

**ERIE STATION HOMEOWNERS ASSOCIATION, INC.**

ERIE STATION ROAD  
TOWN OF HENRIETTA, MONROE COUNTY, NEW YORK

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS**

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**ERIE STATION HOMEOWNERS ASSOCIATION, INC.**

ERIE STATION ROAD  
TOWN OF HENRIETTA, MONROE COUNTY, NEW YORK

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS**

**THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS**, made as of this \_\_\_ day of \_\_\_\_\_, 200\_\_, by ERIE STATION PROPERTIES, LLC, a New York limited liability corporation, with offices located at 301 Exchange Boulevard, Suite 200, Rochester, Monroe County, New York, 14608, hereinafter referred to as "Declarant".

**WITNESSETH:**

**WHEREAS**, Declarant is the Owner of certain property in the Town of Henrietta, County of Monroe and State of New York, which is more particularly described on Schedule A attached hereto and made a part hereof (hereinafter the "Property"); and

**WHEREAS**, Erie Station Homeowners Association, Inc. is a New York Not-for-Profit corporation formed for the purpose of managing and maintaining the Common Areas of the Property;

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, easements and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to Erie Station 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 fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property described in Schedule A attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Areas" shall mean all real property and improvements owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Unit" shall mean and refer to all dwellings situated on the Property.

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

Section 7. "Declarant" shall mean and refer to **ERIE STATION PROPERTIES, LLC**, a New York limited liability corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, including any necessary rights of ingress and egress to Owners' 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:

A. 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. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 75% of each class of members and their mortgagees, agreeing to such dedication or transfer, has been recorded.

B. The right of the Association, pursuant to its By-Laws, to adopt Rules and Regulations governing the use of the Common Areas, and the personal conduct of the members and their guests thereon, and to establish penalties for the violation thereof.

C. The right of invitees and business visitors of any Owner to ingress and egress over those portions of the Common Areas that lie within the dedicated road.

D. The driveways are restricted Common Areas, and the use of each driveway is restricted to the Owner of the unit which is served by the driveway.

## **ARTICLE III EASEMENTS**

Section 1. Easements for Utilities. Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Property, provided that such easements do not encroach upon the improvements.



Section 2. Easements for Encroachments. Each lot, and the property included in the Common Areas, shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings, and by driveways and pedestrian ways constructed by Declarant. A valid easement for said encroachments, and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more living units is partially or totally destroyed and then rebuilt, or is in need of repair, the Owners of the Lots so affected agree that such unit or portions thereof shall stand upon the same place as the original unit, thereby preserving the original easement and encroachment, and further agree that minor encroachments of parts of the adjacent living units on adjoining Lots or on the Common Areas due to such reconstruction or repair shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Other Easements. There is hereby created a blanket easement upon, across, over and under all of the Property, excluding those areas which are improved by residences, for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewers, gas, telephones, electricity and cable television. By virtue of this easement it is expressly permissible to erect and maintain the necessary transformers or other equipment on the Property, and to affix and maintain underground wires and conduits, sewer and water lines on land owned by an Owner.

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 residences or Common Areas, to maintain any utilities for which an easement has been granted and to prevent damage to any other residence. An easement is hereby reserved to Declarant to enter the Common Areas during the period of construction and sale of the Property, or any additions to the Property, 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 IV MEMBERSHIP AND VOTING RIGHTS**

Section I. 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 Declarant. Each Class A member shall be entitled to one vote. 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. Any member owning more than one Lot shall be entitled to cast one vote for each Lot owned by that member.

Class B. The Class B members shall be the Declarant, its successors or assigns, and shall be entitled to one vote for so long as one lot is owned by Declarant. The Class B membership shall cease and be converted to Class A membership when title to sixty-three (63) Lots has been transferred, or five (5) years after the first Lot has been conveyed by Declarant, whichever occurs first. Class A members shall not be entitled to vote for members of the Board of Directors until title to sixty-three (63) Lots has been transferred, or five (5) years after the first Lot has been conveyed by Declarant, whichever occurs first. In the event Sponsor exercises the right to terminate construction and development before all homes are constructed and sold, the Class B membership shall cease and be converted to Class A membership until the sooner of (a) five (5) years after the closing of the first home; or (b) the sale of ninety-five percent (95%) of the homes to be constructed.

## **ARTICLE V COVENANT FOR ANNUAL OR SPECIAL ASSESSMENT**

Section 1. Obligation to Pay Assessments. Each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association annual assessments and charges and special assessments for capital improvements or other extraordinary items. Annual assessments and charges may be imposed by the Board. Special assessments for the purpose of paying for capital improvements or other extraordinary items may be imposed by the Board with the consent of at least two-thirds (2/3) of the members.

Section 2. Uniform Equal Right 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.

