

**SPONSORS'
AFFIDAVIT**

STATE OF NEW YORK)
) ss:
COUNTY OF CAYUGA)

Re: Village Heights Homeowners Association, Inc.
 HO-11-0011

Carolyn Kyle and Peter Kyle and being duly sworn depose and say:

1. A CPS-7 application for the Village Heights Homeowners Association, Inc. was submitted on March 8, 2011. The Department of Law issued a no enforcement action letter for the Village Heights Homeowners Association, Inc. on April 6, 2011. Amendments need to be made to the original CPS-7 Application
2. KYLECROFT NY, LLC, a New York Limited Liability Company with an office at 89 York Street, Auburn, NY, is the sponsor of the HOA for the above captioned property. We are the sole principals of the sponsor of the HOA.
3. The Property consists of 33 lots in the Village of Weedsport and Town of Brutus shown on the Subdivision Map filed in the Cayuga County Clerk's Office on as map 07-46 and modified by filed map 08-197, collectively referred to herein as the "Lots".
4. The property which is to be cooperatively owned by the homeowners association ("HOA") to be established consists of: open space and pathway.
5. The HOA shall provide no services to the Lot owners.
6. Areas of the property that were reserved for drainage purposes are no longer needed or required. The areas reserved for drainage easements were included in the HOA lands and will be transferred from the HOA by appropriate action back to the Sponsor. This revision will cause an amendment to the final site plan map for the project.
7. Marketing of the Property has been difficult in large part due to the onerous covenants and restrictions set forth in the Declaration of Covenants, Conditions and Restrictions. Therefore, the Declaration is to be amended to remove the onerous restrictions.

8. 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.
9. There are no conditions of the property or any lawsuits, administrative proceedings, litigation or other proceedings the outcome of which will materially affect the offering, the property, or sponsor's capacity to perform all of its obligations to the HOA or the operation of the HOA.
10. The number of homes or lots being offered in conjunction with membership in the HOA is 33. The annual assessment per lot is \$265.15.
11. The sponsor/offeree will comply with the escrow and trust fund provisions of GBL Section 352-e(2-b) and Section 352-h and of the regulations adopted by the Attorney General in Part 22, and will hold down payments for the purchase of the property in trust for the benefit of the purchasers. Such funds will not be commingled with the moneys of the offeror(s) until actually employed in connection with the consummation of the transaction. The Sponsor may, upon the consent of the Purchaser, apply a portion of the down payment to construction costs.
12. The sponsor/offeree(s) will provide to each offeree the following information:
 - a. a statement that the purchase price of the home(s) or lot(s) includes the cost of membership, if any, in the HOA;
 - b. if applicable, a copy of any mortgage that will remain on HOA property after transfer to the Association;
 - c. a copy of the Deed between the HOA and Kylecroft NY, LLC;
 - d. if applicable, a copy of the deed of HOA property from Kylecroft NY, LLC to the HOA;
 - e. if applicable, a copy of the recorded deed to the HOA property by which Kylecroft NY, LLC derived title;
 - f. if applicable, 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. The project is being built in one phase. As an alternative to including back-up documentation, a certification of the adequacy of the budget in conformity with the requirements set forth in 13 NYCRR Section 22.4(d), may be provided;
 - g. disclosure of the escrow account as required by Section 22.3(k)(2) including the form for dispute resolution provided by the Attorney General; and
 - h. such other information as the Department of Law may require to be presented to each offeree.

13. The sponsor/offerror(s) agrees to furnish to each offeree a complete copy of the application for CPS-7 treatment and a copy of the letter granting such treatment prior to accepting any down payment and a copy of the First Amendment. If the letter granting approval of the First Amendment has not issued, the sponsor agrees to furnish a copy of such letter to all purchasers within ten (10) days of its issuance.
14. The use for which the units and property are being offered will comply with the property's certificate of occupancy, zoning, building and housing laws, rules and regulations.
15.
 - a. The road providing access to the Subdivision, Cold Spring Road, is a dedicated road owned by the Town of Brutus.
 - b. The roads within the Project, Rosewood Circle and Dorothy Court, are dedicated to the Village of Weedsport. Such roads have been constructed with 16-inch thick crusher run or compatible material, 3" of asphalt base 1½-inch binder cover, 1½-inch top, and 1 foot flange with catch basin.
16. If the facts or circumstances contained in the application underlying the granting of the CPS-7 application change, the sponsor will cease sales and submit a supplemental affidavit providing all the facts constituting such change. If the changes are material and adverse, an offer of rescission will be granted. Sales may recommence upon advice of the Department of Law. Such supplemental affidavit will be furnished to each offeree and each prior purchaser whether or not such purchaser has closed.
17. A Broker-Dealer Statement (Form M-10) is on file for Kylecroft NY, LLC.

