

DECLARATION
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
of
INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

SPONSOR: HOMEFRONT DEVELOPMENT CORPORATION
15 Boulevard
Hudson Falls, New York 12839

DATE OF DECLARATION: , 1992

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DECLARATION

INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

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DECLARATION
of
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
of
INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION, made this day of _____ 1992, by HomeFront Development Corporation, 15 Boulevard, Hudson Falls, New York 12839, a 501(c)(3) Not-for-Profit New York corporation, being referred to hereinafter as the "Sponsor".

WITNESSETH

WHEREAS, the Sponsor is the owner of the property located in the Town of Queensbury, County of Warren, New York described in Article II of this Declaration which the Sponsor intends to develop into a residential community known as Inspiration Park Homeowners' Association, Inc., consisting of approximately 22.48 acres of land upon which will be developed not more than forty two (42) single-family Homes, with open green areas and other common facilities for the benefit of said community; and

WHEREAS, the Sponsor desires that the amenities of the lands described be available for use by the residents of Inspiration Park Homeowner' Association, Inc.; and

WHEREAS, the Sponsor desires to provide for the maintenance, repair and replacement of the green areas and other amenities of said Association and the Property and to this end desires to subject the Property described in Schedule B hereto to this Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens ("Declaration") hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner or occupant of Homes thereof; and

WHEREAS, the Sponsor has deemed it desirable, for such purposes as stated above, to create an agency to which would be delegated and assigned the powers of (i) maintaining and administering the Property and facilities; (ii) administering and enforcing the Declaration and (iii) collecting and disbursing the Assessments and charges hereinafter created; and

WHEREAS, the Sponsor has formed the Inspiration Park Homeowners' Association, Inc. under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Sponsor, for itself, its successors and assigns, declares that the real property described in Article II hereof is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The following words, when capitalized and used in this Declaration, the By-Laws, the Rules and Regulations, or in any instrument supplemental to this Declaration, the By-Laws, or the Rules and Regulations, shall, unless the context otherwise prohibits, have the following meanings:

- a. **Assessments:** Charges for the maintenance and operation of Association Property as described in Article V of the Declaration and includes Special Assessments for capital improvements, Maintenance Assessments and any other charges deemed to be Assessments pursuant to the Declaration and By-Laws.
- b. **Association:** Inspiration Park Homeowners' Association, Inc.
- c. **Association Property:** All land and other improvements and other properties, personal or mixed, heretofore and hereafter owned by the Inspiration Park Homeowners' Association, Inc.
- d. **Authorized Votes:** There shall be only one vote for each Voting Owner regardless of the number of Homes owned by such Owner. The maximum number of votes will be forty two (42).
- e. **Board of Directors or the Board:** The Board of Directors elected by the Members and/or appointed by the Sponsor (subject to initial control by Sponsor) to administer the affairs of the Association.
- f. **Book of Mortgagees:** Record of Mortgagees as reported by the Sponsor or Sponsor's closing attorney to the Board of Directors at the time of each closing, or upon a resale of a Home by an Owner, as may be reported by the Purchaser of such Home at time of taking title. The Secretary of the Board of Directors shall be responsible for maintaining the Book of Mortgagees. Every First

Mortgagee shall have the right, upon written notification to the Secretary, to have its name and address, as set forth in such notification, entered into the Book of Mortgagees.

- g. **By-Laws:** The By-Laws of the Association, as are set forth in Part II of the Offering Plan, as the same may be supplemented, extended or amended from time to time.
- h. **Declaration:** This document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of the Inspiration Park Homeowners' Association, Inc. as it may, from time to time, be supplemented, extended or amended in the manner provided for herein.
- i. **First Mortgage:** The first mortgage granted on a Home to a bank, federal savings and loan association, life insurance company, pension fund, trust company or other institutional lender, licensed mortgage banker or broker, an individual or the Sponsor by an Owner.
- j. **First Mortgagee:** The original first mortgagee, its representatives, assigns or other holder of a First Mortgage on a Home.
- k. **Grantee:** The Purchaser of a Home.
- l. **Grantor:** The Seller of a Home.
- m. **Home:** Each completed Home situated upon the Property (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Queensbury) including the garage appurtenant to such Home, if there be one. Unless the context clearly indicates otherwise, the term "Home" shall be deemed to include the term "Lot".
- n. **Lot:** Any portion of the Property (with the exception of the Association Property) under the scope of this Declaration, as shown on the "as built" Subdivision Map filed, or to be filed, with the Warren County Clerk and identified as a separate parcel on the tax records of the Town of Queensbury. Unless the context clearly indicates otherwise, the term "Lot" is included in the term "Home".
- o. **Member:** Each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.
- p. **Mortgagee:** Any mortgagee, its representatives, assigns, servicing agent or other holder of a mortgage on a Home.

- q. **Offering Plan:** The Offering Plan filed with the New York State Department of Law relating to the Inspiration Park Homeowners' Association, Inc.
- r. **Owner:** The holder of record title, whether one (1) or more persons or entities: (i) of fee simple title to any Home, whether or not such a holder actually resides in such Home; or (ii) the fee interest in any Home subject to this Declaration and shall include the Sponsor with respect to any Unsold Home.
- s. **Property:** All properties as are subject to this Declaration which may be supplemented, extended or amended.
- t. **Purchaser:** A person who has executed a Purchase Agreement, which has also been executed by the Sponsor.
- u. **Rules and Regulations:** The Rules and Regulations of the Association governing the use and care of the Property as may be set forth in this Declaration, the By-Laws or promulgated from time to time by the Board of Directors.
- v. **Second Mortgage Held by New York State Affordable Housing Corporation (NYSAHC):** Any mortgage given by a Purchaser to the New York State Affordable Housing Corporation to ensure enforcement of the requirements imposed by NYSAHC in connection with grant monies provided by NYSAHC.
- w. **Sponsor:** HomeFront Development Corporation, a 501(c)(3) Not-for-Profit New York corporation, its successors and assigns.
- x. **Subdivision Map:** The Subdivision Map as filed in the Office of the Warren County Clerk.
- y. **Transfer of Control Date:** The date on which (i) the Sponsor has transferred title to all forty two (42) Homes; or (ii) five (5) years from the transfer of title to the first Home, whichever first occurs.
- z. **Unsold Home:** Any Home owned by Sponsor or its designee.
- aa. **Voting Owner or Member:** The Owner of a Home. In the event a Home is owned by more than one person, the Voting Owner shall be the person named in a certificate signed by all Owners of such Home and filed with the Secretary of the Board of Directors. If such certificate is not on file, the person or entity first named on the deed by which title is obtained shall be the person considered the Voting Owner.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed by deed and occupied subject to this Declaration is located in the Town of Queensbury, County of Warren and State of New York, is more particularly described in Schedule B to this Declaration.

