

EXHIBIT C

Amended and Restated Declaration:

(attached hereto)

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

THIS AMENDED AND RESTATED DECLARATION (“**Declaration**”) is made as of March 13, 1997 by Rosewil Associates, L.P., a New York limited partnership with an address of 1265 Scottsville Road, Rochester, New York 14624 (hereinafter called “**Declarant**.”), and Rosepark Homeowners’ Association, Inc., a New York not-for-profit corporation with an address of 1265 Scottsville Road, Rochester, New York 14624 (hereinafter called the “**Association**”).

BACKGROUND:

Declarant and the Association are the owners of certain real property in the City of Canandaigua, Ontario County, New York, more particularly described in **Schedule A** attached hereto and made a part hereof, said land in its entirety being hereinafter referred to as the “**Properties**.” Declarant subdivided the Properties and imposed covenants, conditions and restrictions thereon prior to conveying a portion of the same to the Association pursuant to a certain Declaration of Covenants, Conditions and Restrictions recorded in the Ontario County Clerk’s Office in Liber 908 of Deeds at page 989 (the “**Original Declaration**”). The Original Declaration is amended by a certain First Amendment to Declaration of Covenants, Conditions and Restrictions recorded in the Ontario County Clerk’s Office in Liber 923 of Deeds at page 933 (the “**First Amendment**”) and a certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions recorded in the Ontario County Clerk’s Office in Liber 928 of Deeds at page 257 (the “**Second Amendment**”). Declarant and the Association desire to amend and restate the Original Declaration, as amended, by the terms and conditions of this Declaration and to subject the Properties to those certain covenants, agreements, easements, restrictions, charges and liens (hereinafter referred to collectively as “**Restrictions**”) as hereinafter set forth.

DECLARATION:

NOW, THEREFORE, Declarant and the Association hereby declare that all of the Properties, together with any and all improvements thereon and appurtenances thereunto, shall be held, sold and conveyed subject to the following covenants, easements, restrictions and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Properties or any part thereof, Declarant, the Association and all subsequent owners, their heirs, executors, administrators, successors and assigns forever, and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

1.1 Defined Terms. As used herein, the following terms shall have the following meanings:

“**Annual Assessment**” means that portion of the annual costs for the repair, maintenance, insurance, water and sewer charges, real property, franchise and income taxes, management fees and other related charges for the Common Areas, to be paid by each Owner, equally, in monthly installments, as determined by the Board of Directors.

“**Assessment**” means either an Annual Assessment or a Special Assessment.

“**Association**” means and refers to Rosepark Homeowners’ Association, Inc., its successors and assigns.

“**Board of Directors**” means the group of persons selected, authorized and directed to manage and operate the Association pursuant to this Declaration and the Bylaws.

“**Bylaws**” means the rules of operation of the Association and which governs the election of the Board of Directors.

“**Common Area(s)**” means all real property owned by the Association for the common use and enjoyment of the Owners.

“**Declarant**” means Rosewil Associates, L.P., a New York limited partnership, its successors and assigns, if such successors and assigns shall acquire more than one undeveloped Lot from Declarant for the purpose of development.

“**Declaration**” means the Original Declaration, as amended by the First Amendment, the Second Amendment, and as amended and restated by this instrument.

“**Dock(s)**” means those physical structures situated on Canandaigua Lake for the purpose of docking and mooring powered and non-powered water craft, individual boat slips of which shall be designated as Restricted Common Areas, as more fully set forth herein.

“**First Amendment**” has the meaning set forth in the Background section.

“**Lot**” or “**Lots**” means any or all of the plots of land shown upon the Subdivision Map or any resubdivision map of the Properties, and the improvements thereon, with the exception of the Common Areas.

“**Lottery**” has the meaning set forth in Section 2.4.

“**Member(s)**” means the Owner or Owners of each Lot.

“**Original Declaration**” has the meaning set forth in the Background section hereto.