Attached hereto are:

1. Copy of Site Plan to reflect the reduced HOA lands;
2. Copy of Deed and Authorizing Resolutions to transfer title of the HOA property;
3. Second Amended and Restated Declaration of Covenants, Conditions and Restrictions (with changes shown in blackline); and
4. Updated Schedule of Income and Expenses

[Signatures on following pages]

KYLECROFT NY, LLC

Carolyn Kyle, Member
Carolyn Kyle, Member

STATE OF NEW YORK)
COUNTY OF Cayuga) SS:

On the 4 day of August, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **Carolyn Kyle**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Susan M Dwyer
Notary Public

SUSAN M. DWYER
Notary Public-State of New York
No. 04DW6191110
Qualified in Cayuga County
My Commission Expires August 4, 20 16

Carolyn Kyle

Carolyn Kyle

Peter Kyle

Peter Kyle

STATE OF NEW YORK)
COUNTY OF Cayuga) SS:

On the 4 day of August, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **Carolyn Kyle**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Susan M Dwyer
Notary Public

SUSAN M. DWYER
Notary Public-State of New York
No. 04DW6191110
Qualified in Cayuga County
My Commission Expires August 4, 20 16

STATE OF NEW YORK)
COUNTY OF Cayuga) SS:

On the 4 day of August, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **Peter Kyle**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

Susan M Dwyer
Notary Public

SUSAN M. DWYER
Notary Public-State of New York
No. 04DW6191110
Qualified in Cayuga County
My Commission Expires August 4, 20 16

1. SITE PLAN

2. PROPOSED DEED & AUTHORIZING RESOLUTIONS

WARRANTY DEED

THIS INDENTURE made the ____ day of _____, 2015.

BETWEEN **Village Heights Homeowners Association, Inc.**, having an office at 89 York Street, Auburn, NY 13021,

Grantor and

Kylecroft NY, LLC, having an office at 89 York Street, Auburn, NY 13021,

Grantee,

WITNESSETH that the Grantor, in consideration of One and no/100 Dollar (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the Grantee, hereby grants and releases unto the Grantee, the heirs or successors and assigns of the Grantee forever,

ALL THAT TRACT OR PARCEL OF LAND MORE PARTICULARLY DESCRIBED ON SCHEDULE A ATTACHED HERETO.

Subject to easements, covenants, rights of way and restrictions of record.

Being and hereby intending to convey a portion of the same premises conveyed to the Grantor by Deed recorded on July 25, 2012 in the Cayuga County Clerk's Office in as Instrument Number 2012-00126975.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever.

AND the Grantor covenants as follows:

FIRST, that the Grantee shall quietly enjoy the said premises;

SECOND, that the Grantor will forever Warrant the title to said premises.

THIRD, the Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the Grantor has executed this deed the day and year first above written.

GRANTOR:
VILLAGE HEIGHTS HOMEOWNERS ASSOCIATION, INC.

By: _____

Its: _____

STATE OF NEW YORK)
COUNTY OF _____) ss:

On the ____ day of _____ in the year 2015 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Record & Return to:

SCHEDULE A

To be finalized

RESOLUTION

The undersigned are the Directors of Village Heights Homeowners' Association, Inc. ("HOA") a New York not-for-profit corporation.

1. The HOA is a validly existing New York not-for-profit corporation.
2. The HOA is the owner of common area lands which lands were deeded to the HOA by Kylecroft NY, LLC by deed dated July 26, 2012 and recorded in the Cayuga County Clerk's Office on July 26, 2012 in Volume 1482 at page 152 as Instrument Number 2012-00126975 ("Property").
3. Portions of the Property were reserved for drainage purposes which are no longer needed or required.
4. The HOA desires to transfer the reserved areas back to Kylecroft NY, LLC.