2.02. Merger. Upon a merger or consolidation of the Association with another association as provided in the Association's Certificate of Incorporation, this Declaration, By-Laws, or New York State Law, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving or consolidated association and may administer the Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens established by this Declaration within the Property, together with the Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the Restrictive Covenants, Conditions, Restrictions, Easements, Charges and Liens established by this Declaration with the Property, except as hereinafter provided.

ARTICLE III

THE ASSOCIATION: STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of the State of New York, the Sponsor has formed the Inspiration Park Homeowners' Association, Inc. to own, operate and maintain the Association Property, manage the affairs of the Association, enforce this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration, the Certificate of Incorporation and the By-Laws of the Association, as such may be supplemented, extended or amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners of Homes within the Property. All Owners shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definition of the word "Owner" as found in Article I of this Declaration. Ownership of such Home shall be the sole qualification for membership.

Section 3.03. Holder of Security Interest. Any person or entity which holds an interest in a Home merely as security for the performance of an obligation shall not be a Member and shall have no voting rights.

Section 3.04. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.

- a. Notwithstanding anything to the contrary contained in this Declaration, until the Transfer of Control Date, the Board of Directors may not, without the Sponsor's prior written consent, which consent will not be unreasonably withheld, except for necessary alterations, additions or improvements required by law or by any government agency or Board of Fire Underwriters: (i) make any addition, alteration or improvement to 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; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association; (iv) enter into any service or maintenance contract for work not provided for in the initial budget, except for the maintenance of an improvement not in existence or owned by the Association at the time of the recording of this Declaration; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of the services or maintenance of the Property.
- b. This Section shall not be amended without the prior written consent of the Sponsor until the Transfer of Control Date.

ARTICLE IV**PROPERTY RIGHTS AND EASEMENTS****Section 4.01. Dedication of Association Property.**

- a. Subsequent to the recordation of this Declaration, and at or prior to the conveyance of the first Home, the Sponsor shall record the deed to the Association Property in the Office of the Warren County Clerk for the use and enjoyment of the Owners, their guests, lessees, licensees and invitees.
- b. The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration. No portion of the Association Property shall be subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the same shall have been conveyed to the Association by deed and such deed recorded in the Office of the Warren County Clerk.

Section 4.02. Right and Easement of Enjoyment in and to Association Property. Every Owner and such Owner's guests, licensees, lessees and invitees shall have a right and easement of enjoyment in and to all Association Property. Such easements shall be appurtenant to and shall pass with the interests of an Owner. Such rights, easements and privileges shall be subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Sponsor as set forth in Section 4.07 and the rights of Owners as set forth in Section 4.08 herein.

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

- a. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision, or cable television franchisee with or without consideration.
- b. Except as set forth in Section 4.03(a) above, to dedicate or transfer all or any part of the fee title to the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee, subject to the following:

- (1) such a conveyance shall require the consent of Owners by an affirmative vote of sixty-seven percent (67%) of Authorized Votes at a regular or special meeting of Owners, other than those of the Sponsor;
 - (2) any conveyance by the Association prior to the transfer of title to all Homes by the Sponsor, shall also require the prior written approval of the Sponsor unless the Sponsor waives such right in a written agreement recorded in the Office of the Warren County Clerk.
 - (3) no such conveyance shall be made if the First Mortgagees of sixty-seven percent (67%) or more of the Homes advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable. Written notice of any proposed conveyance shall be sent to all First Mortgagees whose names appear in the Book of Mortgagees of the Association not less than ten (10) days nor more than fifty (50) days prior to the date set for voting on the proposed conveyance.
- c. To borrow funds, and in conjunction therewith, mortgage its properties. Such mortgage, however, shall be subject to any and all prior easements set forth herein and/or which may be of record. The amount, terms, or rate of all borrowing and the provisions of all agreements with note holders shall be determined by the Board of Directors, acting in its absolute discretion, subject only to the ability of the Association to repay such borrowed funds from Assessments.
- d. Except as may be prohibited by law, the Certificate of Incorporation, this Declaration or the By-Laws, to contract with any person for the performance of its management and other duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives or other homeowners' associations, both within and without the Property.

Until the Transfer of Control Date, the Board of Directors may not exercise such rights as those set forth in Subparagraphs a., b., c., and d. of this Section 4.03 without the prior written consent of the Sponsor.

Section 4.04. Maintenance of Association Facilities. In order to preserve and enhance values and amenities of the Property, the Association shall, at all times, maintain and keep the Property and all other facilities of the Association in good repair and condition and shall operate such Property and facilities in accordance with high standards.

Section 4.05. Common Utility and Conduit Easement.

- a. All pipes, wires, conduits and public utility lines and cable television lines located within a Home and serving only such Home shall be owned, maintained, repaired and replaced by the Owner of such Home. Every Owner shall have an easement in common with the Owners of other Homes to maintain and use all pipes, wires, conduits, public utility lines and cable television lines located within other Lots or the Association Property and servicing such Owner's Home. Each Home shall be subject to an easement in favor of the Owners of other Homes to maintain and use the pipes, wires, conduits, drainage areas and public utility lines and cable television lines.
- b. The Association shall have the right of access to each Lot for the maintenance, repair or replacement of any pipes, wires, conduits, public utility lines or cable television lines located within such Lot and servicing any other Lot and/or Home. Such right shall be exercised at a reasonable time upon reasonable notice to the Owner and/or occupant, provided, however, that in an emergency such right may be exercised at any time and without notice. The cost of such repair, maintenance or replacement shall be a common expense which shall be the responsibility of the Association, except that, if such repair, maintenance or replacement is occasioned by negligent or willful act or omission of an Owner and/or occupant, it shall be considered a special expense allocable to the responsible Owner and such cost shall be added to the Assessment of such Owner and, as part of that Assessment, shall constitute a lien on the Owner's Home to secure the payment thereof.
- c. The Association shall have an easement over the Lots for the placement, maintenance, repair and replacement of utility banks and telephone pedestals and for the maintenance of the common areas, together with all other easements of access necessitated by the Association's obligation to repair as set forth in Section 6.01 of this Declaration.

Section 4.06. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, the Association and the Architectural Committee (as defined in Article VII hereof) shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any activities which could have an adverse environmental impact or take affirmative action to improve the quality of the environment, and shall comply with all applicable laws, rules and regulations. Prior to Transfer of Control, no such standards or guidelines shall be established without prior written consent of the Sponsor, such consent not to be unreasonably withheld.

Section 4.07. Rights of Sponsor With Respect to Association Property.

