

EXHIBIT I
DECLARATION

*Liber 6329 of Deeds
page 179 in MCE*

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by WHITRIDGE REALTY, CORP., a New York Corporation with its principal office at 48 South Estate Drive, Webster, New York 14580 and LANCASTER HOMES, INC. a New York Corporation with offices at 1548 Buffalo Road, Rochester, New York 14624, hereinafter collectively referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is or will be the owner of certain property in the Town of Perinton, County of Monroe, State of New York, which is more particularly described as:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, Monroe county, New York, being Part of Lot 32, Township 12, Range 4, and more particularly bounded and described as follows:

BEGINNING at the northeast corner of Lot AR-34 of Whitney Ridge Townhouses Subdivision Section 1A as shown on a map thereof filed in Monroe County Clerk's Office in Liber 200 of Maps, page 72; thence (1) running north $88^{\circ} 21' 51''$ east along the south line of Tilegate Glen a distance of 99.94 feet to a point of curve; thence (2) running easterly and southerly along a curve to the right, having a radius of 20 feet, a distance of 37.35 feet to a point; thence (3) running south $74^{\circ} 38' 09''$ east a distance of 60.00 feet to a point; thence (4) running north $15^{\circ} 21' 51''$ east a distance of 12.57 feet to a point; thence (5) running northerly and easterly along a curve to the right having a radius of 44.33 feet, a distance of 56.48 feet to a point of compound curve; thence (6) continuing easterly along a curve to the right having a radius of 120.00 feet, a distance of 77.67 feet to a point of tangency; thence (7) running south $54^{\circ} 33' 08''$ east a distance of 110.11 feet to a point of curve, thence (8) running easterly and southerly along a curve to the right having a radius of 20.00 feet, a distance of 28.55 feet to a point of reverse curve; thence (9) southerly

along a curve to the left having a radius of 330.00 feet a distance of 168.82 feet to a point; thence (10) running south $02^{\circ} 04' 34''$ east a distance of 191.00 feet to a point; thence (11) running southerly along a curve to the right having a radius of 270.00 feet, a distance of 11.59 feet to a point of compound curve; thence (12) running southerly and westerly along a curve to the right, having a radius of 20.00 feet, a distance of 35.44 feet to a point; thence (13) running south $11^{\circ} 55' 17''$ west a distance of 60.00 feet to a point; thence (14) running easterly and southerly along a curve to the right, having a radius of 20.00 feet a distance of 35.44 feet to a point of compound curve; thence (15) running southwesterly along a curve to the right having a radius of 270.00 feet a distance of 127.06 feet to a point; thence (16) running south $50^{\circ} 25' 17''$ west a distance of 414.67 feet to a point; thence (17) running southerly and westerly along a curve to the right, having a radius of 270.00 feet a distance of 275.32 feet to a point; thence (18) running north $00^{\circ} 53' 59''$ west a distance of 799.22 feet to the southwest corner of Lot R-23 as shown on a map of Whitney Ridge Townhouses Section 1A filed in said Clerk's Office in Liber 190 of Maps, page 26; thence (19) running north $88^{\circ} 21' 51''$ east along the south line of Lot R-23 thru R-26 as shown on a map last above referred to a distance of 153.94 feet to the southeast corner of said Lot R-26; thence (20) running north $01^{\circ} 38' 09''$ west along the east line of said Lot R-26 a distance of 100.00 feet to a point in the south line of Lot R-27 as shown on a map of Whitney Ridge Townhouses Section 1A filed in Liber 190 of Maps, page 27; thence (21) running north $88^{\circ} 21' 51''$ east along the south line of Lot R-27 thru Lot R-33 as shown on a map last above referred to and along the south line of Lot AR-34 as shown on a map first above referred to a distance of 178.62 feet to the southeast corner of Lot AR-34; thence (22) north $01^{\circ} 38' 09''$ west along the east line of said Lot AR-34, 80 feet to the point and place of beginning, all as shown on survey made by Sear-Brown Associates, P.C., dated November, 1981 and last revised April 16, 1982, being Map No. 2202.0-15 and Map No. 2202.0-16, which maps have been filed in the Monroe County Clerk's office in Liber 221 of Maps, pages 27 and 28.

