

**DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS**

**- The Cottages at Auburn Meadows-**

NAME: The Cottages at Auburn Meadows Homeowners Association,  
Inc.

DEVELOPER A & D Development Company  
CO-SPONSOR: 22 Whitestone Lane  
Rochester, New York 14618

BUILDER NVR, Inc., d/b/a Ryan Homes of New York  
CO-SPONSOR: 1026 Union Road  
West Seneca, New York 14224

DATED: August \_\_\_, 2018

**BLOCK, LONGO, LAMARCA & BRZEZINSKI, P.C.  
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One Niagara Square  
Buffalo, New York 14202**

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS  
- The Cottages at Auburn Meadows -**

(The Cottages at Auburn Meadows Declaration)

**THIS DECLARATION** is made this \_\_\_\_ day of August, 2018, by A & D Development Company, a New York, having an office 22 Whitestone Lane, Rochester, New York 14618 hereinafter referred to as the "Developer Co-Sponsor", and NVR, INC., d/b/a Ryan Homes of New York, having an office at 1026 Union Road, West Seneca, New York 14224, hereinafter referred to as the "Builder Co-Sponsor" (hereinafter individually and/or collectively referred to as "Sponsor").

**W I T N E S S E T H :**

**WHEREAS**, Developer Co-Sponsor is the current owner of the real property described in Article II of this Declaration, which real property the Developer Co-Sponsor desires to develop as a residential community known or to be known as "The Cottages at Auburn Meadows" with open spaces for the benefit of said community; and

**WHEREAS**, Developer Co-Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces; and, to this end, desires to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each present and future owner thereof; and

**WHEREAS**, Developer Co-Sponsor desires that such real property be subdivided into Lots upon which are or will be constructed residential dwelling Units, which Lots and Units will be individually owned; and

**WHEREAS**, Developer Co-Sponsor has deemed it desirable, for the efficient preservation of the economic and aesthetic values, quality, character and amenities in said community, to create an entity to which should be delegated and assigned the powers of maintaining and administering the community property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer Co-Sponsor has incorporated THE COTTAGES AT AUBURN MEADOWS HOMEOWNERS ASSOCIATION, INC. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the aforesaid functions; and

**WHEREAS**, Builder Co-Sponsor has entered into an agreement with Developer Co-Sponsor to construct the residential dwelling Units in the The Cottages at Auburn Meadows subdivision.

**NOW, THEREFORE,** The A & D Development Company, for itself, its successors and assigns, hereby declares that the real property described in Section 2.01 hereof, and all Lots and/or Units into which all or any part of the aforesaid property may be subdivided, is and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth, and NVR, Inc., d/b/a Ryan Homes of New York, agrees to same by consent and joinder to this Declaration.

## **ARTICLE I DEFINITIONS**

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

- A. "ASSOCIATION" shall mean and refer to THE COTTAGES AT AUBURN MEADOWS HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "BUILDER CO-SPONSOR" shall mean NVR, Inc., d/b/a Ryan Homes of New York, its successor and assigns.
- D. "DEVELOPER CO-SPONSOR" shall mean and refer to A & D Development Company, its successors and assigns.
- E. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Willow Woods, as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- F. "LOT" shall mean and refer to any portion of the property identified as a separate parcel on the tax records of the Town of Farmington shown as a separate lot upon any recorded or filed subdivision map, with the exception of Association Property as heretofore defined, and shall be deemed to include, unless the context clearly requires otherwise, any Unit constructed thereon.
- G. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- H. "OWNER" shall mean and refer to the holder of record title, whether one, more than one person as joint tenants or tenants in common, or as a partnership, or other entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.

- I. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- J. "SPONSOR" shall mean and refer to A & D Development Company and/or NVR, Inc., individually and/or collectively.
- K. "UNIT" shall mean and refer to each completed residential dwelling unit.
- L. "MAINTENANCE ASSESSMENT" shall mean the monthly assessments or charges for the maintenance and operation of Association Property.
- M. "SPECIAL ASSESSMENTS" shall mean any special assessment made by the Board of Directors for capital improvements and repairs.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

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

**Section 2.02 Additional Property.** Other lands ("Additional Property") may become subject to this Declaration in the following manner:

(a) **Lands added by Developer Co-Sponsor without consent of Owners.** The Developer Co-Sponsor may, without the consent of the Unit Owners, within ten (10) years of the date of recording of this Declaration, bring within the scope of this Declaration any other lands consisting of future phases of the Willow Woods development, to be determined at such later dates in the Developer Co-Sponsor's discretion.