- a. With respect to the Property, the Sponsor shall have the right, until the completion of construction, marketing and sale of all Homes, provided the rights of the Owners are not substantially and materially restricted (except for temporary inconvenience):
- (1) to grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of the drainage system, utility lines, wires, pipes and conduits, including, but not necessarily limited to water, electric, telephone, sewer, water, drainage and cable television, to serve any property;
 - (2) to connect with and make use of the utility lines, wires, pipes, conduits and related facilities located on the Property for the benefit of any property set forth in Schedule B hereof and as shown on the Subdivision Map as a part of the total proposed development.
 - (3) to use the Property for ingress and egress for construction purposes and for the storage of building materials;
 - (4) to operate a sales center and/or permit the Sales Agent to operate a sales center and to have prospective purchasers and others visit such sales center and use other portions of the Property;

- (5) to maintain a construction office on the Property;
- (6) to determine the grading, elevation and design of the Home to fit into the general pattern of the development, together with the right to change the configuration to include a different type of Home providing such Home remains compatible with existing Homes and to alter the location on the Lot if the grade and/or contour of the land so requires;
- (7) to grant to itself or to others such easements and rights-of-way as may be reasonably needed for the orderly development of the property set forth in Schedule B of this Declaration; and

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon, and for the benefit of, the Association, the Sponsor and their successors and assigns.

- b. With respect to its exercise of the above rights, the Sponsor agrees (i) to repair any damages resulting from construction within a reasonable time after the completion of development or when such rights are no longer needed by the Sponsor, whichever first occurs; and (ii) until development has been completed, to hold the Association harmless from all liabilities which are directly caused by the Sponsor's exercise of its rights hereunder.
- c. Until Transfer of Control Date, this Section 4.07 may not be amended without prior written consent of the Sponsor.

Section 4.08. Rights and Easements to Owners.

- a. Every Owner shall have an easement for ingress and egress over and to all Association Property. Further, every Owner shall have common utility and conduit easements as described in Section 4.05. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that a conveyance or encumbrance referred to in Section 4.03 (b) and Section 4.08 hereof shall be subject to said easement of each Owner for ingress and egress.

- b. Nothing shall be altered, constructed within or removed (other than debris) from the exterior of any Home or from any Lot, upon completion of the Home and Lot by the Sponsor, or the Association Property, without prior submission for approval to the Architectural Committee and consent of the Board of Directors in accordance with Article VII of this Declaration.

Section 4.09. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article VIII of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceedings to all Mortgagees whose names appear in the Book of Mortgagees of the Association.

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

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Creation of the Lien. The Sponsor, for each Home owned by it within the Property, hereby covenants and agrees, and each Owner of any Home, by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association:

- a. Annual Assessments for the maintenance and operation of the Property;
- b. Special assessments for capital improvements ("Special Assessments"); and
- c. Special assessments that may become necessary as a result of a casualty loss of Association Property caused by nature, such as an ice storm or extraordinary snow and/or rain storm not otherwise covered by insurance and creating a budget deficit for the fiscal year.

MODIFICATION OF DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
OF
INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

WHEREAS, a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Inspiration Park Homeowners' Association, Inc. (the "Declaration") dated November 19, 1992, was recorded in the Warren County Clerk's Office on December 2, 1992 in Book 869 of Deeds at Page 9; and

WHEREAS, in accordance with the provisions of Section 9.06 of said Declaration, the Declaration has been duly modified, at a meeting of the Inspiration Park Homeowners' Association held on September 24, 1993,

NOW, THEREFORE, the Inspiration Park Homeowners' Association, Inc. declares that said Declaration is hereby amended as follows:

I. Paragraph b. of Section 4.08 is hereby deleted in its entirety.

II. In Paragraph c. of Section 8.04 the phrase "behind the home" shall be defined as "behind an imaginary line drawn at the back of the home, running parallel to the street, and not necessarily directly 'behind' the home". In addition, the language "visible from the street" is hereby deleted from said Paragraph c. of Section 8.04.

IN WITNESS WHEREOF, the undersigned, being the President of Inspiration Park Homeowners' Association, Inc. has signed this Modification of Declaration on the 27th day of Oct., 1993.

INSPIRATION PARK HOMEOWNERS'
ASSOCIATION, INC.

By: Sandra Aubin
Sandra Aubin, President

The Maintenance Assessments and the Special Assessments together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Except to the extent prohibited by law, the Board of Directors, on behalf of all Owners, shall have a lien on each Home for unpaid Assessments, with interest thereon, assessed against such Home, subject to foreclosure.

Section 5.02. Basis for Assessments. The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Owner at least thirty (30) days prior to assessing the Owners thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board.

The total annual requirements and any supplemental requirements shall be allocated among, assessed to, and paid by the Owners. Each Owner shall pay an equal portion of said requirements, which shall be 1/42nd of the total. After Association Assessments have been levied on one or more Owners who have closed title to their Homes, the Sponsor will be obligated for Assessments for Unsold Homes which shall be no more than for the difference between the actual expenses, including reserves, applicable to completed improvements as provided for in the Association's budget and the Association charges levied on Owners who have closed title to their Homes as projected in the Association's budget. The sum due the Association from each Owner shall constitute an Assessment by the Board of Directors.

Section 5.03. Purpose of Assessments. The purpose of the Maintenance Assessments shall be to fund the maintenance, repair, replacement and improvement of the maintenance of the Association Property and all other expenses of the Association, including, but not necessarily limited to:

- a. The payment of taxes on the Association Property, if any;
- b. Any utility services to the Property which are commonly metered or billed;
- c. All casualty, liability and other insurance obtained pursuant to Article VIII of this Declaration covering the Property and the Association's officers, directors and employees, if any;

- d. The facilities included in Section 6.01 hereof;
- f. Accounting and record keeping of all Association financial transactions;
- g. Legal, architect, engineering and other professional fees and disbursements; and
- h. Such other expenses of the Association which the Board of Directors deems appropriate or desirable.

Section 5.04. Date of Commencement and Notice of Assessments.

The Assessments provided for herein shall commence on the day on which the first Home is conveyed by the Sponsor to the initial Purchaser. 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.

Section 5.05. Change in the Basis of Assessments.

- a. The Association may change the basis of determining the Maintenance Assessments by obtaining the consent of Owners by an affirmative vote of not less than sixty-seven percent (67%) of Authorized Votes at a regular or special meeting of Owners, excluding those of the Sponsor, except that: (i) until the Transfer of Control Date, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to Unsold Homes shall require the specific prior written consent of the Sponsor; and (ii) no such change shall be made if first Mortgagees whose names appear on in the Book of Mortgagees of the Association of sixty seven percent (67%) or more of the Homes advise the Association in writing, within sixty (60) days of the Mortgagee's receipt of written notice to make such change, that they are opposed to such change, which opposition must not be unreasonable. Failure to object within such time shall be considered consent to such change.

