibility of the Association is the responsibility of and shall be made at the cost and expense of the respective Owner(s) of such Lots.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from the Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.03 of this Declaration.

Section 6.02. Maintenance and Repairs Which Are Not the Responsibility of Association. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Lot Owner (including: (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (I) any member of such Owner's family, or (ii) any family member of tenant of such Owner) or Developer shall be made at the cost and expense of such Lot Owner or Developer, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Home or Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Maintenance, repair and replacement of (I) pipes, wires, conduits and public utility lines servicing only one (1) Lot or Home and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property), (ii) enclosed patio and enclosed yard areas and (iii) landscaping installed on the Lot by the present or any prior Owner of the Lot, shall be the responsibility of, and at the expense of, the Owner of the Lot or Home so serviced or on which such enclosed patio or yard area or landscaping is located.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance and repair undertaken by the Association shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of (I) Association Owned Property and (ii) Association Maintained Property) that it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior improvements on such property and the enhancement and preservation of the appearance and value of the Property.

**ARTICLE VII
INITIAL DEVELOPMENT OF PROPERTY**

The Developer has the right to approve (1) the exterior design and appearance of the Home or other Improvements initially constructed on each Lot and (2) the placement of the Home and driveway on the Lot. Plans for the Home and other Improvements on each Lot shall be submitted to the Developer for approval prior to the commencement of construction. Such plans must contain the information required by Section 7.03 below. When construction has been completed to the satisfaction of the Developer, the Developer will issue a "Certificate of Compliance. Once a Certificate of Compliance is issued for a Home, any future exterior Improvements, or any change of use shall require the approval of the Association's Architectural Committee.

Section 7.01. Control of Developer. The initial construction of any Improvements on a Lot and the initial use of any Improvement on a Lot, including the initial occupancy of any Home, shall be under the exclusive control of Developer until the initial development of the Home and other Improvements on the Lot have been completed to the satisfaction of Developer as evidenced by issuance of a Certificate of Compliance pursuant to Section 7.03 below. After issuance of a Certificate of Compliance with respect to a Lot, control of all further development or construction on such Lot and of the use of such Lot shall be the responsibility of the Association as set forth in Article VIII below.

Section 7.02. Submission of Plans for Initial Development. No Home or other Improvements shall initially be made to or constructed on any Lot unless and until plans for such Improvements, in such detail as Developer may require, have been approved by Developer. Such plans shall include exterior design, construction methods, location of the Improvements on the Lot, finished ground elevations including, without limitation, exterior finishes, colors or color scheme, finish, proportion, style of architecture, proposed parking, height and bulk, of the proposed Improvements. 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 by Developer. Developer may impose such other requirements with respect to the construction of such initial Improvements or such other development on such Lot as Developer deems appropriate, and may consider the harmony of such Improvements within the Development, with the surrounding area, and with the general quality of construction of Improvements in the Development, provided 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. Certificate of Compliance. Upon completion of the construction of the initial Improvements on a Lot to the satisfaction of Developer in accordance with the approved plans, with this Declaration and with such other requirements as Developer may have imposed, Developer shall issue a "Certificate of Compliance" identifying such Improvements, and stating generally that such

Improvements have been satisfactorily completed. Any Certificate of Compliance issued in accordance with the provisions of this Section 7.03 shall be prima facie evidence of the facts stated therein as of the date thereof and, as to any purchaser, lessee, mortgage holder or other encumbrancer in good faith and for value and as to any title insurer, such Certificate shall be conclusive evidence that all Improvements on the Lot as of the date of the Certificate, and the use or uses therein described, comply with all of the requirements of the Declaration. Prior to actual completion of certain Improvements, Developer may issue temporary Certificates of Compliance under such circumstances and on such terms and conditions as Developer deems appropriate.

Section 7.04. Liability of Developer. Except to the extent specifically provided in Section 7.03 above with respect to issuance of a Certificate of Compliance, no action taken by Developer or any officer, employee or agent of Developer 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. All claims, demands or other causes of action arising out of any such action (including issuance of a Certificate of Compliance) by Developer shall be deemed to be hereby waived. Developer shall not be liable for any damages to anyone submitting plans to it for approval or to any Builder, Lot Owner or 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 submitting plans to Developer for approval, agrees by submission of such plans, that no action or suit will be brought against Developer in connection with such submission.