Section 3. 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 a rate of one and one-half per cent (1-½ %) per month, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's lot, and interests, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by 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 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 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 Owner 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 lot Owners. The Association, acting on behalf of the Owners, 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 Owner's portion of the premium for fire and other hazard insurance. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

Section 4. 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, savings and loan association, pension fund, state or federal agency or other institutional lender or 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, 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 from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5. Exempt Property. All properties dedicated to, and accepted by, a local public municipality or authority, shall be exempt from the assessments created herein. However, no land or improvements devoted to residential occupancy use shall be exempt from said assessments.

Section 6. Loans to the Association. The Association's Board of Directors may borrow monies from time to time, so long as the repayment of the principal borrowed and the interest thereon shall be accomplished within the term of five (5) years. Loans that shall require payment over a longer term shall be first approved by two-thirds (2/3) of the votes of each Class of the members present in person or by proxy at a meeting duly called for this purpose.

In order to secure the repayment of any and all sums borrowed by it from time to time, the Association is hereby granted the right and power (i) to assign and pledge revenues received and to be received by it under any provision of this Declaration; (ii) to enter into agreement with note holders with respect to the collection and disbursements of funds; (iii) to apply funds received by the Association first to the payment of principal and interest, when due, on such loans; and (iv) to establish such collection, payment and lien enforcement procedures as may be required by note holders.

Section 7. Contractual Authority. The Association shall be entitled to contract with any corporation, firm or other entity for the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance by the Association hereunder.

**ARTICLE VI  
HAZARD AND LIABILITY INSURANCE**

Section 1. Hazard Insurance. Every Owner, at such Owner's own cost and expense, shall be required to obtain and maintain in force and effect a policy of fire insurance and extended coverage for the property owned by such Owner, insuring the building and fixtures in an amount sufficient to cover the full replacement cost thereof. Such policy of physical damage insurance shall contain written waiver of subrogation against the Association, its members or any tenant of its members.

In the event of damage to or destruction of any unit as a result of fire or other casualty, the Owner with the concurrence of his mortgagee, if any, upon receipt of the insurance proceeds, shall contract to reconstruct or repair his damaged or destroyed unit, in conformance with the original plans and specifications of the unit, including any damage to such Owner's portion of the party wall(s) within thirty (30) days from the receipt of the insurance proceeds and shall complete the reconstruction or repair of the exterior portion of the unit within six (6) months.

In the event the Owner's mortgagee shall refuse to allow the insurance proceeds to be used to reconstruct or repair the exterior portion of the unit, then and in that event the Owner shall pay over to such mortgagee such sum, including any part or all of the insurance proceeds, required for the discharge of his mortgagee's interest and use the balance of the insurance proceeds, if any, at Owner's election, to begin to reconstruct or repair the exterior portion of the unit within thirty (30) days from the receipt of the insurance proceeds and shall complete the reconstruction or repair of the exterior portion of the unit, including any damage to such Owner's portion of the party wall(s) within six (6) months.

In the event any Owner shall, (i) fail to reconstruct or repair the unit with the concurrence of his mortgagee, or (ii) fail to reconstruct or repair the exterior portion of the unit with or without the concurrence of such mortgagee, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot to reconstruct or repair the lot and the exterior portion of the unit and any other improvements erected thereon, including that portion of the party wall(s) located within the said Lot, in conformance with the original plans and specifications for said unit. The cost of such exterior reconstruction and/or repair, including interest, reasonable architect's, engineer and attorney's fees, shall be added to and become part of the assessment to which such Lot is subject. In the event the Owner of said lot shall fail to pay such assessment, the Board of Directors may enforce the collection of such assessment in the same manner as the enforcement of annual and/or special assessments provided under Article VI hereof.

Notwithstanding the foregoing provisions of this Article VI, Section 1, it is further provided that the requirements for maintenance of hazard insurance or the duty to reconstruct or repair the unit damaged or destroyed by fire or other casualty shall not apply to any unit acquired by the Veterans Administration or Federal Housing Administration under a mortgage foreclosure during the period of Ownership by either Federal agency.



The purpose of this Article VI, Section 1 is to assure maintenance of the exterior appearance of all units within the properties for the protection of the financial and aesthetic interest of the membership and the community.

Section 2. Liability Insurance. The Owner of any Lot, at such Owner's election, shall be solely responsible for securing public liability insurance to protect such Owner's interests as such Owner shall be so advised.

Section 3. Limitation on Hazards. No Owner shall permit or suffer anything to be done or left in the unit or garage which will increase the insurance rates on unit or garage or any other unit or garage.

## **ARTICLE VII OTHER INSURANCE**

Section 1. Liability 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. The Board of Directors shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Directors may from time to time determine, covering each member of the Board of Directors, the managing agent and each unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another.