EXCEPTING THEREFROM ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe and State of New York, being part of Lot 32, Township 12, Range 4, and more particularly known and described as Lots Nos. R1, R2, R3 and R4 as shown on a map of Whitney Ridge Subdivision, Section 2, prepared by Sear-Brown Associates, P.C., dated November, 1981 and last revised April 16, 1982 being Map No. 2205.0-15 and Map No 2202.0-16, which maps have been filed in the Monroe County Clerk's Office in Liber 221 of Maps, pages 27 and 28.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Such property includes all of the lots and the designated common areas.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Whitridge Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer 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, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, including areas therein to be improved by single dwellings, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Townhouse Dwelling" shall mean the structure erected by Lancaster on each lot to be occupied and used as a one family dwelling.

Section 5. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: All property outside the townhouse lot lines of the subdivision map filed in the Monroe County Clerk's Office in Liber 221 of Maps, pages 27 & 28 including Broxborne and Garrison Drives.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Whitridge Realty, Corp., and Lancaster Homes, Inc. and their respective successors and assigns, if such successors or assigns should acquire more than one developed Lot from the Declarant for the purpose of development.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE 2

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment, through the Association, in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of an owner for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, and to grant a mortgage covering the common area as security for such indebtedness provided such mortgage shall be subordinate to the rights of the owners hereunder and further provided that as long as Declarant and/or Lancaster Homes controls the Board of Directors or class B membership exist such mortgage must be approved by 2/3 of the class A membership.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of use of Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Regulation of Uses. The Association reserves the right to regulate the use of the Common Area through the establishment of rules and regulations.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant; provided, however, that the Declarant may become a Class A member upon termination of its Class B membership as provided herein, and shall be entitled to one vote for each Lot owned. 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 the owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarants jointly and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) twenty-four (24) months after date of transfer of title to the first Lot in the subdivision.

Section 3. In any event, 24 months after date of transfer of title to the first Lot, Class A members, excluding Declarants, shall be entitled to elect all members of the Board of Directors of the Association.

ARTICLE 4

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 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 thereafter, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments or charges, and (2) special assessments for capital improvements and/or repair of damaged units, such assessments to be established and collected as hereinafter provided. Lancaster, as a Lot owner, shall have no obligation to pay any assessment on Lots which it owns until the construction of a Townhouse dwelling has reached the drywall stage; thereafter on the first day of the month following completion of the drywall stage Lancaster shall pay all charges assessed to such lot. The drywall stage is the point of construction when the walls and exterior doors and windows are in place, the roof shingled, the mechanical systems complete (i.e. plumbing, electrical, heating), exterior walls insulated and the drywall (gypsum board) has been applied to the walls. However, Lancaster shall, to extent actual expenses exceed total of income derived from common charges and special assessments, subsidize the Association's Budget for the twelve month period of operation following the date of the first transfer of title to a Purchaser. The covenant in this Section 1 shall not constitute a guarantee of any kind by the Declarant to pay the annual or special assessments, or any other obligations of the owners other than those of Lancaster. Whitridge shall, at no time, be liable for payment of assessment on unimproved Lots which it owns.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, if any, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, if any, shall be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Each Deed shall contain the following covenant:

"And the party of the second part their distributees, grantees and assigns further covenants that the property herein conveyed shall be subject to an annual charge in such amount as shall be determined by the Whitridge Homeowners Association, Inc., (hereinafter "Homeowners Association"), its successors and assigns, which sum shall be payable annually, in advance on the 15th day of January, and on each annual date such charge shall become a lien upon the land and so continue until fully paid and the party of the second part does hereby authorize and empower said Homeowners Association, its successors and assigns, for the collection of such charges and the enforcement of such liens. Such charge shall be payable to the Homeowners Association, its successors and assigns and shall be devoted exclusively to promote the health, safety, and welfare of the owners and for the improvement and maintenance of the Common Area."

During the Association's first fiscal year ending December 31, 1983, the annual assessment charge shall be prorated and payable at closing. Lancaster shall pay such prorated charge against those lots owned but unsold on the first day of the month following completion of drywall stage.

Section 2. Purpose of Assessments. General assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area, specifically for taxes and maintenance and repair of the roadways including snow removal and salting.