Section 7.05. Consent of Developer Necessary to Amend this Article VII. Notwithstanding any other provision of this Declaration, any amendment to this Article VII, that alters or abridges the rights or authority of Developer, shall not be valid without the consent in writing of Developer, which consent shall not be unreasonably withheld.

ARTICLE VIII ARCHITECTURAL CONTROL AFTER ISSUANCE OF A CERTIFICATE OF COMPLIANCE

Once a Certificate of Compliance has been issued for a Lot, any future additions, modifications or alterations to Improvements on such Lot, including a change of exterior color, must be approved by the Association's Board of Directors or its authorized Architectural Committee. On request, the Board of Directors of the Association (or its authorized Architectural Committee) will cause an "Architectural Certificate" to be issued setting forth whether the Home or other improvements on a Lot violates any provisions of this Declaration or any design standards adopted by the Association pertaining to appearance, design or maintenance of the exterior of any improvements on the Lot.

Section 8.01. Control by Association Through Architectural Review Entity. After issuance of a Certificate of Occupancy and Certificate of Compliance for a Home on a Lot, enforcement of the Declaration with respect to control over any change in use or any additions, modifications or alterations to any Improvement on such Lot or other portion of the Property shall be the responsibility of the Association acting through its

Board of Directors or through the Board's authorized Architectural Committee, such entity being hereinafter referred to as the "Architectural Review Entity." The Board of Directors may, pursuant to the Association's By-Laws, establish an Architectural Committee to serve as the Architectural Review Entity. If the Architectural Committee is a "Committee of the Board", i.e. comprised entirely of members of the Board of Directors, the determination and decisions of the Committee shall be binding. If the Architectural Committee is not comprised entirely of members of the Board of Directors, i.e. it is a "Committee of the Association," its decisions will be subject to review and confirmation of the Board of Directors as provided in Section 8.08 below. If the Board of Directors does not establish an Architectural Committee the Board of Directors shall be the Architectural Review Entity.

Section 8.02. Submission of Plans to Architectural Review Entity. After issuance of a Certificate of Compliance with respect to a Home on a Lot or any other portion of the Property no addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the Improvements located thereon, nor shall the use thereof as designated in the Certificate of Compliance be changed unless or until plans therefore in such form and detail as the Architectural Review Entity requires, have been submitted to, and reviewed and approved by the Architectural Review Entity. The Board of Directors may establish a reasonable fee to be charged and collected for the examination of plans submitted for approval.

Section 8.03. Basis for Disapproval of Plans. The Architectural Review Entity 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 this 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 exterior design, construction methods, location of the proposed improvements on the Lot, finished ground elevations, proposed improvements, including without limitation, exterior finish colors or color scheme, finish proportion, style of architecture, proposed parking, height, bulk or appropriateness of any proposed improvements;
- d. incompatibility of the proposed improvements or use of the proposed improvements with existing improvements or uses in the vicinity;
- e. the failure of the proposed improvements to comply with zoning, building, health or other governmental laws, codes, ordinances, rules or regulations;
- f. any other matter which, in the judgment and sole discretion of the Architectural Review Entity, 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 Plans. Upon approval or qualified approval by the Architectural Review Entity of any plans submitted pursuant to Section 8.02 above, the Architectural Review Entity (or individual member or members as authorized pursuant to Section 8.08 below) 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 other portion of the Property shall, subject to review and confirmation of the Board of Directors if such approval was given by a Committee of the Association (see Section 8.01 above) be final as to such Lot or other portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) 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 this Declaration which benefit or encumber the Lot or other portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of 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 other portion of the Property shall not be deemed a waiver of the right of the Architectural Review Entity 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 other portion of the Property.

Section 8.05. Written Notification of Disapproval. In any case, where the Architectural Review Entity disapproves any plans submitted hereunder, it 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 above. In any such case, the Architectural Review Entity 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 Architectural Review Entity to Act. If any applicant has not received notice from the Architectural Review Entity approving or disapproving any plans within 35 days after submission thereof, said applicant may notify the Architectural Review Entity in writing of that fact. The plans shall be deemed approved unless notice to the contrary is given by the Architectural Review Entity not later than later of:

- a. 15 days after the date of such notice, if such notice is given;
- b. 70 days after the date the plans were originally submitted.