NOW, THEREFORE, be it

1. RESOLVED, that the Directors consent to and authorize a transfer of a portion of the Property to Kylecroft NY, LLC.
2. RESOLVED, that Carolyn Kyle is authorized to execute and deliver such documents, certificates and instruments required for the transfer of the Property;

IN WITNESS WHEREOF, this Resolution has been executed by the undersigned on this _____ day of _____, 2015.

3. SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

SECOND AMENDED AND RESTATED DECLARATION
Of
Covenants, Conditions and Restrictions
Village Heights Homeowners' Association

DECLARANT:

KYLECROFT NY, LLC
~~2451 Hamilton Road~~ 89 York Street
~~Weedsport, New York 13166~~ Auburn, NY 13021

DATED:

RECORDED:

ANNE DYRING RILEY LLC

Attorney for the Declarant

~~674 Ridge Road~~ 1130 Crosspointe Lane, Suite 10A
Webster, NY 14580

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION, made this _____ day of _____, ~~2010~~2015, by Kylecroft NY, LLC, a New York limited liability company, which has offices at ~~2451 Hamilton Road, New York 13166~~89 York Street, Auburn, NY 13021 being hereinafter referred to as "the Declarant", amends and restates the Declaration of Covenants, Conditions and Restrictions filed in the Cayuga County Clerk's Office on September 17, 2007 in Liber 1326 of Deeds at page 306.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the Village of Weedsport, County of Cayuga and State of New York, more particularly described in Article II of this Declaration being known as the Village Heights Subdivision as shown on a Subdivision map recorded in the Cayuga County Clerk's Office known as Map No. 07-46 as modified by filed Map No. 08-197; and

WHEREAS, the Declarant desires to develop said property as a residential community with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities on the Property and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described above to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Declarant desires that certain portions of said real property be subdivided into lots upon which are or will be constructed residential dwelling units, which lots and units will be individually owned and the Declarant desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

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

WHEREAS, the Declarant has incorporated the Village Heights Homeowners Association, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Declarant and for itself, its successors and assigns, declares the real property described in Section 2.01 hereof: is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "ASSOCIATION" shall mean and refer to the VILLAGE HEIGHTS HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "DECLARANT" shall mean and refer to Kylecroft NY, LLC, its successors or assigns if such successors or assigns shall acquire more than one undeveloped Lot from Declarant for the purpose of development.
- D. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- E. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Village of Weedsport or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- F. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- G. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities, of the fee interest in any Lot, whether or not such holder actually resides on such Lot, but shall exclude the Declarant.
- H. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- I. "TRAIL" shall mean and refer to the trail as shown on the Village Heights Subdivision Map.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Village of Weedsport, County of Cayuga and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as "Property".

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

Section 2.03. Additional Property. The Declarant shall have the right but not the duty or obligation to incorporate and bring into and within the scheme of this Declaration additional lands by amending this Declaration. The amendment shall contain such terms and conditions reflecting the uniqueness of the additional lands and its improvements.

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

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Declarant has formed the Association, to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, and as they may be 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 Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Declarant. All Owners, upon becoming such, shall 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 definitions of the words "Owner" and "Declarant" as found in Article I of this Declaration.

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Declarant, shall be Class A Members. The Declarant shall be a Class B Member. Until all Lots owned by Declarant, including Lots which may be incorporated by amendment hereto, are transferred, or until 10 years following the recording of the Declaration, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Declarant's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. Lots Owned or Held by More Than One Person or by Corporation. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common ownership or interest such Owners shall collectively be entitled to only that number of votes prescribed herein for such Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity, which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. The Declarant may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. 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 and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the

Association.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled.

Section 3.12. Declarant's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, until the Declarant, or its designee, no longer owns a Lot then subject to this Declaration, the Board of Directors may not, without the Declarant's written consent, which consent will not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Property of the Association costing more than 20% of the then current annual budget, (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 150% of 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, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Lot, or (v) reduce the quantity or quality of services or maintenance of the Association Property.

Section 3.13. Declarant at its option, prior to the tenth (10th) anniversary of the transfer of the first Lot to an Owner, or prior to such time as title to all 33 Lots has been conveyed, Declarant shall have the right to appoint a transition board of directors ("Transition Board") including Declarant and up to five (5) Owners to oversee the transition of the maintenance of the Common Areas from the Declarant to the Association. Such Transition Board shall be subject to the By-Laws of the Association.

Until the Declarant, or its designee, no longer owns a Lot then subject to this Declaration, this Section of the Declaration or any other section of the Declaration shall not be amended without the prior written consent of the Declarant.