“**Owner**” or “**Townhome Owner**” means and refers to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

“**Properties**” means and refers to that certain real property described in Schedule A attached hereto and made a part hereof.

“**Restricted Common Area**” means and refers to that part or parts of the Common Areas which are set aside for the exclusive use of a particular Member or Members.

“**Restricted Slips**” has the meaning set forth in Section 2.3.

“**Restrictions**” has the meaning set forth in the Background section hereto.

“**Rules and Regulations**” means the Rules and Regulations of the Association, as amended from time to time.

“**Second Amendment**” has the meaning set forth in the Background section hereto.

“**Special Assessment**” means (i) that portion of the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and/or the Lots, (ii) the cost of a shortfall in the Association’s contingency reserve, (iii) the cost of a shortfall in the Association’s annual budget should actual costs exceed annual assessments plus rental income for Docks, if any, and/or (iv) the costs of federal and/or state income taxes levied with respect to the operation of the Docks should net taxable income be generated, to be paid by each Owner as determined by the Board of Directors.

“**Sponsor**” means Rosewil Associates, L.P., the New York limited partnership which is developing the Properties and offering it for sale to the general public.

“**Subdivision Map**” means the subdivision map of the Rosepark Subdivision prepared by Clark Engineers, P.C., filed in the Ontario County Clerk’s Office on

February 15, 1991 at Map File Number 18728, and any resubdivision maps filed with respect to the Properties, including, without limitation, Resubdivision Map of Rosepark Subdivision filed in the Ontario County Clerk's Office November 7, 1991 at Map File Number 19367, Resubdivision Map No. 2 of Rosepark Subdivision filed in the Ontario County Clerk's Office April 23, 1992 at Map File Number 19744, Resubdivision Map No. 3 of Rosepark Subdivision filed in the Ontario County Clerk's Office April 30, 1993 at Map File Number 20627, and Resubdivision Map No. 4 of Rosepark Subdivision filed in the Ontario County Clerk's Office July 26, 1996 at Map File Number 23062.

"Townhome" means and refers to the single family dwelling structure built on any given Lot.

"Unrestricted Slips" has the meaning set forth in Section 2.3.

1.2 Other Defined Terms. Other terms used herein and defined shall have the meanings ascribed to them as they are so defined.

ARTICLE 2 - PROPERTY RIGHTS

2.1 Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, excluding any Restricted Common Area, except to the extent necessary for ingress and egress to said Member's property over the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (i) the right of the Association, pursuant to the Bylaws, to adopt rules and regulations governing the use of the Common Areas and any facilities constructed thereon the personal conduct of its Members and their guests thereon and the establishment of penalties for the infraction of such rules and regulations;
- (ii) the right of the Association to suspend the right of use by a Member of any of the facilities on the Common Areas for any period during which any Assessment against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (iii) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members approving such transfer, provided, however that no such dedication or transfer shall be effective unless an instrument signed by seventy-five percent (75%) of each class of Members entitled to vote in the manner described in Section 2.04, and their mortgagees, agreeing to such dedication or transfer, has been recorded;

(iv) the right of guests, invitees or licensees of any Member to ingress and egress over those portions of the Common Areas that lie within private roadways and driveways;

(v) the right of the Association to designate certain portions of the Common Areas as Restricted Common Areas for the exclusive use and enjoyment of Members, their guests, invitees or licensees subject to any restrictions, obligations or conditions, if any, the Association decides to place on the exclusive use and enjoyment of such Restricted Common Areas; and

(vi) the right of the Association to designate certain portions of the Common Areas as walkways, sidewalks and private roadways for the use of Members, their guests, invitees or licensees.

2.2 Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities located therein to the members of his family, his tenants or contract purchasers who reside on his Lot.