Section 8.07. Right of Board of Directors to Promulgate Rules and Regulations. 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 Review Entity to approve or disapprove any plans submitted for approval, or to waive the exercise of the right of

discretion in the review of such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of this Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 8.08. Delegation of Functions. The Board of Directors may authorize individual members of the Board of Directors or its authorized Architectural Committee to perform any of the functions of its authorized Architectural Committee provided the number and identity of such members and their functions and scope of authority have been established by a resolution of the entire Board of Directors. The approval or disapproval of plans by such individual member or members will be subject, however, to the reasonable review and confirmation of the Board of Directors acting in accordance with such procedures as may be established by the Board of Directors.

Section 8.09. Records of Meetings; Regulations. The Architectural Review Entity shall keep minutes of meetings and maintain records of all votes taken at meetings on architectural control issues. Such records and current copies of the Association's architectural rules and regulations shall be available at reasonable places and times for inspection by any Lot Owner or holder of a mortgage on a Lot or their authorized representative.

Section 8.10. Liability. No action taken by the Architectural Review Entity under this Article VIII 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 any member of the Board of Directors or its authorized Architectural Committee shall be liable to anyone submitting plans for approval or to any Lot Owner or Lot purchaser 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 agrees, by submitting such plans, that no action or suit will be brought against the Association, the Board of Directors or its authorized Architectural Committee, or against any member of the Association, the Board of Directors or the Architectural Committee thereof in connection with such submission.

Section 8.11. Architectural Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgage holder, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Developer, the Architectural Review Entity shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Certificate") signed by a Board member of the Architectural Review Entity stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of this Declaration pertaining to exterior appearance, design or maintenance and describing such violation, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Certificate. Any such Architectural 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 8.12. Restrictions on Changes to Architectural Controls, Design Standards and Rules and Regulations. The controls set forth in this Article VIII and any

design standards or rules and regulations established by Developer prior to the sale of all Lots, shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than 67% of the total votes of all Lot Owners (excluding Developer) voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and to all lending institution holders of first mortgages of Lots whose names appear on the records of the Association at least 30 days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together hold first mortgages on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE IX INSURANCE

The Association is obligated, with limitations — such as availability and reasonable cost, to maintain: (i) liability insurance coverage for occurrences on Association Owned Property or relating to maintenance services performed by the Association on Association Maintained Property, (ii) director and • officer liability insurance covering wrongful acts of directors and officers of the Association, (iii) fidelity insurance covering those who handle Association funds and (iv) worker compensation insurance for employees and others who perform work for the Association.

Section 9.01. Insurance to be Carried by Association. Subject to the availability of such coverages at reasonable costs as provided in this Section 9.01 below, the Board of Directors of the Association shall obtain and maintain (and review at least once each year) with such deductible amounts as the Board of Directors shall deem appropriate: (1) liability insurance for occurrences on Association Owned Property, (2) director and officer liability insurance covering wrongful acts of officers and directors of the Association, (3) fidelity insurance covering those who handle Association funds, and (4) worker compensation insurance covering Association employees and those who perform work for the Association. Such insurance coverages shall be as follows:

1. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Lot Owners, but not the liability of Lot Owners arising from occurrences within such Owner's Home or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability including bodily injury, property damage and personal injury (libel, slander, false arrest and invasion of privacy), (ii) medical payments, (iii) 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, (iv) "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, (v) contractual liability, (vi) liability for the property of others, (vii) host liquor liability coverage with respect to events sponsored by the Association, and (viii) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be cancelled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least 30 days' prior written notice to the insured (10 days for non-payment of premium), including all known holders of first mortgages on Lots as shown on the records of the Association. The Board of Directors shall review such coverage at least once a year.

Until the first meeting of the Board of Directors of the Association following the first annual meeting of Lot Owners, this public liability insurance shall be in a combined single limit of not less than \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

2. Director and Officer Liability. The director and officer liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis and shall include all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each claim. 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.

3. 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 name the Association as obligee and be in an amount not less than a sum equal to three (3) months 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 cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice to the Association (10 days notice for non-payment of premium) and to all institutional holders of first mortgages on Lots whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Lot Owner, holder of a first mortgage on a Lot, or prospective Lot Owner or first mortgage holder, increase the amount of such insurance to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot, the cost of which will be borne by that Lot Owner.