ARTICLE IV
PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Declarant 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 Members, which land shall hereinafter be referred to as "Association Property". The Association shall accept any such conveyance made by the Declarant provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association, the Declarant, and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner. Such easements shall also be subject to any and all applicable governmental regulations governing wetlands as well as the Water Supply Source Protection Rules and Regulations, and Trail Easement.

Every Member (and such Member's guests, licensees, tenants and invitees) also shall have an easement for ingress and egress by non-motorized vehicles or on foot over Association Property and the common utility and conduit easements described in Section 4.06 hereof These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

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

- (a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;
- (b) to grant easements or rights of way including an easement over the Trail to any public or private utility corporation, governmental agency or political subdivision with or without consideration;
- (c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Members who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose

names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;

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

Section 4.04. Rights of Declarant. With respect to Association Property, the Declarant shall have the right until the improvement, marketing and sale of all Lots is completed:

- (a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not limited to, water, gas, electric, telephone, cable television and sewer to service the Property;
- (b) 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) to use the Association Property for ingress and egress to those portions of the Initial Property (as described in Section 2.01 of this Declaration);
- (d) to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not limited to, the paved areas;
- (e) to grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of the Property.

All easements, rights-of-way and other rights granted by the Declarant pursuant to (a), (b), (c) and (e) above shall be permanent, run with the land and be binding upon and for the benefit of the Association and the Declarant and their respective successors and assigns. The rights granted to the Declarant pursuant to (d) above shall remain in effect until the Declarant completes the improvement, marketing and sale of all Lots or the Declarant records a written memorandum releasing its rights hereunder.

Section 4.05. Intentionally Deleted

Section 4.06. Intentionally Deleted

Section 4.07. Intentionally Deleted

Section 4.08. Maintenance of Association Facilities. In order to preserve and

enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.09. Right of Association to Contract Duties and Functions. 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 agreements with other associations, both within and without the Property.

Section 4.10. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and, in its discretion, may establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment

Section 4.11. Common Access Easement. The Declarant and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all Trail, walkways and drives located on the Association Property and the Association shall have an access easement to each Lot for the maintenance, repair and replacement of any property or facilities, the maintenance of which is the responsibility of the Association. All roads within the Village Heights Subdivision will be dedicated to the Village of Weedsport and Town of Brutus.

Section 4.12. 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 the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear 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 New York.

ARTICLE V **ASSESSMENTS**

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, excluding the Declarant, 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: (a) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); (b) special assessments for capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year ("Special Assessments"); hereinafter collectively 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 interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and also shall be the personal obligation of the Owner of such Lot at the time the assessment falls due.

At such time as each Owner takes title to a Lot, such Owner shall deposit with the Declarant Three Hundred dollars (\$300.00) which shall be deposited in a Reserve Fund.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association' Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such other date as determined by the Declarant. 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 at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration, excluding the Declarant, shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any. (For so long as Declarant owns a Lot then subject to the Declaration, the Maintenance Assessment for Lots owned by someone other than Declarant shall not be less than the amount set forth in the CPS-7 on file with the NYS Attorney General's Office, without the prior written consent of the Declarant). The Maintenance Assessment on the Lots owned by the

Declarant shall be an amount calculated in accordance with the following: The Declarant shall be obligated for the difference between the actual Association expenses, exclusive of reserves applicable to completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by Declarant upon which a home has been completed, the Declarant shall pay for reserves from and after the issuance of a Certificate of Occupancy. In no event, however, will the Declarant be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on each unsold Lot. This Section may not be amended without the prior written consent of the Declarant.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot transferred to a third party purchaser for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by a fraction, the numerator of which is one (1), and the denominator of which is the total number of Lots then subject to this Declaration, as amended.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until the Declarant, or its designee, no longer owns a Lot then 'subject to this Declaration, no change in the basis of Maintenance Assessments which adversely affects the interest of the Declarant with respect to unsold Lots shall be valid except with the specific consent of the Declarant in writing.

Section 5.07. Special Assessments for Capital Improvements and Other Needs. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and for the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 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 30 days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein

provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed 1.5% per month, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association, under no circumstances, shall entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or at the request of a mortgagee, shall send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Late charges, penalties and attorney fees shall not be payable or collectable for unpaid common charges or assessments owed by the Declarant.