2.3 Designation of Restricted Slips and Unrestricted Slips and the Association's Right to Lease Certain Slips. Of the 69 boat slips located or to be located at the Docks, 52 boat slips shall be designated by the Board of Directors as Restricted Common Areas (the "Restricted Slips"), each individual boat slip being a Restricted Common Area for the benefit of the Lot for which it is designated. The remaining seventeen boat slips (the "Unrestricted Slips"), if installed, shall be disposed of by the Association in such manner as the Board of Directors in its sole discretion shall determine; provided, however, that the Unrestricted Slips may only be used by Members of the Association. Should the Owner of a Lot elect not to use his Restricted Slip, the Board of Directors shall have the irrevocable right to lease said Owner's Restricted Slip. Such an election may be made by a Lot Owner providing written notice to the Board of Directors prior to the commencement of the boating season, as determined by the date of which the movable portions of the Docks are placed in position in Canandaigua Lake. Upon such election and when and if the Board of Directors is able to find a lessee of the Owner's Restricted Slip, said Owner shall be relieved of those Assessments regarding the repair, maintenance and operation of the Docks which he would have been responsible for paying during the term of the lease to that Owner who utilizes the Restricted Slip. Payment of the Assessments for the Docks while a Restricted Slip is leased as set forth in this Section 2.3 shall be the responsibility of the Owner who leases the Restricted Slip and not of the Lot Owner who has elected to have the Board of Directors lease his Restricted Slip; only, however, when the Board of Directors is able to lease said Restricted Slip.

2.4 Lottery System for Leasing Boat Slips to Members. If (i) the number of Owners electing not to use their Restricted Slips is greater than the number of Owners seeking a second slip in addition to their existing Restricted Slips, or (ii) the number of Owners seeking a second slip in addition to their existing Restricted Slip is greater than the number of Owners

electing not to use their Restricted Slips, the Board of Directors shall employ a lottery system (the "Lottery") to determine, in the circumstances set forth in the preceding clause (i), which such Owners' Restricted Slips shall be leased, or, in the event of the circumstances set forth in preceding clause (ii), which such Owners shall be entitled to lease an additional Restricted Slip. The terms and conditions of the Lottery shall be determined in the sole discretion of the Board of Directors.

2.5 Restricted Slip Leases. A lease for a Restricted Slip shall be in writing, shall be for a minimum term of one year, shall contain a clause obligating the lessee to be responsible for 100% of the Annual and Special Assessments associated with use of the Restricted Slip, and shall contain such other terms and conditions as the Board of Directors shall determine.

ARTICLE 3 - EASEMENTS

3.1 Easements for Utilities. With the exception of the Lots, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Properties, including but not limited to, water, sewers, gas, telephones and electricity, and a master cable television system.

3.2 Easements for Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by Declarant during initial construction and reconstruction in the event of a rebuilding after a casualty loss or taking under an eminent domain proceeding. A valid easement for said encroachments and for the maintenance of same so long as such encroachments stand, shall and does exist.

3.3 Other Easements. An easement is hereby granted to the Association, its officers, agents, employees, including employees of any management company, having a contract with the Association, over all of the Common Areas, to perform the duties of maintenance and repair of the Common Areas, to maintain any utilities for which an easement has been granted and to prevent damage the Properties. An easement is hereby reserved to Declarant to enter the Common Areas during the period of construction and sale of the Properties, or any additions to the Properties, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of residences, including, without limitation, a business office, sales office, storage area, construction yards, signs and model units, provided that this does not unreasonably obstruct access by Members of the Association.

ARTICLE 4 - MEMBERSHIP AND VOTING RIGHTS

4.1 **Membership.** Every Owner of a Lot which is subjected to Assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

4.2 **Voting Rights.** The Association shall have two classes of voting membership.

4.2.1 Class A Members shall be the Owners of the Lots, with the exception of Declarant. Each Class A Member shall be entitled to one vote on all issues except as limited by the Class B Member voting as described below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, nor shall any Owner be entitled to more than one vote regardless of the number of Lots he owns.