(b) **Lands added with consent of Owners.** The owner of any adjacent lands who desires to add such adjacent lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to the Declaration by the recording in the Ontario County Clerk's Office of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such Additional Property and thereby subject such additions to assessment for their fair share of the expenses of the Association and may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added adjacent properties and as are not inconsistent with the provisions of this Declaration.

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

**Section 3.01 Formation of The Cottages at Auburn Meadows Homeowners Association, Inc.** Pursuant to the Not-for-Profit Corporation Law of New York, the Developer Co-Sponsor has formed The Cottages at Auburn Meadows Homeowners Association, Inc. (the "Association") to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the rights and powers and be subject to the limitations of a not-for-profit corporation as contained in the New York Not-for-Profit Corporation Law as the same may be amended from time to time.

**Section 3.02 Membership.** The Association shall have as members only Lot/Unit Owners and the Developer Co-Sponsor for so long as Developer Co-Sponsor holds title to a Lot. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

**Section 3.03 Voting.** Each Owner, including the Developer Co-Sponsor, shall be entitled to one (1) vote regardless of the number of Units owned in any portion of the Property covered by this Declaration.

**Section 3.04 Lots Owned or Held by More Than One Person or by Corporation.** When any Lot/Unit is owned or held by more than one person as tenants by the entirety, in joint or common ownership or interest, or as partners, such Owners shall collectively be entitled to only one vote for such Lot/Unit. Upon the recording of title in the name of joint owners, a document can be filed with the Association designating which of the Owners shall have the right to cast votes for the Unit. If such a document is not filed, the Board of Directors may in good faith adopt a rule or policy for making a determination as to which of the Owners may cast the vote for the Unit.

In the case of a corporate Owner, votes may be cast by any duly authorized officer of such corporation.

**Section 3.05 Meeting and Voting Regulations.** The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

**Section 3.06 Selection of Directors.** The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association. The business and affairs of the Association shall initially be managed by a three (3) member Board of Directors designated by the Developer Co-Sponsor to serve until the first annual meeting of the Unit Owners, to be held within thirty (30) days after title to fifty percent (50%) of the Units has been transferred by Sponsor or if sooner, five (5) years after the date of transfer of the first Unit. At such annual meeting, Unit Owners shall elect a new Board of Directors consisting of five (5) members. The Developer Co-Sponsor agrees not to cast its votes to elect a majority of the Directors at such time. So long as the Developer Co-Sponsor continues to own one (1) or more Units, it shall be entitled to appoint one (1) member of the Board of Directors.

Nominations for election to the Board of Directors at the first annual meeting and thereafter shall be made by a nominating committee which shall consist of a Chairman, who may or may not be a member of the Board of Directors, and two or more members of the Association at least one of whom shall be a resident Owner. The Board of Directors shall also receive any nominations in writing presented by Unit owners not on the Nominating Committee at least ten (10) days prior to the annual meeting and shall include said nominations on the ballot. Write-in votes for persons other than those nominated by said committee shall also be permitted.

The first meeting of the Board of Directors shall be held not later than thirty (30) days after the date of the first closing of title to the first Unit conveyed to a resident Owner.

The term of office of the members of the Board shall normally be two (2) years or until their successors are elected except for members initially designated by the Developer Co-Sponsor. At the first annual meeting of the Association held for the election of a five (5) member Board, the Members shall elect three (3) Directors for a two (2) year term and two (2) Directors for a one (1) year term except that if only two members are elected in a case as provided above where there are fewer than eight (8) Unit Owners other than the Developer Co-Sponsor, the term of such members shall be two (2) years. At the expiration of the initial term of office of each member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years.

Subject to the limitations set forth in the following paragraph, at any regular or special meeting of the Owners, any member of the Board elected by the Owners may be removed (i) without cause, by the affirmative vote of not less than two-thirds (2/3) of all Owners other than the Developer Co-Sponsor, and (ii) with cause, by the affirmative vote of not less than a majority of all Owners, other than the Developer Co-Sponsor, and a successor may then and there or thereafter be elected to fill the vacancy thus created.