Written notice shall be sent not less than ten (10) days nor more than fifty (50) days in advance of the date set for voting thereon to all Owners and Mortgagees. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Warren, New York.

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

Section 5.06. Special Assessments for Capital Improvements.

In addition to the annual Maintenance Assessment, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction, replacement or repair of a capital nature to the Association Property, including the necessary fixtures and personal property related thereto. Any Special Assessment for the construction (rather than reconstruction or replacement) of any capital improvement, or for any Special Assessment amounting to more than twenty-five percent (25%) of the then current amount of annual Maintenance Assessments, the consent of Owners shall be evidenced by an affirmative vote of sixty seven percent (67%) of the Authorized Votes cast in person, by mail (absentee ballot) or by proxy at a regular or special meeting duly called for this purpose. Written notice of such meeting shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date. Until Transfer of Control Date the Association may not levy any Special Assessments or make any capital improvements without prior written consent of the Sponsor.

Section 5.07. Special Assessments for Emergency Conditions or for Loss due to Casualty. In addition to the annual Maintenance Assessment, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of repairs or replacement of Association Property or budget deficit resulting from such emergency, including without limitation, the construction, reconstruction, replacement or repair of Association Property, including the necessary fixtures and personal property related thereto, if any, resulting from a casualty caused by nature, such as an ice storm or extraordinary snow and/or rain storm not otherwise covered by insurance. Any such Special Assessment shall not require the consent of Owners. The Board shall establish one (1) or more due dates for each payment or partial payment of such Special Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date. The Sponsor will pay its proportionate share based on the Homes to which title has not transferred.

Section 5.08. Assessments: Personal Obligation of the Owner and Lien on Home. The Assessments shall be paid when due. All sums assessed by the Board of Directors, but unpaid, together with any accelerated installments, late charges, which initially shall be ten dollars (\$10) per month for each month such sums remain unpaid, fees for violations of Rules and Regulations and interest thereon at such rate as may be fixed by the Board of Directors from time to time (such rate not to exceed the maximum rate of interest then permitted by law), shall be the personal obligation of an

Owner and shall constitute a lien upon the Owner's Home prior to all other liens except: (i) tax or assessment liens on the Home by the taxing subdivision of and governmental authority, including, but not limited to, state, county, town and school district taxing agencies; and (ii) all sums unpaid on any First Mortgage of record encumbering any Home. Assessments shall be levied on an annual basis and shall be due and payable on a monthly basis unless the Board of Directors establishes other periods of payment, except that, if an installment of Assessments due is not paid within thirty (30) days from date due, the Board of Directors may accelerate the remaining installments for the fiscal year, if any, upon notice thereof to the delinquent Owner. All costs and expenses incurred in collection of past due Assessments, including reasonable attorneys' fees, shall be added to and shall constitute an Assessment payable by such Owner.

Section 5.09. Foreclosure of Lien for Assessments. The lien for past due Assessments may be foreclosed by the Association in accordance with the laws of the State of New York, in like manner as a mortgage on real property, and the Association shall also have the right to recover all costs incurred by it in pursuing such right, including, but not necessarily limited to, accelerated payments, if any, late charges, interest and reasonable attorneys' fees. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments, the unpaid balance shall be charged equally to all Owners. The Purchaser of a Home at a foreclosure sale of a First Mortgage, shall not be liable for Assessments unpaid up to the date of such foreclosure sale or conveyance. Nothing contained in this Section with regard to the right of the Association to enforce its lien by foreclosure shall prohibit the Association from obtaining a money judgment against the Owner or Owners and issuing execution for a sheriff's sale.

Section 5.10. Notice of Default. The Board of Directors, when giving notice to an Owner of default in paying Assessments, may, at its option, or shall, at the request of a Mortgagee, send a copy of such notice to each such Owner's Mortgagee whose name and address appears in the Book of Mortgagees of the Association. The Mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments at any time prior to the time title is conveyed pursuant to Section 5.09 above.

Section 5.11. No Exemption or Waiver of Assessments. Every Owner shall pay the Assessments assessed against his Home when due and no Owner may exempt himself from liability for the payment of Assessments so assessed by waiver of the use or enjoyment of any of the Property or by the abandonment of his Home. However, no Owner shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him of such Home made in accordance with the provisions of this Declaration and the By-Laws.

Section 5.12. Grantee to be Liable with Grantor for Unpaid Assessments. In any conveyance of a Home either by voluntary instrument by operation of law or judicial proceedings, the Grantee of the Home shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to receive from the Grantor the amounts paid by the Grantee therefore. However, any such Grantee shall be entitled to a statement from the Board of Directors setting forth the unpaid Assessments against the Grantor and the Grantee shall not be liable for, nor shall the Home conveyed be subject to, a lien for any unpaid Assessments against the Grantor in excess of the amount therein set forth. "Grantee" as used herein shall not include either the First Mortgagee of record, its successors, heirs and assigns.

Section 5.13. Exempt Property. Property subject to the Declaration shall be exempt from Assessment Charges and liens created herein, to the extent of any easements or other interest therein dedicated and accepted by local public authority and devoted to public use.

Section 5.14. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors, in its absolute discretion, may determine to be desirable.

Section 5.15. Assessment Certificates. Upon written demand of an Owner, Mortgagee, lessee or title insurer of a Home (or any prospective purchaser, lessee, Mortgagee or title insurer of such Home), the Association, shall, within fifteen (15) days of receipt of such written demand, issue and furnish a certificate in writing, signed by an Officer or designee of the Association, setting forth with respect to such Home, as of the date of such certificate: (i) whether all Assessments have been paid; (ii) the amount of such Assessments, including interest, late charges and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration, the By-Laws and/or Rules and Regulations.

A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide Purchaser, Mortgagee, lessee, or title insurer of the Home with respect to which such certificate has been issued.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Repairs and Maintenance by the Association. The Association shall be responsible for, and the cost thereof shall be an expense of the Association, the following:

- a. Except as specifically otherwise provided in this Section 6.01, all repair, replacement, reconstruction, and maintenance of all Association Property;
- b. Maintenance, repair and replacement of all pipes, wires, conduits, utility lines and cable television lines servicing more than one Home, whether or not on the Property, unless such is the responsibility of the utility or cable television company;
- c. Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded by Assessments.