Section 5.09. 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 Maintenance 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

Maintenance 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 for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these 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 or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject to (i) the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Declarant as required by Section 3.12 of this Declaration shall be obtained.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;
- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) assess the Maintenance Assessment on a given day in each year and,

subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;

- (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
- (3) provide for the custody and safeguarding of all funds received by it;
- (4) establish sinking funds and/or other security deposits;
- (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements, snow removal from all paved areas, until dedicated to the municipality, and the maintenance of all landscaped areas of Association Property shall be the responsibility of, and at the cost and expense of the Association (maintaining and preserving the lawns, mowing lawns, fertilizing, seeding and watering of the lawns of the Common Area but not the Lots, including the Trail, walks, trees, shrubs and lawns of the Common Area). Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association located on Association property and, for which a utility company or other entity is not responsible (except such lines and facilities located on individual Lots) also shall be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

- a. Maintenance of Association Property and Lots. The Association shall, except where stated otherwise, maintain, repair and replace all improvements, walkways and landscaped areas within the Association Property. ~~The Association also shall be responsible for snow removal from paved areas and walks within the Association Property.~~
- b. The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, or (ii) the maintenance, repair or replacement of any sewer lines, water lines or any water or sewer laterals or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company or which are located on any individual Lot, (iii) the maintenance, repair or replacement of the dedicated improvements, or (iv) obstructed sewer laterals, (v) watering of lawn areas of any Lots, any maintenance, repairs or replacements of the Lot's driveways, Lots sidewalks/walkways (vi) landscape plantings, trees or shrubs planted by any individual Owner.

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 negligent or willful act or omission of a Lot Owner, excluding the Declarant, shall be made at the cost and expense of such Lot Owner. 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 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.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed 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, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) upon reasonable notice to the Owner(s), shall have the right to enter upon any portion of a Lot at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of a Lot to make necessary repairs or to prevent damage. The repair of any damage caused in gaining access shall be at the expense of the Association.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Declarant to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property, shall be the responsibility of the Association, acting through the

Architectural Review Committee (hereinafter referred to as the "Architectural Committee") as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Review Committee. The Architectural Committee shall be a permanent committee of the Association and shall approve all proposed improvements, additions, modifications or alterations to any existing improvements or any proposed change in the use of a Lot or any other portion of the Property, including Association Property, after transfer of title to such Lot or other portion of the Property, working within guidelines and policies established by the Board of Directors. The Architectural Committee also may assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three (3) or more persons, as determined by the Board of Directors of the Association, for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Declarant no improvement, exterior addition, including mailboxes, modification or alteration shall be made on or to such Lot or other portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee, working within guidelines and policies established by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee, working within guidelines and policies established by the Board of Directors, may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure of the Plans to comply with all requirements of the Village of Weedsport as set forth on the final approved site plan;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, or proposed parking;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

- e. failure of proposed improvements to comply with any zoning, building, preservation, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Architectural Committee 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 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee 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 provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (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 the Declaration which benefit or encumber the Lot or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee 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 7.04. In any such case, the Architectural Committee 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 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 45 days after submission thereof, the applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;
- b. Seventy (70) days after the date the plans were originally

submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee 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 additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Architectural Committee as long as the number and identity of such staff or members, and the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Architectural Committee.

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 7.11. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Declarant, the Architectural Committee, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Committee Certificate") signed by a member of the Architectural Committee 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 the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee 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 Architectural Committee

Certificate was issued.

Section 7.12. Pre-Construction Requirements. Each Owner shall observe the following pre-construction procedures and shall be responsible for compliance with these procedures by all agents, contractors and other third parties performing work or supplying services at the lot:

- (a) A Building Construction Agreement shall be executed between the Owner and any builder constructing a home on the Lot pursuant to the terms of which the Owner shall pay for and be responsible for any damages to streets, curbs, common areas or adjoining lots occurring during lot clearing and house construction.
- (b) A Building Permit shall be secured from the Village of Weedsport and the plans shall comply with the Village of Weedsport final approved site plan and any applicable condition therein.
- (c) The Owner shall confirm the availability of all utilities and shall apply to the utility for temporary and permanent electrical service and to appropriate municipal agencies for water and sewer service for each Lot.
- (d) A utility stakeout must be arranged prior to any construction on the Lot and care should be exercised in clearing of the Lot so as to not disturb buried cables, water and sewer lines. NYS Dig Safely and all other preconstruction approvals shall be obtained by Owner.
- (e) Electric service will be provided from the nearest transformer to the closest point of the building. The cost of any additional electrical cable shall be borne by the Owner.
- (f) No dumping of any excavated material will be permitted within the subdivision without the express written consent of Declarant. Each Owner shall be responsible for the off-premises disposition of any waste materials.
- (g) The Owner shall supply the Declarant with current liability insurance coverage naming the Declarant as additional insureds.