Section 3. Maximum Annual Assessment Per Lot Per Year. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Eight and 38/100 Dollars (\$108.38) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year in conformance with the rise, if any, of the Consumer Price Index for the Northeast (published by the Department of Labor, Washington, D.C.) for the preceding month of July without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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 Area, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose and such assessment is determined at least 30 days prior to the levying of such charge.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two-thirds percent (66 2/3%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual maintenance and special assessments must be fixed at a uniform rate for all Lots.

Section 7. Date of Commencement of Annual Assessments:

Due Date. Except as provided in Article 4 Section 1, the annual assessments provided for herein shall commence as to all Lots upon which title is transferred or upon all occupied homes on the day title is transferred to a purchaser. Annual assessments shall be collected at closing and shall be adjusted according to the number of months remaining in the Association's fiscal year. The Board of Directors shall fix the amount of the annual assessment for each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect from the owner of each Lot the annual assessment for such Lot on the 15th day of January. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of nonpayment of Assessments:

Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten per centum (10%) per annum, and the

Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Whitridge Homeowners Association, Inc., or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on a real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The Lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot owners. The Association, acting on behalf of the Lot owners, shall have the power to bid in an 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 owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. In the event that the Association is unable for any reason to foreclose its lien, the Association may elect to levy a substantial assessment upon all members of the Association to recover such sum.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority, and the Common Area, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes of each class of the Members of the Association who are voting in person or by proxy at a meeting at which a quorum, as defined in Article 4, Section 5, is present. In no event shall such management agreement be cancelled prior to the effecting, by the Association or its Board of Directors, of a new management agreement with a party or parties, which new management agreement will become operative

immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association, or its Board of Directors, to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

ARTICLE 5

INSURANCE

Section 1. Townhouse Insurance. The Association shall be required to obtain and maintain adequate insurance of all the Townhouses which shall insure the property for its full replacement value, with no deductions for depreciation, against loss by fire or other hazards. Such insurance shall be sufficient to cover the full replacement value, or for necessary repair or reconstruction work. Such insurance shall be written in the manner designated by the Association for the benefit of the Association, the lot owners and unit mortgagees as their interest may appear.

The purpose of such insurance will be to protect, preserve and provide for the continued maintenance and support of separately owned townhouses which shall share common party walls, connected exterior roofs, and other parts of overall structure. Insurance obtained by the Board of Directors shall be written in the name of the Association and the owners as their interest shall appear. Members of the Association shall not be prohibited from carrying other insurance for their own benefit provided that such policies contain waivers of subrogation and further provided that the liabilities of the carriers issuing insurance

procured by the Association shall not be affected or diminished by reason of any such additional insurance carried by a member of the Association. Each lot owner shall provide in any mortgage obtained on any lot that any insurance proceeds shall be used pursuant to the authority of Section 25 of the New York State Real Property Law to repair or replace the townhouse unit.

The insurance policy shall also contain a broad form of liability coverage against claims arising from the Associations ownership use and maintenance of the common area. Such policy shall name the Association and its members as insureds.

Section 2. Payment of Premiums. Premiums for insurance obtained by the Board of Directors, as provided hereinabove, shall not be a part of the common expense but shall be paid by the respective homeowners upon receipt of the annual statement from the Agency forwarded through the Homeowners Association. In the event such premium is not paid within 30 days after receipt of the statement by homeowner, then the Homeowners Association may pay same and charge the costs thereof against the lot as a special assessment.

Section 3. Repair or Replacement of Damaged or Destroyed Property. The owner(s) shall be required to reconstruct or repair any townhouse unit destroyed by fire or other casualty to any townhouse dwelling unit. Proceeds paid under any insurance shall be paid to the Board of Directors of the Association and the homeowners jointly. The homeowners shall repair or rebuild the damaged or destroyed portions of the structure, and/or exterior of the unit, in a good and workmanlike manner in

conformance with the original plan and specifications. The contractor or contractors selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding. In the event the insurance proceeds are insufficient to fully pay the costs of repairing and/or rebuilding the damaged or destroyed portions in good and workmanlike manner, the Board of Directors shall levy a special assessment against the owner in whatever amount sufficient to make up the deficiency and notify said owner at least 30 days in advance of such assessment. If the insurance proceeds exceed the cost of repairing and/or rebuilding, such excess shall be paid over to homeowner and/or the mortgagee in such portions as shall be independently determined by those parties.