Section 6.02. Repairs and Maintenance which are the Responsibility of the Home Owner. Each Owner of a Home shall be responsible for:

- a. the maintenance, repair or replacement of any pipes, wires, conduits, utility lines, cable television within each Home, or utility meters serving such Home;
- b. the cleaning of chimneys and flues, if any, of his Home;
- c. the maintenance of his Lot, the exterior of his Home, including the roof; and
- d. the shoveling of snow from his driveway and walkways, if any.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement shall be of a quality and appearance consistent with the original construction so as to enhance and preserve the appearance and value of the Property and the Homes.

ARTICLE VII

INSURANCE AND RECONSTRUCTION

Section 7.01. Insurance to be Carried by the Association. The Board of Directors of the Association shall obtain and maintain the following types of insurance coverage: (i) fire and casualty on Association Property, if applicable; (ii) general liability insurance; (iii) Directors' and Officers' liability insurance; (iv) fidelity bond; and (v) workers' compensation insurance, with coverages to be as follows:

- a. **Fire and Casualty.** The policy shall cover the interests of the Association, the Board of Directors and all Owners and Mortgagees as their interest may appear. Coverage shall be for the full replacement cost (without deduction for depreciation) of all improvements on Association Property, if any.
- b. **General Liability.** The general liability insurance shall cover the Directors and Officers of the Association and all Owners, but not the liability of the Owners arising from occurrences from such Owner's Lot and/or Home. The policy shall include the following endorsements:
 - (1) comprehensive general liability (including libel, slander, false arrest and invasion of privacy);
 - (2) personal injury;
 - (3) medical payments;
 - (4) 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;
 - (5) "severability of interest" precluding the insurer from denying coverage to any Owner because of negligent acts of the Association or any other Owner;
 - (6) contractual liability;
 - (7) water damage liability;
 - (8) hired and non-owned vehicle coverage;

- (9) liability for the property of others;
- (10) host liquor liability coverage with respect to events sponsored by the Association; and
- (11) deletion of the normal products exclusion with respect to events sponsored by the Association.

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

- c. **Directors' and Officers' Liability.** The Directors' and Officers' liability insurance shall cover the "wrongful" acts of a Director or Officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors and any deductible provision shall apply only to each occurrence and not to each item of damage.

Until the first meeting of the Board of Directors elected by the Owners, the Directors' and Officers' liability coverage shall be in the amount of \$1,000,000.

- d. **Fidelity Bond.** The fidelity bond shall cover all Directors, Officers and employees of the Association, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association at any given time, but in no event less than a sum equal to six months aggregate assessments on all Homes, plus the reserves and other funds on hand. In the event a professional property manager is employed or retained by the Association, such professional property manager, serving the Association under a contract (not as an employee of the Association) shall maintain a fidelity bond in the same amounts as herein required to be held by the Association, naming the Association as Obligee, and provide the Board of Directors with a certificate evidencing such coverage.. The professional property manager, if named as an employee of the Association, shall then be added to the Association's bond.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000 for dishonest acts and \$10,000 for forgery.

007349

MODIFICATION OF DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
OF
INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

1912 898 PAGE 93

WHEREAS, a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Inspiration Park Homeowners' Association, Inc. (the "Declaration") dated November 19, 1992, was recorded in the Warren County Clerk's Office on December 2, 1992 in Book 869 of Deeds at Page 9; and

WHEREAS, in accordance with the provisions of Section 9.06 of said Declaration, the Declaration has been duly modified, at a meeting of the Inspiration Park Homeowners' Association held on September 24, 1993,

NOW, THEREFORE, the Inspiration Park Homeowners' Association, Inc. declares that said Declaration is hereby amended as follows:

I. Paragraph b. of Section 4.08 is hereby deleted in its entirety.

II. In Paragraph c. of Section 8.04 the phrase "behind the home" shall be defined as "behind an imaginary line drawn at the back of the home, running parallel to the street, and not necessarily directly 'behind' the home". In addition, the language "visible from the street" is hereby deleted from said Paragraph c. of Section 8.04.

IN WITNESS WHEREOF, the undersigned, being the President of Inspiration Park Homeowners' Association, Inc. has signed this Modification of Declaration on the 27th day of Oct., 1993.

INSPIRATION PARK HOMEOWNERS'
ASSOCIATION, INC.

By: Sandra Aubin
Sandra Aubin, President

- e. **Workers' Compensation.** Workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person working on behalf of the Association, including the Directors and Officers of the Board of Directors.
- f. **Other.** The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time, including "umbrella" coverage.

The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Article VIII or for any loss or damage resulting from such failure, if such failure is due to the prohibitive cost of such coverages from reputable insurance companies.

The deductible, if any, on any insurance policy purchased by the Board of Directors may be the subject of an Assessment. The Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Home 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.

The Board of Directors shall review the coverage of all insurance policies at least annually to assure adequacy of coverage.

No portion of the Property is located in a Flood Hazard Zone. However, in the future, if any portion of the Property is determined to be located in an area subsequently identified by the Federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program, or one hundred percent (100%) of insurable property.

Section 7.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Association Property, insurance proceeds, if any, shall be payable to the Association. The Board of Directors shall be responsible for the disbursement of the proceeds to contractors engaged in the repair and restoration of such Association Property. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute an Assessment and the Board of Directors shall assess all the Owners for such deficit and for the cost of a performance bond and labor and materials payment bond, if required, as part of the Assessments.

Section 7.03. Insurance To Be Carried By Owners. Each Owner shall, at such Owner's expense, obtain adequate insurance covering the full replacement cost of his Home in accordance with the original plans and specifications and general liability insurance for occurrences within the Home and on the Lot of such Owner. Evidence of such insurance shall be provided the Board of Directors annually upon the anniversary date of the policy or policies, together with the name and address of the insurance agency issuing such policies.

In the event of damage or destruction of an Owner's property, prompt repair and restoration shall be arranged by the Owner. Any such repair and/or restoration shall be in substantial accordance with plans and specifications of the damaged improvements as originally built and approved. "Prompt repair and restoration" as used herein shall mean repair and restoration to begin, weather permitting, not more than sixty (60) days from the date of receipt of the insurance proceeds by the Owner, providing that if new or revised permits from a municipal authority are required, a reasonable time will be allowed to procure such permits.

Section 7.04. Actions Which May Increase Insurance Rates Prohibited. Under no circumstances shall an Owner permit or suffer anything to be done or omit to do anything which will increase insurance rates on Association Property. The penalty for any and all violations shall be an Assessment against the Owner violating this provision in an amount equal to the increased rate and/or increased premiums.

ARTICLE VIII

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

In addition to Restrictions and General Covenants set forth in this Article VIII, additional Restrictions were recorded in a Declaration of Covenants, Conditions and Restrictions in the Office of the Warren County Clerk in Book 801 of Deeds at Page 308 and a Correction Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Warren County Clerk in Book 802 of Deeds at Page 296.