4.2.2 The Class B Member shall be Declarant, its successors or assigns, and it shall be entitled to one vote on all Association issues for so long as it owns a Lot. Class B membership shall cease and be converted to Class A membership on June 21, 1999, or at such earlier time as title to all the Lots have been conveyed by Declarant, whichever first occurs. Prior to June 21, 1999, or such earlier time as title to all 52 Lots have been conveyed by Declarant, the Class B Member shall be entitled to appoint three of the four members of the Board of Directors and Class A Members shall be entitled to vote for one member of the Board of Directors, as more specifically set forth in the Bylaws.

ARTICLE 5 - COVENANT FOR ANNUAL OR SPECIAL ASSESSMENT

5.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments and (ii) Special Assessments, including, but not limited to special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided. The covenant in this Section 5.1 shall not constitute a guarantee or promise of any kind by Declarant to pay any Assessment or any other obligation of any Owner other than Declarant. The Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who is the Owner of such Lot at the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them. Notwithstanding the provisions of this Article 5, the Declarant shall be obligated to pay only the difference between the amount of Assessments collected on completed and/or sold Townhomes as set forth

in the projected budget, and the actual cost of operation for the Association. In addition, the Declarant shall pay the portions of Assessments attributable to reserves only for completed, unsold Townhomes, as more particularly set forth in Section 5.12.

5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively (i) to operate, maintain, repair, improve, construct, reconstruct and preserve, on a non-profit basis, the Common Areas, exclusively for the benefit of its Members, their guests, invitees or licensees; (ii) to maintain, repair, reconstruct, replace and preserve, on a non-profit basis, the exterior improvements of the Townhomes constructed on the Lots, excluding patio areas, courtyards, atriums and/or decks, the maintenance of which is the sole responsibility of the individual Member who is the owner in fee simple of these areas; (iii) to pay real property taxes on the Common Areas owned by the Association. The above obligation shall not include any maintenance, repairs or replacements caused by fire or other casualty to a Townhome; and (iv) to pay any franchise or income taxes of the Association.

5.3 Date of Commencement of Annual Assessments and Due Dates. The Annual Assessments provided for herein shall be fixed from time to time, but at least annually, and shall commence as to all Lots on the first day of the month following the recording of this Declaration. The Board of Directors shall fix the amount of subsequent Annual Assessments from time to time, but at least annually, for each Lot at least 30 days in advance of the Annual Assessment period. Written notice of the Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from each Lot Owner one-twelfth (1/12) of the Annual Assessment for such Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer, or the Managing Agent, if any, of the Association setting forth whether the Annual Assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any Annual Assessment therein stated to have been paid.

5.4 Special Assessments for Capital Improvements. In addition to the Annual Assessments, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, and the Lots, or any of them, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly called for this purpose.

5.5 Assessments for the Dock. In addition to the Assessments heretofore and hereafter established, there shall be an additional and separate Assessment levied by the Association upon the Lot Owners for the maintenance, repair, replacement, reconstruction, improvement and preservation, on a non-profit basis, of the Docks. In addition, the Association may levy, in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, (i) the cost of any construction, reconstruction, repair

or replacement of a capital improvement upon the Dock; (ii) the cost of an operating shortfall should actual costs of maintaining and operating the Dock exceed Annual Assessments plus rental income collected; and (iii) any Federal and New York State income taxes due should the operation of the Docks generate net taxable income, provided that any Special Assessment for a capital improvement upon the Docks shall have the assent of two-thirds (2/3) of the votes of the Class A Members present in person or by proxy, entitled to vote with respect to said Special Assessment. Special assessments will be budgeted at a meeting duly called for that purpose. The Association may levy a Special Assessment with respect to the Docks not to exceed 110% of any annual operating shortfall, and/or 100% of all New York State and/or Federal income taxes without approval of the Members. Any Special Assessment in excess of 110% of any annual operating shortfall must be approved by the assent of 50% of the votes of the Class A Members present in person or by proxy; at a meeting duly called for that purpose.