Section 7.13 During Construction Requirements. Each Owner shall observe the following procedures during construction and shall be responsible for compliance with these procedures by all agents, contractors and other third parties performing work or supplying services at the Lot:

- (a) All damage to curbs, streets and common areas as a result of construction shall be repaired promptly;
- (b) No trees shall be removed from the site other than those noted on the site plan approved by the Architectural Committee. All other trees shall be protected from equipment damage and/or filling. Protective barriers or bulkheading are to be used where necessary to avoid disturbance within the dripline;
- (c) Adjoining properties shall not be used for access to the site or for the storage of materials without the written permission of the adjacent owner;

- (d) Construction materials must be stored on an inconspicuous area of the site. The site shall be kept clear and free of construction debris, surplus materials, trash and garbage at all times during construction. A trash container must be maintained on each site for the disposal of trash and litter;
- (e) Worker's vehicles, including lawn maintenance vehicles and trailers, must not be parked in roadway;
- (f) Job site speed limit for construction vehicles is 15 mph;
- (g) Sewer, water, electric, cable TV and telephone services to the home shall be installed and located prior to the construction of paved drives and walks;
- (h) A portable toilet shall be provided at each site.
- (i) During the period of any construction on any lot each owner hereby agrees to be bound by the New York State Pollution Discharge Elimination System (NYSDES) general permit for stormwater discharge for construction activities as it may apply to construction activities on each lot.
- (j) Owner shall be liable to Developer for all construction activities imposed upon the Developer/Owner or by the above referenced SPDES permit for failure to comply with the requirements for such SPDES permit.

Section 7.14. Post Construction Requirements. Each owner shall observe the following procedures following completion of construction and shall be responsible for compliance with these procedures by all agents, contractors and other third parties performing work or supplying services at the lot:

- (a) Removing all building debris from the site and surrounding area;
- (b) Removing contractor's signs;
- (c) Removing the temporary electric service electrical pole.
- (d) Comply with all conditions of the site plan including the landscape plan for the trees to be planted on each Lot.

Section 7.15 The above restrictions shall not apply to Declarant.

Section 7.16 The above restrictions shall not be construed to permit any action or thing prohibited by applicable zoning ordinances or building codes or any laws, rules or regulations or any governmental authority or by other specific restrictions of record. In the event of any conflict, the most restrictive provisions of such laws, ordinances, codes, rules, regulations of record or other restrictions shall be controlling.

ARTICLE VIII

INSURANCE AND RECONSTRUCTION

Section 8.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the

Board of Directors to be appropriate or relevant: (i) fire and casualty insurance on the Association Property, (ii) liability insurance on the Association Property, (iii) 'directors and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. 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 Owners, but not the liability of 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, (ii) Personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

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

2. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

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 \$1,000,000.00.

3. 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.

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

5. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense for those claims relating to Association maintenance responsibility. The Board of Directors of the Association shall assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner, as well as any deductible amount necessitated by a fire within the Lot Owners dwelling and not caused by the Association's negligence or activities. 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.

**Option to Have Insurance Paid
by Lot Owners Directly**

The Board of Directors may, at its option, elect to have any insurance which it obtains, paid for directly by the Owners of the Lots rather than from assessments paid to the Association. However, should any Owner fail to pay such Owner's portion of such insurance premium, the Board of Directors may elect to pay such amount on behalf of such Owner in which event such amount so advanced shall be a charge and continuing lien upon the Lot of such Owner and shall also be the personal obligation of such Owner. Such amount shall bear interest and shall be collectible in the same manner as a delinquent assessment as set forth in Section 5.08 of this Declaration.

Section 8.02. Intentionally deleted.

Section 8.03. Insurance Carried by Owners. Owners shall carry insurance for their own benefit.

ARTICLE IX

Reserved.