Section 8.01. Use of Homes. Except as otherwise provided in this Declaration and the By-Laws, the Homes shall be used only for residential purposes and purposes incidental and accessory thereto. This shall not prohibit an Owner or occupant from maintaining an office within the Home, providing no extraordinary traffic results, there are no alterations or modifications to the exterior of the Home and no signs or other evidence of such office are displayed in any window, on the exterior of any Home, or anywhere on the Property.

Section 8.02. Pets. All pets shall be subject to the municipal laws and no unleashed pets shall be permitted to roam on any portion of the Association Property. The Board of Directors shall have the right to require any Owner (or any tenant or family member or guest of any Owner or tenant) to remove the pet from the Home, or the Association Property, if, in the opinion of the Board of Directors, acting in its sole discretion, such pet is creating a nuisance.

Section 8.03. Parking.

- a. **Recreational Vehicles.** Any recreational vehicles, including, but not limited to, all terrain vehicles, motor bikes, motorcycles, minibikes, snowmobiles, boat trailers, campers or other such vehicles must be parked or stored behind the Home, within the garage of the Home, if any, in such location on the Lot as may be specifically authorized by the Board of Directors for such parking, or in such area on the Association Property as may be designated by the Board of Directors for such parking.
- b. **Unlicensed or Inoperable Vehicles.** Unlicensed or inoperable motor vehicles of any type, unless garaged, shall not be permitted to remain on the Property for more than ten (10) days.
- c. **Unauthorized Parking.** Vehicles may not be on the Association Property unless the Board of Directors has designated such area as a vehicle parking lot. Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the Property or an occupant's driveway or garage, may be towed from the premises at the expense of the respective owner of such vehicle so parked. The Board of Directors, Managing Agent or authorized employee of either, may order such removal on behalf of the Board of Directors after giving reasonable notice to the owner of the vehicle, if such owner is known, and shall not be liable for any costs, loss or

damage of any nature whatsoever, directly or indirectly, resulting therefrom or connected therewith. Notice is not required prior to removing a vehicle blocking the roadway or impeding access by emergency vehicles.

- d. **Roadway Parking.** The roadways will be dedicated to the Town of Queensbury and parking on such roadways will be subject to the Town of Queensbury regulations.

Section 8.04. Use of the Property.

- a. **Use and Maintenance of Slope Control Areas.** Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with the established slope ratios, create erosion or sliding problems or change the direction of flow of drainage channels. The slope control and drainage areas and all improvements thereon shall be maintained by the Association, except in those cases where a governmental agency or other public entity or utility company is responsible for such maintenance.
- b. **Trees and Other Natural Fences.** No trees shall be removed from any portion of the Association Property except with the prior written consent of the Board of Directors, after obtaining any necessary approvals and/or permits from all applicable government agencies.
- c. **Outdoor Storage.** No storage of personal property, including firewood, shall be permitted outside the Home unless such property is kept behind the Home and is not visible from the street. This prohibition shall not be construed to prohibit customary seasonal outdoor furniture, grills and the like. This prohibition also shall not be construed to prohibit swing sets or similar play structures, provided any such structures are in the backyard. No outdoor storage structures may be constructed and/or placed on any portion of the Association Property without the prior written consent of the Board of Directors.
- d. **Outdoor Repair Work.** No work on any motor vehicles, boats, trailers or other equipment shall be permitted on any portion of the Association Property.

- e. **Refuse Disposal.** Except for building materials being used during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, refuse or other waste material shall be kept, stored or allowed to accumulate outside the Home, or its garage, or any portion of the Property. Such refuse may be placed in designated containers for scheduled pickup.
- f. **Noxious or Offensive Activities.** No noxious or offensive activity shall be permitted on any portion of the Property, or in any Home, nor shall anything be done thereon that may be, or may become, a nuisance or annoyance to the occupants of other Homes thereof.
- g. **No Above Surface Utilities.** No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, water, 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 other than as may have been required in the initial development without the consent of the Board of Directors.

Section 8.05. General.

- a. **Lease Restrictions.** An Owner may only lease the entire Home and not a portion thereof and such leasing shall be in accordance with the terms and conditions as may be set forth by the New York State Affordable Housing Corporation. The Board of Directors or the Managing Agent, if there be one, shall be promptly notified by the Owner of the Home that such leasing has occurred and provided with the names and telephone numbers of the occupants.
- b. **Interaction with the Board of Directors, Managing Agent and/or Employees of the Association.**
 - (1) If an Owner, his family, guests, lessees, licensees or other invitees, gives a key, whether to his Home, a motor vehicle or other item of personal property, to an employee or Director of the Association or the Managing Agent, he does so at his own risk, and neither the Board of Directors nor the Managing Agent nor the employee of either, shall be liable for injury, loss or damage directly or indirectly resulting therefrom or connected therewith.

- (2) No employee of the Association or the Managing Agent shall be asked to perform any personal services for any Owner or occupant or guest, during hours such employee is employed by the Association or Managing Agent on behalf of the Association, except in an emergency.

THE BOARD OF DIRECTORS MAY PROMULGATE SUCH OTHER RULES AND REGULATIONS, FROM TIME TO TIME, AS MAY BE NECESSARY TO PRESERVE AND ENHANCE THE PROPERTY OF THE INSPIRATION PARK HOMEOWNERS' ASSOCIATION, INC.

ARTICLE IX

DURATION, ENFORCEMENT AND AMENDMENT OF DECLARATION

Section 9.01. Duration. This Declaration shall continue until: (i) terminated by casualty loss, condemnation or eminent domain; or (ii) such time as withdrawal of the Property from the provisions of this Declaration is authorized by an affirmative vote of Owners by at least eighty percent (80%) of the Authorized Votes. No such vote shall be effective without written consent of at least fifty one percent (51%) of the holders of first mortgages on the Homes, if any. The Sponsor will not vote its interests appurtenant to Unsold Homes for such withdrawal unless at least eighty percent (80%) of all other Owners so elect for such withdrawal, at which time Sponsor may vote as it sees fit.

Section 9.02. Declaration Runs with the Land; Enforceability. The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of, and be enforceable by the Sponsor and the Association, being hereby deemed the agent for all of the Owners, and by any Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of this Declaration, and monetary damages won't adequately compensate for violations 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 hereof.

In addition, or as an alternative, to an action at law or suit in equity, the Board of Directors may, with respect to any violation of this Declaration or the By-Laws or rules and regulations 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 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 an Owner or occupant shall be deemed an Assessment against the Home of such Owner or against the Home occupied by such occupant, and, as such, shall be a charge and continuing lien upon such Home, shall constitute a personal obligation of the Owner and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Each person or entity acquiring an interest in a Home 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 his and for his heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he 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 Home or other portion of the Property.