5.6 Notice and Quorum for Any Action Authorized Under Sections 5.4 or 5.5.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 or 5.5 shall be sent to all Members entitled to vote with respect to that action not less than 30 days nor more than 60 days in advance of the meeting. The presence of Members, in person or by proxy, constituting two-thirds (2/3) of the membership entitled to vote on that particular issue as determined in accordance with the provisions of Section 4.2 shall constitute a quorum.

5.7 Uniform Equal Rate of Assessment. Annual and Special Assessments must be fixed at a uniform equal rate for all Lots and may be collected on a monthly basis.

5.8 Effect of Nonpayment of Assessments and Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within 30 days after the due date, the Assessment shall bear interest from the date of delinquency at the maximum prevailing legal rate per annum, and the Association may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees and disbursements of any such action shall be added to the amount of such Assessment. Each such Member, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Member personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property and such Member hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Members. The Association, acting on behalf of the Lot Member shall have the power to bid for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting Member's portion of the premium for fire and other hazard insurance. No Member

may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas, or abandonment of a Lot, or by renunciation of membership in the Association. Nevertheless a Member may give to the Association, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

5.9 Subordination of the Association Lien to First Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage given to any bank, savings bank, saving and loan association, pension fund, or other institutional lender or to the Declarant. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage, or by deed in lieu of foreclosure, given as above provided, shall extinguish the lien of such Assessments as to payments which become due prior to the foreclosure sale and transfer. No foreclosure sale or transfer shall relieve such Lot Member from liability for any Assessments thereafter becoming due or relieve the Lot from the lien thereof.

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

5.11 Contractual Authority. The Association shall be entitled to contract with any corporation, firm or other entity in the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

5.12 Assessments for Declarant's Completed Townhomes. Notwithstanding any provision to the contrary in this Article 5, for Lots improved by Completed Townhomes (as defined below) which are owned by Declarant, Declarant shall only be liable for that portion payment of Assessments applicable to such Lots which are for reserve items. For purposes of this section a "**Completed Townhome**" shall be a Townhome which has been constructed with the particular improvements for which reserves are indicated and included in Assessments.

ARTICLE 6 - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot which is subject to Assessment pursuant to the provisions of Article 5. Said exterior maintenance will entail the following: painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, and other exterior improvements including snow plowing and shovelling of the driveway and sidewalks for the

Townhomes. Such exterior maintenance shall not include glass surfaces or doors, screens, screen doors, snow shoveling of individual Townhome patios or decks, and any maintenance of Landscaping, plantings or shrubbery on a Lot which was not originally installed by Declarant. In the event that the need for maintenance or repair is caused through the willful or negligent act or intention of a Member, his family, guests, invitees or licensees, the cost of such maintenance and repairs shall be added to and become part of the Assessment to which such Lot is subject. The above obligation of the Association does not include any maintenance or repairs caused by fire or other casualty to the premises owned individually by Members.

ARTICLE 7 - PARTY WALLS

7.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of the Townhomes upon the Properties and placed on the dividing line between any two Townhomes shall constitute a party wall for the purposes of this Declaration only, and to the extent not inconsistent with the provisions of this Article the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Members who make use of the wall in proportion to such use.

7.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Member who has used the wall may restore it, and if the other Member thereafter makes use of the wall he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Member to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

7.4 Weatherproofing. Notwithstanding any other provision of this Article 7, a Member, who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole costs of furnishing the necessary protection against such elements.

7.5 Right of Contribution Runs with the Land. The right of any Member to contribution from any other Member under this Article shall be appurtenant to the land and shall pass to such Member's successors in title.

7.6 Arbitration. In the event any dispute arises concerning a party wall, or under the provisions of this Article 7, except for disputes involving the Declarant, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator and the decision shall be by a majority of all of the arbitrators and be binding upon the party. Judgment upon the award of the arbitrators may be taken in any court of law with jurisdiction thereof.