Section 4. Insurance Assessments. The Board of Directors, or its duly authorized agent, shall have the authority to obtain insurance for all improvements constructed in the Common Area against loss or damage by any hazard in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering the Common Area, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be included in the costs of insurance paid for directly by the homeowners.

ARTICLE 6

MAINTENANCE OF TOWNHOUSES

Section 1. Lot and Structure Exterior Maintenance. Each owner shall keep his own lot maintained in a reasonable manner, including the maintenance of the exterior of all units, the cleaning and replacement of screens and windows, maintenance of the lawns, trees and shrubbery, driveway and yard. The owners shall provide exterior maintenance upon all respective townhouse dwelling units including, but not necessarily limited to the following: exterior repair of roofs, gutters, downspouts exterior building surfaces, patio fences, trees, shrubs, grass, walks and other exterior improvements.

Section 2. Interior Maintenance. All interiors including fixtures and equipment installed commencing at a point where utility pipes, wires, conduits or systems enter the Lot line, shall be maintained and kept in repair by the owner thereof. An owner shall not do any act or any work that will unnecessarily impair the structural soundness or integrity of another townhouse dwelling structure, or impair any easement or do any act or allow any condition to exist which will adversely affect the other connected dwelling structure, or the owner thereof.

Section 3. Repair By Association. In the event that owner does not perform maintenance required herein, the Association, upon 30 days' written notice to the owner, shall have the right to enter upon the lot of the owner to perform such maintenance and repairs and to have its agents and employees enter upon the lot to perform such maintenance and repairs as are covered under this section of the Declaration, the cost of which shall be charged to the owner as a Special Assessment.

ARTICLE 7

PARTY WALLS AND ROOF REPAIRS

Section 1. General Rules of Law to Apply. Each vertical wall built as part of the original construction of a townhouse dwelling structure which serves to divide each respective dwelling unit from the other attached unit between and through either side of which runs the dividing line between the lots, shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance of Party Walls.

(a) The cost of reasonable repair and maintenance of the portion of a party wall which physically comprises the common wall between two adjacent structural improvements shall be shared equally between the lot owners who make use of such portion of the party wall; except, that the cost of repairing or maintaining so much of such common wall as is limited solely to the interior of a structural improvement shall be borne by the owner of such structural improvement wherein such interior repairs or maintenance is required.

(b) Where a party wall extends above the roof line, or beyond the exterior front or rear wall of an adjacent structure, the owner of the structure which so extends above the roof line or beyond the front or rear exterior walls of any adjacent structure, shall be deemed to have an easement for the support, use, maintenance, and repair of the entire party wall, including the roof and exterior finishing materials which

face the exposed portion of said party wall and said lot owner shall be obligated to maintain the exterior of such extended portions of the party wall in the same manner as the exterior of the balance of said lot owner's structural improvements. If a party wall, or any extension thereof as above described, is destroyed or damaged by fire or other casualty, and to the extent such damage is not repaired out of proceeds of insurance, the lot owners making use of such party wall mutually agree and covenant to repair or rebuild the said wall, including all exteriors thereof, and the expense of such repair or restoration shall be borne between the said lot owners in accordance with the foregoing provisions of the preceding sub-paragraphs, and said wall shall be erected on the same spot where it now stands and shall be of the same size and of the same similar materials and of like quality. Nothing contained in this sub-paragraph, however, shall limit the right of any such lot owner to call for a larger contribution from the adjacent lot owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Notwithstanding any other provision of this Section, an owner, who by his negligent or willful act, causes that portion of the party wall physically used as a common wall between the adjacent structures to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) The right of any lot owner to contribution from any other lot owner under this Section shall be appurtenant to the land and shall pass to such lot owner's successors in title.

Section 3. Roofs. The cost of reasonable repair and maintenance of all

roofs shall be borne by the owners of the units. Nothing therein shall restrict the owners of each lot from making claim against any owner for any negligence which might cause damage to any roof.