4. Worker Compensation. To the extent deemed reasonable and necessary by the Board of Directors of the Association, worker compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf the Association.

5. 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, and hired and non-owned vehicle coverage.

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 available only at demonstrably unreasonable cost.

Deductible. 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 of wantonly malicious act of an Owner against such Owner. With respect to property insurance, the deductible shall apply to each occurrence, not to each item of damage. 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 attorney's 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.

ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

This Article contains rules or prohibitions intended to preserve the appearance of the Property and to promote harmony in the community. The Board of Directors of the Association is given the authority to do such things as require the removal of pets that create a nuisance, and to control signage including signage advertising Homes for sale. Many actions are prohibited unless allowed by the Association's Board of Directors. It is the intent that the restrictions in this Article X allow permitted activities without being overly restrictive or disruptive of individual choice within limits acceptable to the community at large. Persons against whom enforcement is sought for alleged violations of restrictions shall be afforded an opportunity to be heard as provided in Section 11.02 of this Declaration.

Section 10.01. Signs and Advertising. Unless approved in writing by the Board of Directors of the Association, no sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property. Political signs, security system signs, and for sale signs shall be subject to such time, size, facing direction and location requirements, and limitations established from time to time by the Board of Directors. This Section shall not apply to temporary signs erected by or with the permission of Developer in connection with the initial sale of Lots or Homes.

Section 10.02. Animals, Birds and Insects. No animals other than two (2) dog and two (2) cats shall be kept or maintained on any Lot or other portion of the Property without the written consent of the Board of Directors of the Association. The Board of Directors 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. The Board of Directors of the Association shall have the right to require any Lot Owner (or any tenant of a Lot Owner or any family member or guest of any Lot Owner or tenant) to dispose of any animal, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal is creating a nuisance because, e.g., the Lot Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled.

Section 10.03. Fences, Walls and Screen Planting. No fence, wall, or screen planting of any kind shall be planted, installed or erected upon any Lot or other portion of the Property nor shall any fence, wall or screen planting be replaced with other than a similar type of planting fence or wall except with the written consent of Developer

prior to the issuance of a Certificate of Compliance for the Lot and thereafter with the written consent of the Board of Directors of the Association (as to plantings) and the Architectural Committee (as to fences and walls). Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the reasonable course of construction or repair of any approved Improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept stored or allowed to accumulate outdoors on any Lot or other portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property reasonably accessible to the persons making the pick-up. The Board of Directors of the Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner and location of storage of such containers. All facilities for the storage or disposal of Trash shall be kept in a clean and sanitary condition.

Section 10.05. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances shall be controlled so as not to (I) be detrimental to or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 10.06. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association's Board of Directors.

Section 10.07. Dwelling in Other Than Homes. No temporary building, trailer, mobile home, basement, shack, barn, outbuilding, shed, garage, building in the course of construction or other temporary structure shall be constructed on, or used, temporarily or permanently, as a dwelling, on any Lot or other portion of the Property except with the written consent of Developer during the course of construction and of the Board of Directors of the Association after the completion of development, i.e. after all Lots have been improved with Homes. Any consent given shall be in accord with the authority vested in Developer under Article VII above and the Architectural Committee under Article VIII above including, but not limited to, location, exterior design, appearance and materials.

Section 10.08. Subdivision of Lots. There shall be no further division of any Lot or Lots shown on the filed subdivision map or plat except by Developer. This provision is not intended to preclude the division of a Lot between the two (2) adjoining

Lot Owners for the purpose of adding to their existing Lots, or the division of a Lot into two (2) Lots to accommodate ownership of Duplex Homes.

Section 10.09. Residential Use Only. Except as provided in Section 10.10 below, each Lot shall be used only for residential purposes and purposes incidental and accessory thereto, except that, with the consent of Developer given prior to the initial occupancy of any dwelling constructed on a Lot, any such dwelling may be used as a model home and/or temporary real estate office.