ARTICLE 8 - USE OF PROPERTY

The use of the Properties shall be restricted to and in accordance with the following provisions:

8.1 Type of Dwellings. No building shall be erected, altered, placed or permitted to remain on any Lot other than a Townhome.

8.2 Use of Common Areas. The Common Areas shall be used for the furnishing of benefits and activities for which the same are reasonably intended, for the use and enjoyment of the Members.

8.3 Occupancy. No Townhome shall be occupied by any person in violation of this Article 8.

8.4 Nuisances. No nuisances shall be allowed upon the Properties nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Properties by the Owner.

8.5 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Properties or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

8.6 Interpretation. In interpreting deeds, mortgages, and plans, the original existing physical boundaries of a Townhome (or in the event the Townhome is reconstructed in substantial accordance with the original plan, its existing physical boundaries as reconstructed), shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or plans, regardless of minor variance between boundaries shown on the plans or in the deed and those of the applicable structure.

8.7 Regulations. Regulations concerning use of the Properties may be promulgated by the Board of Directors as hereinabove set forth; provided, however, that copies of such regulations are furnished to each Member prior to the time that said regulations become effective. The initial regulations, which shall be deemed effective until amended by the Board of Directors are annexed to and made a part of the Bylaws. Such regulations shall not impair or limit the rights of mortgagees as elsewhere recited.

8.8 Restricted Common Areas for Lots 101-104. The area extending directly behind Lots 101-104, delineated by the extension of the side lot lines of said Lots extending to the edge of the Properties at the shoreline of Canandaigua Lake, as more particularly shown on the map attached hereto as **Schedule B**, shall constitute a Restricted Common Area for the benefit and use and enjoyment of the Owners of Lots 101-104. Said Owners may use the Re-

stricted Common Area in the manner provided in the Rules and Regulations as the same may be amended from time to time. Said Lot Owners utilizing and enjoying this Restricted Common Areas shall not install any structure of a permanent nature upon such area, nor leave or cause to be left any personal property on such area for more than a twelve-hour period. Further, any damage caused to the landscaping or lawn located within such Restricted Common Area by reason of the use by the Owner(s) shall be immediately repaired by the Owner(s) at the expense of the Owner(s). Failure to effect such immediate repairs shall place in the Association the immediate right to effect such repairs and to assess the offending Owner(s) for the cost of the same. Violations of the provisions shall vest in the Board of Directors the right to rescind the right of the Owner(s) to the Restricted Common Areas conferred hereby and in the Rules and Regulations. Nothing herein contained, however, shall prohibit the Members from traversing said Restricted Common Area, provided the Members comply with the Rules and Regulations of the Association.

8.9 Application to Declarant. These restrictions shall not apply to the business activities of Declarant or its successors during construction or any additions thereto, so long as there are not undue delays.

8.10 Third Parties. The Properties are for the exclusive use and benefit of the Members as provided in Article 2. No other property will be subjected to this Declaration, no other parties will become Members except as a result of purchasing a Lot, and no other parties shall be permitted to use the Properties (including the Docks and beach area), except as may be provided by a written amendment to this Declaration approved by at least 80% of the Members.

ARTICLE 9 - ARCHITECTURAL CONTROL

No building, fence, patio, deck, wall, storm or screen door, mail box, tree, shrub, planting or any other exterior change, no matter how minute, or other structure of any type shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made including paint or stain until the plans and specifications showing nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors, provided, however, that the Owner of a Townhome may change the landscaping within his individual patio, atrium, deck or porch area at the front and/or rear of his Lot without the prior written consent of the Board of Directors. Satellite dishes shall be installed on the roofs of Townhomes or Lots provided that (i) they are of a diameter not to exceed eighteen inches and (ii) they are placed in locations as approved by the Board of Directors. In the event said Board of Directors fails to approve or disapprove the design and location of a proposed alteration or improvement within 30 days after plans and specifications have been submitted to it, the Board of Directors's approval will not be required and this Articles will be deemed to have been fully complied with.