GENERAL COVENANTS AND RESTRICTIONS

~~Section 9.01. Advertising and Signs. Except for signs erected by or with the permission of the Declarant in connection with the initial development, lease or sale of Lots, no additional 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, including but not limited to temporary signs advertising property for sale or rent, except with the consent of the Architectural Committee.~~

~~Section 9.02. Animals, Birds and Insects. Except for two (2) dogs and two (2) cats belonging to an occupant of a Lot, fish, or birds kept in a cage, no animals, birds or insects shall be kept or maintained on any Lot except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. In any event, dogs may be allowed outdoors only within the area fully enclosed by privacy fencing or electronic containment system, unless accompanied by a responsible person and leashed. A kennel or outdoor enclosure for retaining a pet out of doors may be constructed only within an area fully enclosed by privacy fencing, and such enclosure shall be approved by the Board of Directors of the Association. The Board of Directors of the Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is~~

creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled, or privacy fencing has not been approved for construction and the animal is kept outdoors.

~~Section 9.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially installed by the Declarant on a Lot or other portion of the Property and not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence (chain link or otherwise), wall or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.~~

~~Section 9.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any 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 designated by the Association so as to provide access to persons making such pick-up. 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 of storage of the same on any portion of the Property.~~

~~Section 9.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic 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.~~

~~Section 9.06. 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 to 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 be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.~~

~~Section 9.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any~~

portion of the Property, except with the consent of the Association.

~~Section 9.08. Dwelling in Other Than Residential Unit.~~ No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used temporarily or permanently as a dwelling on any Lot or other portion of the Property, except with the consent of the Association.

~~Section 9.09. Antennas.~~ No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association, which shall be in compliance with Federal and local regulations but in any event shall not be visible from the street.

~~Section 9.10. Trees and Other Natural Features.~~ After the transfer of title by the Declarant to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization. The Owner shall comply with all Village of Weedsport requirements as to planting of trees on lots as shown on the final approved site plan.

~~Section 9.11. 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 established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

~~Section 9.12. Snowmobiles, ATVs and Motorcycles.~~ No snowmobile, ATV, motorcycle or similar motor vehicle shall be operated on any portion of the Property.

~~Section 9.13. Commercial and Professional Activity on Property.~~ No wholesale or retail business, service occupation or home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, except by the Declarant in conjunction with the initial construction, development, lease and sale of Lots, except that Association consent shall not be required for a legal home occupation requiring no visitor parking or employee parking.

~~Section 9.14. Outside Storage.~~ Outside storage or parking for more than one 72 consecutive hour period per month of commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited.

~~Section 9.15. Outdoor Repair Work.~~ With respect to a Lot or other portion of the Property to which title has been transferred by the Declarant, no work on any motor vehicles,

~~boats or machines of any kind other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.~~

~~Section 9.16. Oversized Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Declarant, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property for more than 72 hours within any month:~~

- ~~a. any vehicle which cannot fit into a garage of the size constructed by the Declarant with the Units with the overhead garage door closed;~~
- ~~b. commercial vehicles of a weight of two (2) tons or more, unless garaged;~~
- ~~c. unlicensed motor vehicles of any type, unless garaged.~~

~~Section 9.17. Clotheslines and Above Ground Pools. No outdoors drying or airing of any clothing or bedding and no above ground pools shall be permitted on the Property unless authorized by the Association.~~

~~Section 9.18. Prohibited Items. No trampolines or portable basketball nets shall be allowed anywhere on the Property.~~

~~Section 9.19. Wetlands and Water Supply Source Protection Rules and Regulations. All Owners shall be subject to the applicable governmental regulations having jurisdiction for any wetlands and the water Supply Source Protection Rules and Regulations.~~

~~Section 9.20. Declarant Approval. All plans and specifications for dwellings to be constructed on any Lot shall be approved by Declarant, including all colors, style, design of the home and all improvements on the Lot, including mailboxes. Construction of dwellings on the Lots shall be performed only by builders approved by Declarant.~~

ARTICLE X **ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION**

Section 10.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property, whether or not the deed, lease or any other instrument incorporates or refers to the Declaration, covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges 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 Lot or other portion of the Property.

Section 10.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof

Section 10.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior to or subsequent thereto. No liability shall attach to the Declarant, the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 10.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the 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 (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any. This paragraph shall not be applicable to any action brought by the Association against the Declarant.

Section 10.05. Inspection and Entry Rights. Any agent of the Association or the Architectural Committee may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. 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 Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, 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 10.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter endeavor to provide such mortgagee 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.