Section 10.10. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors of the Association in its sole discretion. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.11. Unlicensed Vehicles, Parking of Recreational and Commercial Vehicles. No unlicensed vehicles shall be allowed on the Property. Unless used in conjunction with construction on the Property, or with the maintenance, repair or replacement of the Property, there shall be no outside storage of or parking of recreational vehicles, commercial vehicles of a weight of two (2) tons or more, camper bodies, boats or trailers, anywhere on the Property for more than 4 consecutive days and no such storage shall be repeated more than two (2) times in any calendar year, except as may be otherwise be consented to by the Board of Directors of the Association.

Section 10.12. Outdoor Repair Work on Vehicles, Boats or Machines. With respect to a Lot for which the Home thereon has been issued a Certificate of Occupancy by the Municipality, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot, except with the consent of the Board of Directors of the Association.

Section 10.13. Laundry Poles and Lines. Unless otherwise consented to by the Board of Directors of the Association, laundry poles and lines outside of the Units are prohibited except that one retractable type laundry line may be installed on each Lot from the rear of the Home on the Lot, provided such line shall be retracted from the outside when not in actual use.

Section 10.14. Aboveground Swimming Pools. No aboveground swimming pools shall be permitted unless consented to in writing by the Board of Directors of the Association

Section 10.15. Gardens. Flower and vegetable gardens shall be limited to such areas as the Board of Directors of the Association shall determine to be appropriate. Any garden area planted by a Home Owner or occupant shall be maintained by such Owner or occupant in a manner consistent with good garden management.

Section 10.16. Maintenance. Subject to the Association's obligations as set forth in this Declaration, each Lot and any Improvements thereon shall be kept in good order and repair, including, but not limited to, seeding, watering and mowing all

lawns, and painting or other appropriate external care of all Homes and other Improvements, all in a manner and with such frequency as is consistent with good property management.

Section 10.17. Television and Communication Antennas. The construction of television and other communications antenna shall be in accordance with the then current rules of the Association for such construction to the extent such rules are not violative of governmental regulations including FCC regulations. No satellite dish, disc, aerial, antenna or similar receptacle shall be located in any place directly visible to a person standing on the street in front of the Home, unless no other location on the Home is appropriate under FCC regulations.

Section 10.18. Liability for Damage During Construction. The repair of any damage to any roadway or other portion of the Property, and the clean-up of spills, as a result of construction activities, including the delivery of supplies or materials, shall be the responsibility of the Owner of the Lot on whose behalf such construction activities were being undertaken, and any Builder constructing on the Lot.

Section 10.19. Exterior Storage. Unless otherwise authorized in writing by the Board of Directors of the Association, there shall be no exterior storage or exterior storage facilities or structures on any Lot except for cooking grills, which may be stored on a patio or in a courtyard. By way of illustration and not of limitation the outdoor storage of the following is intended to be prohibited: unlicensed vehicles, boats, tools, machinery, equipment, supplies and sheds.

Section 10.20. No Disturbances of Grading to Interrupt Surface Drainage. There shall be no alteration of any finish grading of a Lot which results in interruption of surface drainage or causes erosion or other damage to the finish grading of any other Lot.

Section 10.21. No Open Fires. No open fires of any kind shall be permitted on any Lot except within the confines of a fireplace or barbecue pit, the construction of which, if visible from the sidewalk in front of the Home, has been approved by the Architectural Committee. All such fires shall be attended to at all times and shall be thoroughly extinguished upon completion of use.

Section 10.22. Trees and Other Natural Features. After the transfer of title by Developer to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Association's Board of Directors. The Association's Board of Directors, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

Section 10.23. Operation of Snowmobiles, Motorcycles, All Terrain Vehicles or Similar Motor Vehicles. The operation of snowmobiles, motorcycles, all terrain vehicles or similar vehicles is prohibited within the Property unless authorized by the Association's Board of Directors.

Section 10.24. Use of Garages. Garages are to be used only for the parking of motor vehicles and the storage of household and other personal property. Garages shall not be used as screened-in living or patio areas. Garage doors shall be

kept shut at all times except when in use to permit the entry or departure of a motor vehicle, or for access for the storage of personal or household property.

Section 10.25. Outdoor Hot-Tub or Spa. No outdoor hot tub or spa shall be constructed or placed, temporarily or otherwise, upon any Lot, unless (i) authorized in writing by the Board of Directors of the Association and (ii) in compliance with any rules and regulations regarding the size, location, appearance and screening thereof as may be promulgated from time to time by the Board of Directors.