Section 9.03. 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 any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Sponsor, the Association (or any officer, director, employee, agent, committee, committee member or Owners) or to any other person or organization for failure to enforce the provisions of this Declaration.

Section 9.04. Obligation and Lien for Cost of Enforcement by Association. If the Association successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, the By-Laws or rules and regulations promulgated hereunder or thereunder, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is: (i) an Owner; or (ii) any family member, tenant, guest or invitee of the Owner; or (iii) a family member or guest or invitee of the tenant of the Owner; or (iv) a guest or invitee of any member of such Owner's family or any family member of the tenant of such Owner, such costs shall also be a lien upon the Home or other portion of the Property owned by such Owner, if any. This lien shall be subsequent to a first mortgage and any second mortgage held by NYSAHC.

Section 9.05. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Board of Directors of the name and address of the Mortgagee and any other information necessary to identify the mortgage and Mortgagee of such Owner's Home, if any. Upon receipt of written request from any such Mortgagee, the Association shall thereafter provide such Mortgagee with a duplicate copy of

any notice of default sent to such Owner with regard to the violation by such Owner, or other persons as described in Section 9.04 above, of any provision of this Declaration.

Section 9.06. Amending. Subject to the provisions of this Declaration, this Declaration may be modified, altered or amended at any duly called meeting of Members, provided that written notice of the meeting by certified mail, return receipt requested, containing a full statement of the proposed modification, alteration or amendment has been sent to all Owners last known place of residence and all holders of First Mortgages on Homes who have requested notification of any such proposed action, listed in the Book of Mortgagees of the Association, no less than ten (10) days nor more than fifty (50) days prior to the date of the meeting; and provided further that:

- a. If the proposed modification, alteration or amendment is of an immaterial nature, at least sixty seven percent (67%) of the total Voting Members approve the change and not more than thirty four percent (34%) of the holders of First Mortgages on the Homes, if any, advise the Association, in writing, within thirty (30) days from the date of notice that they are opposed to such proposed modification, alteration or amendment, which opposition must not be unreasonable. Failure on the part of the Mortgagees to object within such time shall be considered consent to such change.
- b. If the proposed modification, alteration or amendment is of a material nature, at least sixty seven percent (67%) of the total Voting Members approve the change, and at least fifty one percent (51%) of the holders of First Mortgages on the Homes, if any, advise the Association, in writing, within thirty (30) days from the date of the notice that they are opposed to such proposed modification, alteration or amendment, which opposition must not be unreasonable. Failure on the part of the Mortgagees to object within such time shall be considered consent to such change.

A change to any of the following shall be considered material:

- (1) voting rights;
- (2) assessments or assessment liens;
- (3) reserves for maintenance, repair and replacement of Association Property;
- (4) responsibility for maintenance and repairs;

- (5) reallocation of interests in the general or limited common areas or rights to their use;
 - (6) boundaries of any Home;
 - (7) convertibility of Homes into common areas or vice versa;
 - (8) notwithstanding Sponsor's right to complete development in accordance with this Declaration, expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
 - (9) insurance or fidelity bonds;
 - (10) leasing of Homes;
 - (11) imposition of any restrictions on an Owner's right to sell or transfer his Home;
 - (12) a decision by the Association to establish self-management when professional management had been required previously by an eligible First Mortgagee;
 - (13) restoration or repair after a hazard damage or partial condemnation in a manner other than as specified in this Declaration;
 - (14) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
 - (15) any provisions that expressly benefit mortgage holders, insurers or guarantors.
- c. When Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property, the eligible First Mortgagees representing at least sixty seven percent (67%) of the mortgaged Homes must agree.
- d. An instrument evidencing the change shall be duly recorded in the Office of the Warren County Clerk. Such instrument need not contain a written consent of the required number of Members and First Mortgagees of Homes, but shall contain a certification by the Board of Directors that the consents required by this Section for such change have been received and filed with the Board of Directors.

Until Transfer of Control Date, the prior written consent of the Sponsor shall be required for any amendment which adversely affects a substantial interest or right of the Sponsor (as determined by the Sponsor in its sole judgment).

The above provisions in this Section and the provisions of Section 9.09, notwithstanding, the Sponsor may execute, acknowledge and record in the Office of the Warren County Clerk amendments to this Declaration which may be required to bring this Declaration into conformity with any subsequent requirements of the Planning Board of the Town of Queensbury. The Sponsor, during the time the Sponsor owns any Homes, may also make amendments to this Declaration to correct errors or omissions, which amendments shall not adversely modify the substantial rights of any Owner without such Owner's written consent. Any such amendments shall be recorded in the Office of the Warren County Clerk and the Sponsor shall submit such amendments to the Department of Law and, upon the Department of Law's acceptance for filing of such amendments, send copies to all Owners and Purchasers by certified mail, return receipt requested.

Section 9.07. Conflict with Municipal Laws. The Covenants, Conditions and Restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the enforceable, applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority or by specific enforceable restrictions imposed by any deed or lease.

Section 9.08. Attorneys' Fees. Any party to a proceeding who succeeds in enforcing the Covenants, Conditions and Restrictions set forth herein, or enjoining the violation of any of the Covenants, Conditions and Restrictions against an Owner (or such Owner's lessee, licensee or invitee), shall be entitled to reasonable attorneys' fees against such Owner.

Section 9.09. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 9.10 Owner Responsible for Tenants. The Owner of a Home who rents the same, shall provide that the tenant shall comply in all respects with the terms of this Declaration, the By-Laws and rules and regulations of the Association. If a tenant is in violation of this Declaration, the By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of such Home which such tenant occupies, in writing, by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced by the Owner against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies which it may have pursuant to this Declaration.