Section 10.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration. In addition, so long as the Declarant owns a Lot subject to this Declaration, the written consent of the Declarant will be required for any amendment which adversely affects the interest of the Declarant.

In voting for such amendment or rescission, the Members voting rights shall be as set forth in Article III hereof.

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

In addition to the approval of the Lot Owners and Declarant, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the 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 or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 10.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Cayuga County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 10.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until _____, 2030, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 10.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be

final and binding as to all persons or property benefited or bound by the provisions.

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

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

Section 10.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 10.12. 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 10.13. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

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

Section 11.03. Notice. Any notice required to be sent to the Declarant, Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent

when mailed, postage prepaid, to the last known address of the person who appears as the Declarant, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 11.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-far-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 11.05. Right of Association To Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners or residents association or similar entity.

KYLECROFT NY, LLC

By: _____

Its: _____

STATE OF NEW YORK)
COUNTY OF _____) ss:

On the ____ day of _____ in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same-in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SCHEDULE A

Property Description

All that tract or parcel of land situate in the Village of Weedsport, Cayuga County, New York State, as shown on a map of the "Village Heights Subdivision" filed in the Cayuga County Clerk's Office and known as Map No. 07-46 and as modified by filed Map No. 08-197.

4. SCHEDULE OF INCOME AND EXPENSES



July 22nd, 2015

New York State Department of Law
120 Broadway
New York, NY 10271

Re: KyleCroft NY, LLC
Village Heights Homeowners Association
Village of Weedsport, Town of Brutus, NY

To Whom It May Concern:

KyleCroft NY, LLC, the sponsor of the Village Heights Homeowners Association has retained my company, Kyle Croft Development, to verify and review the schedule of income and expenses in maintaining the 33 Village Heights residential housing development built in 2011.

Our experience in the real estate business includes over 15 years in the sale, leasing and property management of commercial and residential real estate.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the "Schedule of Income and Expenses". I have reviewed the schedule and attached footnotes in order to form a basis for certification.

I certify that the projections in the "Schedule of Income and Expenses" are reasonable and that the projected income from the 33 unit Village Heights Subdivision should be sufficient to meet the anticipated operating expenses for the first (1st) full year of operation as a Homeowners Association.

I certify that the Schedules:

1. Set forth in detail the projected income and expenses necessary to operate Village Heights Homeowners Association;
2. Affords potential purchasers in the Village Heights Subdivision an adequate basis upon which to project the operating costs of the Homeowners Association during the initial year of operation;

3. Do not contain any untrue statements of a material fact;
4. Do not project the future costs, which would be unreasonable until an operating budget can be realized based on 100% project build.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law. The information contained herein is based on information to the best knowledge of the undersigned. Further, portions of the information were provided by others, and assumed to be accurate, but are not guaranteed.

Respectfully submitted,
Kyle Croft Development, LLC

Grant Kyle
Project Manager

FOOTNOTES TO SCHEDULE OF RECEIPTS AND EXPENSES

1. Total monthly fee allocated to General Maintenance Fund and routine operating with the belief that it will become effective on or about September 1st, 2015, as the first units transfer title. This is an estimated budget based upon information available at the time of bidding for the first twelve months of operation of the Association consisting of 33 units. This estimate should not be construed as an assurance of final expenses, and is based upon information available at this time.
2. Routine legal expenses are for occasional advice and for the annual audit certification letter by retained Association counsel. It is assumed that any collections of fees expensed for delinquent accounts will be passed on to the unit per the bylaws and therefore be reimbursed to the Association. Provides for preparation of annual financial statements, including balance sheet, profit and loss statements and preparation of Federal and New York State corporate income tax returns. Office expenses include postage, copies, printing, payment cards or coupons, envelopes, supplies and long distance telephone.
3. Insurance is based on an estimate by the Ladd Agency for a liability policy on the common area of \$1,000,000 per occurrence, with a \$2,000,000 aggregate. The policy also includes Directors and Officers coverage.
4. This is based upon a bid from a professional landscape company, Morgan Landscaping, specializing in commercial and homeowners association services.
5. This is based upon the estimates from the local assessor
6. Landscaping repairs are budgeted for the replacement of significant tree and/or planting in the common areas subject to disease or storm.
7. Miscellaneous reserve contribution for unanticipated expenses.