Section 2. No Liability for Failure to Obtain Above Coverage. The Board of Directors shall not be liable for failure to obtain any of the coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is so available only at demonstrably unreasonable cost.

Section 3. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense if the loss involves property for which the Association has maintenance responsibility, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner and shall be collectible in the same manner as assessments under Article V of this Declaration.

## **ARTICLE VIII PARTY WALLS**

Section 1. The wall located on the property line between two units shall be known as a Party Wall maintained for the common benefit of the two unit Owners and shall be constructed with one-half of its thickness on each side of the dividing property line 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.

Section 2. The Party Walls shall be jointly used and maintained as party walls so long as the units shall be used and occupied as single family residences.

Section 3. Each unit shall be subject to such encroachments as are caused or created by the construction, settlement, repair or reconstruction of the Party Wall(s).

Section 4. Each unit Owner shall have full right to use the Party Wall(s) adjoining his unit for support and no construction shall penetrate the Party Wall other than beams (joists) for the support of the unit.

Section 5. No Party Wall may be extended nor increased in height.

Section 6. Where destruction of the Party Wall is caused by fire or other insured cause, it shall be rebuilt with the proceeds of insurance. In the event it shall become necessary to repair or reconstruct a Party Wall, or any portion thereof, because of deterioration, the cost thereof shall be borne equally by the adjoining unit Owners. In the event that damage to the Party Wall is caused as the result of negligence or carelessness on the part of a unit Owner or such Owner's invitees, then and in such event the cost to reconstruct that Party Wall shall be borne solely by such negligent or careless unit Owner.

Section 7. In the event a Party Wall is reconstructed, it shall be located in the same location and be of the same or similar materials and of the same quality and proportions as its original construction.

Section 8. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision shall be by a majority of all the arbitrators.

## **ARTICLE IX MAINTENANCE**

Section 1. Common Area Maintenance. The Association shall repair and maintain the Common Areas, including driveways and all landscaped areas; and maintain, repair and replace all pipes, wires and conduits located in the Common Areas for which a utility company or other entity is not responsible. The Association shall also be responsible for the maintenance of all lawns, shrubbery and other plants installed by the Association.

In addition to maintenance of the Common Areas as aforesaid, the Association shall be responsible for maintenance and snow removal of the driveways and maintenance and repair of the driveways and facilities comprising the Common Areas. In the event that the need for maintenance or repair is caused through the willful or negligent act of an

Owner, such Owner's family, guests or invitees, the costs of such maintenance and repairs shall be added to and become part of the assessment to which such Lot is subject.

Maintenance performed by the Association shall also include:

- a) Maintenance of the signs and those landscaped areas within the perimeter of Lots, Association property and dedicated street rights-of-way;
- b) Repair and replacement of exterior siding, gutters, downspouts and roofs of all homes and garages; painting of trim and window and door frames (but not including repair or replacement of windows, window panes or doors);
- c) Repainting (or re-staining), repair and replacement of exterior decks, patios, fences and rails;
- d) Plowing of snow from driveways and parking areas;
- e) Refuse collection;
- f) Maintenance of (i) fire and casualty insurance on the buildings; (ii) casualty and liability insurance on the Association property; and (iii) directors' and officers liability insurance for the officers and directors of the Association;
- g) Enforcement of restrictive covenants and establishment of rules and regulations governing the use of the Association property and the conduct of the Lot owners;
- h) Repair and replacement, as necessary of the Association property, including the driveways, parking areas, signs, and those portions of sewer, water and storm utility laterals (limited, however, to repair necessitated by leakage or structural failure) servicing one or more homes and not maintained by a utility company, public authority, municipality or other entity; and
- i) The Association shall not be responsible for repair or replacement of spalling concrete walks, stoops or patios.

## **ARTICLE X USE OF PROPERTY**

The use of a unit by a member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Directors and the following covenants and restrictions:

- A. Each member's unit and lot shall be maintained in good repair and overall appearance.
- B. Any member who mortgages or sells his unit shall notify the Board of Directors providing the name and address of his mortgagee or new Owner.
- C. The Board of Directors shall, at the request of the mortgagee of the unit, report any delinquent assessments due from the Owner of such unit.
- D. No nuisances shall be allowed upon the property 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 property by its residents.



E. No improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances, the regulations of all governmental bodies having jurisdiction thereof, shall be observed.

F. Regulations promulgated by the Board of Directors concerning the use of the property shall be observed by the members, provided, however, that copies of such regulations are furnished to each member prior to the time the said regulations become effective.

G. The maintenance and special assessments shall be paid when due.

H. No Owner or resident shall keep or maintain any animals or birds except a single dog, cat or bird. Pets must be housed indoors and cannot be housed, or fenced in, outdoors. Pets must be on a leash if taken outdoors and must be accompanied by an adult. Owners shall be responsible for picking up after pets.