ARTICLE 10 - INSURANCE AND CASUALTY DAMAGES

10.1 Casualty. The Board of Directors shall obtain and maintain, to the extent possible, insurance coverage insuring the structures and all other insurable improvements upon the Properties, including all Association property and all individual Townhomes, and improvements and betterments, and all personal property as may be owned by the Association in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and such other risks as from time to time customarily shall be covered with respect to improvements similar in construction, location and use as the Association structures, including but not limited to, vandalism, malicious mischief, windstorm and additional perils. The property insurance will be on a blanket basis so that the total policy limit is available for any one loss.

10.2 Liability. Insurance covering public liability and property damage shall be provided in such amounts and in such forms as shall be required by the Board of Directors, but in no event less than \$500,000.00 for bodily injury to all persons per one occurrence and \$250,000.00 property damage per occurrence; including, but not limited to, hired automobile, non-owned automobile and off-premises employee coverage (if there are any employees). All liability insurance will contain cross-liability endorsements to cover liabilities of the Townhome Owners as a group to a Townhome Owner.

10.3 Workers' Compensation. In the event workers' compensation insurance is required by law for the Association, a workers' compensation policy meeting those requirements shall be procured.

10.4 Members' Insurance. Each Member should obtain insurance, at his own expense, affording coverage upon his Lot and his personal property for loss incurred by virtue of fire or other casualty and for his personal liability and additional insurance required by law, if any.

10.5 Premiums. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as common expenses.

10.6 Other Coverage. The Association may secure such other forms of insurance coverage, including, but not limited to director's and officer's liability coverage, as its Board of Directors may from time to time direct to be purchased and paid as a common expense.

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ARTICLE 11 - GENERAL PROVISIONS

11.1 Amendment and Restatement. By vote of at least 80% of the Members as of the date of this Declaration, this Declaration amends and restates in its entirety the Original Declaration as amended by the First Amendment and the Second Amendment.

11.2 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective heirs, successors and assigns for a period of 30 years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten years each, unless an instrument signed by the then Owners of 80% of the Lots has been recorded, agreeing to change said covenants and restrictions, in whole or in part. This Declaration may be amended by an instrument, signed by not less than the Owners of 80% of the Lots.

11.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

11.4 Enforcement. The Association, or any Member, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first set forth above.

ROSEWIL ASSOCIATES, L.P., a New York
limited partnership

By: Wilrose Property, Inc., a New York
corporation, its general partner

By: *David M. Jacobstein*
Name: *DAVID M. JACOBSTEIN*
Title: *VICE PRESIDENT*

ROSE PARK HOMEOWNERS ASSOCIATION,
INC., a New York not-for-profit corporation

By: *Ronald A. Cocquyt*
Ronald A. Cocquyt
Vice President

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

On this 2nd day of September, 1998, before me personally came David M. Jacobstein, to me personally known, who, being by me duly sworn, did depose and say that he resides in Pittsford, New York; that he is a vice President of Wilrose Property, Inc., the corporation described herein, and which executed the within Instrument as the general partner of Rosewil Associates, L.P.; and that he executed the foregoing instrument by order of the board of directors of said corporation.

Sharlene A. Buckingham
Notary Public

SHARLENE A. BUCKINGHAM
Notary Public, State of New York
Qualified in Erie County
My Commission Expires

8/31/99

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

On this 2nd day of SEPTEMBER, 1998, before me personally came Ronald A. Cocquyt, to me personally known, who, being by me duly sworn, did depose and say that he resides in Victor, New York; that he is a Vice President of Rosepark Homeowners' Association, Inc., the not-for-profit corporation named in and which executed the foregoing instrument and that he executed the foregoing instrument on behalf of said not-for-profit corporation by order of the board of directors of said not-for-profit corporation.

Sharlene A. Buckingham
Notary Public

SHARLENE A. BUCKINGHAM
Notary Public, State of New York
Qualified in Erie County
My Commission Expires

8/31/99