ARTICLE X

COMPLIANCE AND ARBITRATION

Section 10.01. Compliance with Rules of the Association Pursuant to This Declaration and the By-Laws. Should any Owner, members of such Owner's family, his employees, guests, lessees, licensees or other invitees fail to comply with any of the provisions of this Declaration, the By-Laws, the Certificate of Incorporation or the rules and regulations, and as such may be amended from time to time, the following procedures may be followed to obtain compliance:

- a. A committee of three (3) people shall be appointed by the Board of Directors and designated the Compliance Committee to serve at the pleasure of the Board of Directors.
- b. The Compliance Committee shall first undertake to obtain compliance informally, by discussing the violation or violations with the violator, and seeking to obtain future compliance or cessation of the ongoing violation or violations.
- c. Should this informal procedure prove unsatisfactory or not secure future compliance, the Compliance Committee shall then send a written notice to the violator, and if such person is not an Owner, to the Owner who brought such person onto the Property, notifying him of the claimed violation, requesting, as the case may be, either a correction of the violation, or an assurance that a similar violation will not occur in the future. Such notice shall establish a date for compliance.
- d. Should such notice obtain the requested compliance, that will dispose of the matter, unless the same or a similar violation thereafter occurs.
- e. Should such notice not obtain the requested compliance within the time requested, the Compliance Committee shall then be authorized, at its discretion, to establish a monetary and/or non-monetary penalty, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar violations in the future by the same or any other person. Such fine shall become a binding personal obligation of the violator, if an Owner, or the Owner responsible for such violator. Failure to correct the condition or situation which leads to the first fine for a period of twenty (20) days after the initial fine becomes finally due and payable, shall constitute a second offense. Notice of

the imposition of such fine or fines shall be by certified mail, return receipt requested, to the violator and/or the Owner responsible for such violator, and shall be paid to the Association within (10) days following the date of the mailing of such notice, unless the violator, if an Owner, or the Owner responsible for such violator, requests the right to arbitrate the matter, within ten (10) days, before the Arbitration Committee, as hereinafter set forth. Should the fine not be paid within the ten (10) days, or if a request to arbitrate is not received within the said ten (10) days, the amount of the fine shall be added to the Owner's Assessments on the first of the month following the termination of the ten (10) day period above set forth, and shall be collectible as such.

- f. The Arbitration Committee shall consist of an elected member of the Board of Directors, as Chairman of the Committee, and two (2) other members of the Board of Directors who shall be appointed by the Board to serve at the pleasure of the Board of Directors.

- g. Should the violator, or the Owner responsible for the violator, request the right to arbitrate the imposition or amount of a fine, as above set forth, he shall do so in writing, directed to the Board of Directors, within ten (10) days of his receipt of notice sent by certified mail, return receipt requested, of the imposition of said fine. The Board of Directors shall promptly forward the same to the Arbitration Committee, which shall meet within twenty (20) days thereafter, on notice to the alleged violator, to hear and dispose of the matter. At such hearing, at which two (2) or more members of the Compliance Committee are present, the alleged violator and/or the Owner responsible for such violator, may be heard. A decision on the matter shall be made by the Arbitration Committee, by a majority vote, within ten (10) days following said hearing, and such decision shall be promptly communicated to the alleged violator and/or the Owner responsible for such violator, in writing. If the decision of the Arbitration Committee is to uphold the determination of the Compliance Committee, the provision relating to the payment and enforcement thereof set forth in Subparagraph e. above shall apply. If their decision is in favor of the alleged violator, no fine will be imposed. The decision of the Arbitration Committee shall be final and binding upon all parties.

- h. In the event the violator is a person other than an Owner, or member of such Owner's immediate family, copies of all notices required to be given to the violator under this Declaration, the By-Laws or the Certificate of Incorporation shall also be given to the Owner responsible for such violator.

ARTICLE XI

GENERAL

Section 11.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 11.02. Invalidity of Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

Section 11.03. Gender. The use of masculine gender herein shall be deemed to include the masculine, feminine or neuter as the context so requires and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 11.04. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional Covenants, Conditions and Restrictions affecting the Property prior to the conveyance of any Homes subject to this Declaration.

Section 11.05. Notice. All notices hereunder shall be in writing, and, unless otherwise expressly provided, shall be sent by mail, in a postpaid sealed wrapper, addressed, if to the Board of Directors, at the Office of the Board of Directors, and if to an Owner or Mortgagee, to the address of such Owner or Mortgagee as appears on the books of the Association, and if to the Sponsor, to the address of the Sponsor as appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of this Declaration, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent of such notice.

Section 11.06. Right of Association to Transfer Interest.

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

Section 11.07. Right of Association to Transfer Functions.

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

Section 11.08. Right of First Mortgagee to Make Payment of Charges. First Mortgagees may (i) jointly or singly pay taxes or other charges that are in default and that may, or have become, charges against the Association Property, and (ii) pay overdue premiums on insurance policies, or secure new coverage, for the Association Property in the event of lapse of a policy.

First Mortgagees making such payments are due immediate reimbursement from the Homeowners' Association, corporation or trust.

LIENS, ENCUMBRANCES AND OTHER TITLE EXCEPTIONS

1. The terms, conditions, covenants, easements and provisions of the Declaration and By-Laws relating to the Association, include:
 - a. Each Owner shall have an easement in common with the Owners of other Homes to maintain and use all pipes, wires, conduits, drainage areas, public utility lines and cable television lines located within other Homes or on the Property and servicing such Owner's Home. Each Lot shall be subject to an easement in favor of the Owners of Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines and cable television lines servicing, but not located on such other Lot.
 - b. The Association shall have the right of access to each Lot for the maintenance, repair or replacement of any pipes, wires, conduits, public utility lines or cable television lines located within such Lot and services any other Lot.
 - c. Easements and rights retained by Sponsor.
2. State of facts shown on a survey of the Land and Buildings providing such state of facts do not make title unmarketable.
3. Zoning, regulations and ordinances and any amendments thereto, provided that the use of the Lots and the Homes located on such Lots as contemplated by the Plan are not prohibited thereby.
4. New York State franchise taxes of any corporation in the chain of title, provided that any title company which is authorized to do business in the State of New York is willing to insure that such taxes will not be collected out of the Lot and/or Home.
5. Sewer, water, electric, plumbing, heating, telephone, cable television and other utility easements and consents, if any, then or thereafter recorded, including the right to maintain and operate lines, pipes, ducts, wires, cables, conduits, connections, fittings, poles and distribution boxes in, over, under and upon the Property, the Lots and/or the Homes.

6. Leases or tenancies, and service, maintenance and license agreements affecting the Homes or portions of the Association Property, if any.
7. Future taxes and installments of special assessments for improvements payable to the Town, County and School District.
8. Utility easements, rights-of-way and agreements granted to or made with the Town Queensbury, utility companies and the cable television franchisee for the area, if any, or any other municipality.
9. Such easements and/or rights-of-way as have been granted by instrument and recorded in the Office of the Warren County Clerk, including, but not necessarily limited to, Central Queensbury Municipal Water District, Niagara Mohawk Power Company and New York Telephone (NYNEX).
11. The lien of a purchase money mortgage, if any, obtained by Purchaser to finance the purchase of the Home.
12. Standard exceptions contained in the form of title insurance policy then issued by such title insurance company insuring Purchaser's title to the Home.

ALL OF THE ABOVE SHALL SURVIVE DELIVERY OF THE DEED.