I. No resident of a unit shall post any advertisement or posters for business, commercial or political purposes of any kind in or on the properties except as authorized by the Board of Directors. This paragraph shall not apply to Declarant.

J. No fence, gate, dog houses or other temporary or permanent structures of any kind and nature will be erected on the properties without the prior written consent of the Board of Directors. This paragraph shall not apply to Declarant.

K. No television or radio or satellite antenna or any other type of receiving or transmitting antenna nor awnings or other projections or structure shall be attached or erected on the exterior of units or on any lot, except satellite receivers not exceeding 18" in diameter, which must be approved by the Board of Directors of the Association.

L. No modification of any kind to the exterior of the units, either to the structure or the appearance thereof, including, but not limited to, the walls, roof, windows and doors, the color of exterior walls, roof, windows, doors and trim, awnings, mechanical devices, flags or storage structures shall be made without first obtaining the express written consent of the Association's Board of Directors, upon due written application made. The Board of Directors shall adopt such rules and regulations to enforce this section as it, from time to time, shall deem necessary.

M. Unit Owners are prohibited from constructing in-ground or above-ground swimming pools and from storing boats, trailers, motorcycles, bicycles, motor homes, campers or motor vehicles of any kind other than a licensed private passenger vehicle, which shall not be parked on the premises except in the unit garage, nor shall any person park a motor vehicle or otherwise obstruct any resident's use of ingress or egress to any sidewalk, garage or driveway, nor may any motor vehicle be parked on the roadways when parking would obstruct access by emergency or service vehicles.

N. No unit Owner shall install, or permit to be installed, any window mounted or through-the-wall mounted air conditioning unit.

O. No repair of motor vehicles shall be conducted on any of the roadways, driveways or Common Areas nor shall such areas be used for storage or parking of any boat, trailer, camper, bus, truck or commercial vehicle without the written permission of the Board of Directors.

P. No Owner shall make or permit any disturbing noises in any building or do or permit anything to be done therein which will interfere with the rights, comforts or conveniences of other Owners.

Q. Units may be used for residential purposes only.

R. The Common Areas shall not be obstructed, littered, defaced or misused in any manner.

S. Every Owner shall be liable for any and all damage to the Common Areas and the property of the Association which shall be caused by said Owner or such other person for whose conduct such Owner is legally responsible.

T. No interior alterations to a home are permitted which would impair the structural soundness of any Party Walls, reduce the levels of fire safety in neighboring units or diminish the heat and sound insulation between units.

U. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, wood piles, rubbish, refuse, garbage, trash or other waste material shall be kept, stored or allowed to accumulate outdoors. All such trash shall be kept within the garage or in the Owner's home. Trash containers may be placed outdoors within twenty-four (24) hours of a scheduled pick-up, at such place designated by the Board of Directors so as to provide access to persons making such pick-up. The Board of Directors may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

V. Residential Use Only. Except as provided in Section 11 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto, except that so long as the Declarant holds for sale any lot or dwelling on the property, the Declarant may use one or more lots or other portions of the property for model homes and/or a real estate office.

W. Commercial and Professional Activity on Property. No wholesale or retail business, and no salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the property, except (i) by the Declarant in conjunction with the initial construction, development, lease and sale of lots and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.



X. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Board of Directors.

## ARTICLE XI ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be constructed or maintained upon the Property, nor shall any exterior addition to or change or alteration be made until the plans and specifications showing the 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 and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more Owners appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location 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.

## ARTICLE XII 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 an 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. The provisions of this Declaration shall run with and bind the land, for a term of thirty (30) 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 thirty (30) year period by an instrument signed by not less than 90% of the lot Owners, and thereafter by an instrument signed by not less than 75% of the lot Owners. Any amendment must be recorded in the Monroe County Clerk's Office to become effective.

Section 4. Annexation of Additional Property. Annexation of additional property shall require the assent of three-fourths (3/4) of each Class of members at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast 60% of the votes of each Class of the members shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be two-thirds (2/3) of the

required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. FHA/VA Approval. As long as there is a Class B membership and the Lots have been approved for FHA/VA financing, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Areas and amendment of this Declaration.

Section 4. 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.

### **ARTICLE XIII AGE RESTRICTIONS**

Pursuant to a resolution adopted by the Town Board of the Town of Henrietta, New York, the Sponsor and subsequent owners of the property may not enter into an agreement for the rental or sale of a home unless at the time of such sale such home will be occupied by at least one person fifty-five (55) years of age or older, and the Association is charged with the requirement that at the time of such sale such unit will be occupied by at least one person fifty-five (55) years of age or older.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has caused this Declaration to be executed as of the day and date first above written.

**ERIE STATION PROPERTIES, LLC**

By: \_\_\_\_\_  
**CHRISTOPHER A. DIMARZO, Member**