Section 10.26. No Disposal of Refuse into Ponds or Association Owned Property. No garbage, trash or other refuse of any kind shall be dumped, disposed of or placed into any retention or detention pond or ponds or on any Association Owned Property.

Section 10.27. Use of Ponds. The ponds may be used for the operation of remote-controlled boats and similar activities subject to such rules and regulations as may be promulgated from time to time by the Board of Directors of the Association regarding use of the pond. No swimming, bathing or ice skating shall be permitted in the ponds.

Section 10.28. Hunting, Firearms. No hunting or discharge of firearms shall be allowed on any lot or Association Owned Property.

Section 10.29. Free Standing Solar Panel Structures. No free standing solar panel structure shall be permitted on the Property except with the written consent of the Board of Directors and subject to such rules and regulations promulgated by the Board of Directors.

The following Sections of this Article X apply to Duplex Homes and Lots

only. Section 10.30. Special Covenants for Duplex Homes.

A. In the case of a Duplex Home, all maintenance, repair and replacement of the exterior of said Home, including siding, windows and roof shall be made by the Owner of the Home, unless both Owners of Homes in the Duplex Building agree to jointly contract for the service and materials to make such maintenance, repair or replacement. The Owners of Homes in a Duplex Building may establish reasonable schedules and regulations for such maintenance and replacement, 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 Home(s).

B. Party Wall. The wall built as part of a Duplex Building and which serves as the common wall between the Homes, whether or not it is the dividing line between the Lots, shall be the "Party Wall". The Owner of each Duplex Home shall have an easement to enter upon the Lot and within the Home of the other Owner to effect necessary repairs and maintenance of the Party Wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of the Party Wall, except that if a Party Wall has to be repaired because it was exposed to the elements because of the negligent or willful conduct of an Owner, such Owner shall bear the whole cost of such repair. Such entrance shall be exercised upon reasonable

notice to the other Owner, shall be limited to reasonable times, and shall be exercised so as not to unreasonably impair the right of the other Owner to the use and quiet enjoyment of said other Owner's Home. In the event of destruction of the Party Wall by fire or other casualty or the need for substantial repairs or rebuilding of the Party Wall, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, either Owner may restore the Party Wall and shall be entitled to a contribution equaling one-half of the cost of such restoration from the Owner of the other Home. Such right of contribution shall not be construed, however, to limit in any degree, the right of an Owner to seek greater contribution if so entitled under the law for the State of New York regarding liability for negligent or willful acts or omissions.

Any Party Wall that is repaired or rebuilt shall be in the same location as the original Party Wall and shall be of substantially the same material as the original Party Wall.

Section 10.31. Easement for Encroachments or Projections. For easements allowing encroachments or projections of improvements from Duplex Lots onto or over adjoining Lots or Association Property, see Section 4.02-E above.

Section 10.32. Change in Color of Siding, Trim or Roof. Any reasonably noticeable change in color, texture, or materials of the exterior siding, trim or roof of a Home in a Duplex Building shall require the consent of the Owner of the other Home, which consent shall not be unreasonably withheld.

Section 10.33. Failure of Unit Owner to Respond to Request for an Approval. If an Owner of a Duplex Lot is requested to consent or approve a request or action under the provisions of this Declaration and does not respond to such request within fifteen (15) days after submission of such request to such Owner, such request to consent or approval shall be deemed to have been given. Notwithstanding the foregoing, any such action shall still be subject to any and all approvals of the Association required by this Declaration.

ARTICLE XI ENFORCEMENT, AMENDMENT AND DURATION

This Article provides that the provisions of this Declaration "run with the land" which means they also apply to subsequent owners of each Lot. Lot Owners are responsible for the actions of their tenants and guests as such actions relate to compliance with the provisions of this Declaration. Violators of any provision of this Declaration shall be subject to legal action, fines and penalties and will, be obligated to reimburse the Association for the cost of enforcement. The Association has the right, but not the obligation, to send the holder of a mortgage on a Lot a copy of any notice to the Owner of a Lot concerning a violation by such Owner of any provision of this Declaration. Except for (i) amendments to correct omissions or errors, which may be made by the Developer, and (ii) amendments that terminate, modify or extinguish easements, which require the consent of the Owner or Owners of the Lot or Lots benefiting from such easement, all other amendments to this Declaration shall require the consent of Owners of two-thirds (2/3) of the Lots. In addition, any amendment to the Declaration that adversely affects the interest of the Developer, shall require the Developer's consent, which consent shall not be unreasonably withheld. Owners of 80% of the Lots may vote to terminate this Declaration.