ARTICLE 8

ARCHITECTURAL CONTROL

Section 1. No building, except the townhouse dwelling constructed by Declarant, shall be constructed, erected or maintained upon the properties, nor shall any exterior color alteration, including the color of the roof, addition to, alteration of any kind be made to the townhouse dwellings. Each owner may repair and replace the fence located on his Lot with a fence of the same design in the same location. No changes shall be made in material of the exterior of any dwelling structure or any of the materials of the roof, windows, garage door, trim or paving walks or drive, until the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external color, design and location in relation to the surrounding structures and topography by the Board of Directors of the Association or by an architectural committee appointed by the Board. No clotheslines, awnings, plantings of trees or bushes, installations of screens and/or storm doors other than replacements of originals, no installation of exterior exposed airconditioning units shall be permitted except upon written approval by the Board of Directors.

In the event the Board or its designated committee fails to approve or disapprove each design or request by a lot owner within thirty

(30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Construction of Buildings and Use Restrictions. The property is hereby restricted to residential dwellings for residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of said property at any time as a residence either temporarily or permanently. The construction of more than one hundred fifteen (115) Townhouse Dwellings is prohibited.

Section 3. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 4. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain during the period of construction and sale of said Townhouse Dwellings, upon such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhouse Dwellings, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 5. No livestock of any kind be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 6. No advertising signs (except one of not more than five square feet "for rent" or "for sale" sign per lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any house or any resident thereof. No business activities of any kind whatsoever shall be conducted in any building or in any portion of said Property, provided, however, the foregoing covenants shall not apply to the business activities signs and billboards, or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns during the construction and sale period, and of Whitridge Homeowners Association, Inc., a non-profit corporation, incorporated under the laws of the State of New York, its successors, and assigns, in furtherance of its powers and purposes as hereinafter set forth.

ARTICLE 9

EASEMENTS

Section 1. There are hereby created the following easements:

- a) A pedestrian easement for the use and benefit of all members of the Association for pedestrian ingress and egress to and from all lots.
- b) An easement for the benefit of the Monroe County Water Authority for the maintenance and repair of storm sewer lines to be located across the properties as shown on the Map. By virtue of these easements, it shall be expressly permissible for the Declarant, municipal authority and/or providing utility company to erect and maintain all necessary equipment on the properties, and to affix and maintain all necessary

equipment on the properties, and to affix and maintain electrical, telephone, sewer, water, and drainage wires, circuits, conduits, and pipes through the lots and the foundations and walls of all the Townhouse Dwellings located on the properties and/or under the surface of the Common Area. An easement is further granted to all police, fire-protection, ambulance, and all similar persons, organizations, or entities to enter upon the Common Area, in the performance of their duties. Notwithstanding anything to the contrary contained in this Declaration, no utility wires, circuits, conduits, or pipes may be installed or relocated on the properties, except as initially laid out and approved by the Declarant or subsequently by the Association's Board of Directors. Specific easements have been granted to the Town of Perinton, Fairport Municipal Commission, Rochester Telephone Corporation and Rochester Gas and Electric Corporation for the above stated purposes. These easements have been recorded in the Office of the County Clerk of Monroe County. The easements provided for in this Article shall in no way affect any other recorded easement on the properties. Notwithstanding the above easements, the Declarant acknowledges that no municipal authority has any obligation to install service to the Townhouse properties.

Section 2. Utility Easement Crossings . Easements for underground utility service may be crossed by driveways, walkways, and other easements. Such easements for the underground service shall be kept clear of all other improvements, including buildings, or other pavings other than crossing walkways or driveways, and neither the Declarant, the

Association, nor any utility company using the easements shall be liable for any damage done by any of them or their assigns, agents, employees or servants to shrubbery, trees, flowers, or other improvements of any owner, located on the properties covered by said easements.

Section 3. Townhouse Easements. Each Townhouse Lot shall be subject to an easement for encroachments created by construction, settling, and overhangs of all structures and buildings designed or constructed by the Declarant. An easement for said encroachments, and for the maintenance of same, shall, and does, exist so long as said structure or buildings stand. In the event a Townhouse Dwelling Structure is damaged or destroyed and then repaired or rebuilt, the Owners of the Townhouse sharing a party wall with the damaged or destroyed Townhouse, together with all adjacent Owners, agree that minor encroachments due to repair or reconstruction shall be permitted.

ARTICLE 10

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner, 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 Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be in form acceptable for recording in the office of the clerk of the County of Monroe, and must be so recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either in corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of _____, 19__.

WHITRIDGE REALTY, INC.
Declarant

By: _____

LANCASTER HOMES, INC.
Declarant

By: _____

EXHIBIT II
CERTIFICATE OF INCORPORATION
OF
WHITRIDGE HOMEOWNERS ASSOCIATION, INC.
Under Section 402 of the
Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify:

1. The name of the Corporation is WHITRIDGE HOMEOWNERS ASSOCIATION, INC.
2. The corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of, its members, directors or officers except to the extent permitted under the Not-for-Profit Law.
3. The purposes for which this corporation is formed are to:
 - (a) provide maintenance, preservation and architectural control of the residence lots and common area known as Whitney Ridge Townhouse Subdivision, Section 2, Town of Perinton, County of Monroe, State of New York, and being the premises described in a certain Declaration of covenants, Conditions and Restrictions (hereinafter called the "Declaration");
 - (b) promote the health, safety and welfare of the residents within the above property and any additions thereto as may hereafter be brought within the jurisdiction of the corporation;
 - (c) levy, collect and enforce payment by any lawful means, of all charges or assessments, pursuant to the terms of the Declaration;
 - (d) pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation including all licenses, taxes or governmental charges levied or imposed against the property of the corporation;

- (e) acquire by gift, purchase or otherwise own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (f) borrow money and with the consent of two-thirds (2/3) of the Class A members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property in connection with the affairs of the corporation;
- (g) dedicate, sell or transfer all or any part of the common area to any public agency, authority or utility, for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of their Class A members agreeing to such dedication, sale or transfer;
- (h) participate in mergers and consolidations with other not-for-profit corporations, organized for the same purposes or annex additional residential property and common area, provided that any such merger or consolidation shall have the consent of two-thirds (2/3) of their Class A members;
- (i) have and exercise any and all powers, rights and privileges which a corporation organized under the Not-for-Profit Law of the State of New York, by law, may now or hereafter have or exercise.

4. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The corporation is a Type "A" corporation as defined by Section 201 of the Not-for-Profit Corporation Law.

5. The office of the corporation is to be located in the Town of Perinton, County of Monroe, State of New York.

6. The territory in which the corporation's activities are to be principally conducted is the Town of Perinton, County of Monroe, State of New York.

7. The Secretary of State is designated as the agent of the corporation upon whom process of any action or proceeding against the corporation may be served and the address to which the Secretary of State shall mail copy of process in any action or proceeding against the corporation served upon him as well as copies of any notice required by law is: Byron Cartwright, 1548 Buffalo Road, Rochester, New York 14624.

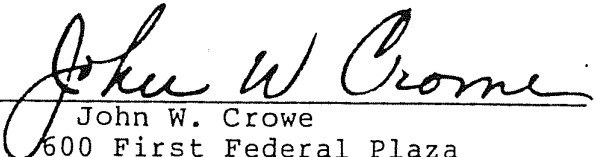
8. The corporation may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3) of each class of members which may exist at the time of such dissolution. Upon dissolution of the corporation, other than incident to merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency, to be used for purposes similar to those which the corporation was created, or for the general welfare of the residents of the town in which the property is located. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to similar purposes.

9. Amendment to this Certificate of Incorporation shall require the consent of two-thirds (2/3) of the entire membership.

10. No approvals of consents as required by the Not-for-Profit Corporation Law need to be endorsed upon this Certificate of Incorporation prior to its delivery to the Department of State.


11. The incorporator of this corporation is a natural person at least eighteen (18) years of age.

IN WITNESS WHEREOF, I have made, subscribed and acknowledged this Certificate this 24th day of September, 1982.


John W. Crowe
600 First Federal Plaza
Rochester, New York 14614

STATE OF NEW YORK)
) SS;
COUNTY OF MONROE)

On this 24th day of September, 1982, before me, the subscriber, personally appeared JOHN W. CROWE, to me known and known to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.


Notary Public

KAREN A. STACY
Notary Public in the State of New York
MONROE COUNTY
Commission Expires March 30, 1983