Section 11.01. Declaration Runs with The Land. The provisions of this Declaration shall bind the Property and shall be construed as running 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 this Declaration) covenants and agrees for him, her, or itself and for his, her or its heirs, successors and/or assigns, to observe, perform and be bound by the provisions of this 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 11.02. Enforceability.

u.a Actions at Law or Suits in Equity. The provisions of this Declaration shall inure to the benefit of and be enforceable by the Association (being hereby deemed the agent for all of its members), and by any Lot Owner, their respective legal representatives, heirs, successors and/or 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 this 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 of this Declaration.

u.b Penalties and Fines. In addition to 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 of rules and regulations of the Association or of any committee of the Association, and after affording the alleged violator a 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 occupant of a Lot shall be deemed a Special Assessment against the Owner of such Lot 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 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of this Declaration shall in no event be construed as a waiver of the right by that beneficiary or by any other beneficiary to do so thereafter, as to the same or similar violation occurring prior to subsequent thereto. No liability shall attach to the Association (or any officer, director, employee, member, agent, committee or committee member of the Association) or to any other person or organization for failure to enforce the provisions of this Declaration.

Section 11.04. Owner Responsible for Tenants and Guests. Any lease of a Home shall provide, in writing, within the lease, specific reference to the "Declaration" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant or any guest of a Lot Owner is in violation of this Declaration, or the By-Laws or rules and regulations of the Association, the Board of Directors shall send a written notice by certified mail, return receipt requested, notifying the Owner of the Home occupied by

such tenant. If the violation is not cured or eviction proceedings are not commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.05. Obligation and Lien for Cost of Enforcement. If the Association or any other party successfully brings an action to extinguish a violation or to otherwise enforce the provisions of this Declaration or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner of a Lot; or (2) any family member, tenant, guest or invitee of the Owner of a Lot; or (3) a family member or guest or invitee of the tenant of the Owner of a Lot; or (4) a guest or invitee of (i) any member of the family of the Owner of a Lot or (ii) any family member of the tenant of the Owner of the Lot, such costs shall also be a lien upon the Lot owned by such Owner.

Section 11.06. Inspection and Entry Rights. Any agent of the Association may at any reasonable time or times, upon not less than 24 hours notice to the Lot Owner, enter upon the Lot of such Owner to inspect the exterior improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the provisions of this Declaration, or with rules and regulation issued pursuant to this Declaration. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Board of Directors determines that it is necessary to trim, cut or prune any tree, hedge or other planting because it is unsightly or because its location, the height to which, or the manner in which, it has been permitted to grow, is detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.07. Notification to Mortgage Holders of Violations. If the Association is notified of the name and address of the holder of a mortgage on a Lot, the Association may thereafter provide such mortgage holder with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration relating to such Owner or to the Lot of such Owner.

Section 11.08. Amending Declaration. Developer, during the time it shall own any portion of the Property, or the Association may make amendments to this Declaration to (i) correct omissions or errors, which amendments shall not substantially or adversely modify rights of any Owner without such Owner's written consent, or (ii) comply with the reasonable requirements of any title insurance company, any Unit mortgage lender or prospective Unit mortgage lender or any governmental authority or agency, or (iii) comply with the requirements of the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Government National Mortgage Association ("Ginnie Mae") or similar or successor entities in order to make mortgage loans to purchasers or Owners of Lots or

Units available or to render them eligible for purchase by all or any of the foregoing entities.

Except as otherwise specifically provided for in this Declaration, including Sections 2.02, 3.10, 4.05, 5.07, and the above portion of this Section 11.08, the Board of Directors of the Association on its own initiative may, or pursuant to a written petition signed by Owners of not less than 25 percent of the Lots owned by persons independent of Developer shall, propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 4.06 herein for the purpose of considering such proposed amendment. Notice shall be given as required by said Section 4.06 of this Declaration.

The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of Owners of two-thirds (2/3) or more of the total number of Lots shall be required for approval of a proposed amendment, except that (I) an amendment to shorten the duration of this Declaration shall require the affirmative vote of Owners of 80% of the total number of Lots after a hearing as provided in Section 11.10 below, and (H) so long as Developer holds title to any portion of the Property, the written consent of Developer will be required for any amendment which adversely affects a substantial interest or right of Developer, which consent must not be unreasonably withheld; and (Hi) no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions, which together hold first mortgages on 51% or more of the Lots, advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution holder of a first mortgage on a Lot shall be sent, at least 30 days prior to the date or initial date set for voting on the proposed amendment, to all such lending institution holders of first mortgages whose names appear on the records of the Association.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose Owners specifically consent in writing to such termination, extinguishment or modification, except as provided in Section 11.09 of this Declaration.

Section 11.09. Duration and Termination. Except as otherwise provided for herein, this Declaration shall continue with full force and effect unless terminated by the affirmative vote of Owners of not less than 80% of the total number of Lots after a hearing is held in accordance with Section 4.06 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 25 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof, and a form of ballot, shall be

mailed or delivered to all Lot Owners not less than fourteen (14) days prior to the date or dates set for the canvass thereof.

Section 11.10. 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 Recording Office. Such instrument need not contain the written consent of the Owners of the required number of Lots but shall contain 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 11.11. When Termination Becomes Effective. Any approved termination to the Declaration shall become effective only when an instrument describing such termination has been duly recorded in the Recording Office and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such termination.

Section 11.12. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of 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 benefited or bound by such provisions.

Any conflict in construction or interpretation between the Association and any other person or entity to enforce the provisions of this Declaration 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 findings, determinations, rulings or orders or in carrying out any directive contained in this Declaration relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Lot Owners and to the end that the Property shall be preserved and maintained as a high-quality community.

In granting any permit, authorization, or approval, as provided in this Declaration, 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 11.13. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or by the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.14. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration. The provisions of this Declaration may be amended only in the manner provided herein.

Section 11.15. Unenforceability or Invalidity of Agreement or Declaration. The determination by any court that any provision of this Declaration is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision of this Declaration.

**ARTICLE XII
GENERAL**

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

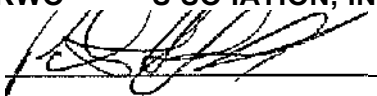
Section 12.02. Notice. Any notice required to be sent to the Owner of a Lot or to the holder of a mortgage on a Lot under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as such Owner or mortgage holder on the records of the Association at the time of such meeting.

OAKWOOD HILLS, LLC

By:  _____

Peter H. Zelif - President/Member

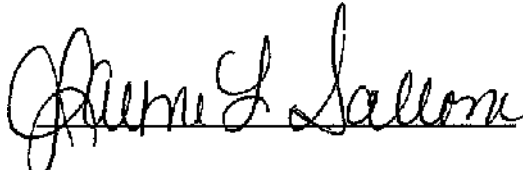
OAKWOOD ASSOCIATION, INC.

By:  _____

Peter H. Zelif - President

STATE OF NEW YORK)
) SS
COUNTY OF GENESEE)

On this 1st day of February, 2018, before me, the undersigned, a notary public in and for said state, personally appeared Peter H. Zelif, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the above instrument and he acknowledged to me that he executed the same his capacity, and that by his signature on the instrument, the individual or person on behalf of which he acted, executed this instrument.



SCHEDULE "A"

LANDS SUBJECT TO THE DECLARATION

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Batavia, County of Genesee and State of New York, described as parts of Lots 2, 4 & 6 and being part of Township 12, Range 1, Section 8, of the Holland Land Company's Survey and being all of the land shown on Map of the Oakwood Hills Subdivision filed in the Genesee County Clerk's Office on March 31, 2014 under Map Cover 2272, Slide No. 52, Cabinet 3 (the "Subdivision", as amended by amended subdivision map filed under Instrument no. 2499 on January 4, 2018 in the Genesee County Clerk's Office, excepting and reserving therefrom Sublot Nos. 21, 23, 24 and 81 that are "prior sold lots" as defined in Section 1.01 of this Declaration.