Any member of the Board of Directors whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Members of the Board of Directors appointed by the Developer Co-Sponsor may be removed without cause only by the Developer Co-Sponsor, but may be removed for cause in the same manner as any other member of the Board of Directors may be removed for cause. The successor to such removed member shall be appointed by the Developer Co-Sponsor.

Any officer may be removed by the Board of Directors, with or without cause, whenever in the judgment of the Board, the best interests of the Association will be served thereby.

**Section 3.07 Powers and Duties of Directors.** The powers of the Board of Directors shall be as set forth in the By-Laws of the Association.

**Section 3.08 Indemnification of Officers and Directors.** Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, imposed upon or reasonably incurred by such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being, or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

**Section 3.09 Developer Co-Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.** Notwithstanding anything to the contrary contained in this Declaration, so long as the Developer Co-Sponsor holds title to any Lot or portion of the Property, the Board of Directors may not, without the Developer Co-Sponsor's written consent, which consent may not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) increase the amount or proportion of the budget allocated to reserves; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Association Property. So long as the Developer Co-Sponsor holds title to any Lot or portion of the Property, this Section shall not be amended without the written consent of the Developer Co-Sponsor.

#### **ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**

**Section 4.01 Dedication of Association Property.** Developer Co-Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property". The Association

must accept any such conveyance made by the Developer Co-Sponsor provided such conveyance is made without consideration.

**Section 4.02 Rights and Easements of Lot Owners.** Subject to the rights and easements of the Association as set forth in Sections 4.03 and 4.04 herein and the rights and easements of the Developer Co-Sponsor as set forth in Section 4.05 herein, each Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have the following rights and easements, provided no such easement shall interfere with the use of any Unit as a dwelling:

- (a) Enjoyment - the right to enjoy all Association Property;
- (b) Ingress and Egress - an easement by vehicle or on foot for ingress or egress in common with other Lot Owners and the Developer Co-Sponsor over all walkways, driveways and roadways located on Association Property;
- (c) Utility Lines - an easement for the installation, use, repair, maintenance and replacement of utility lines including water, electric, cable television, sanitary sewer, storm sewer and drainage servicing the Lot of such Owner.

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

- (a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of and maintain the value, aesthetic appearance, quality, character, and structural integrity of the Units in such manner as, in the discretion of the Association, shall serve to promote the best interests of the Lot Owners;
- (b) to grant easements or rights-of-way, with or without consideration, to any public or private utility corporation, cable television company, governmental agency or political subdivision; provided no such easement or right of way shall interfere with the occupancy of any Unit as a dwelling;
- (c) to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Unit Owners other than the Developer Co-Sponsor.
- (d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which

shall be sent to every Member not less than ten (10) days nor more than fifty (50) days in advance of the date or initial date of the canvass thereof.

**Section 4.04 Right of Association to Contract Duties and Functions.** The Association may contract with any person, corporation, firm, trust company, bank or other entity for the performance of its various duties and functions.

**Section 4.05 Rights and Easements of Developer Co-Sponsor.** With respect to Association Property and in addition to the rights reserved in Section 4.06 below, so long as the Developer Co-Sponsor holds title to any Lot or dwelling Unit on lands described in any Schedules to this Declaration (whether or not subject to this Declaration), the Developer Co-Sponsor shall have the right to:

(a) grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone and sewer to service the Property;

(b) connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property;

(c) use the Association Property for ingress and egress to the Property;  
and

(d) grant to itself or to others such other easements and rights-of-way as may be reasonably needed for the orderly development of the Property.

The easements, rights-of-way and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Developer Co-Sponsor and their successors and assigns. With respect to its exercise of the above rights, the Developer Co-Sponsor agrees to repair any damages resulting from exercise thereof within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs. So long as the Developer Co-Sponsor holds title to any portion of the Property, this Section shall not be amended without the written consent of the Developer Co-Sponsor, which consent shall not be unreasonably withheld.

**Section 4.06 Environmental Considerations.** In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Article IX herein, the Association shall consider the impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse impact of its activities or take affirmative action to improve the quality of the Property.

**Section 4.07 Notice of Condemnation of Association Property and Resolution of Dispute as to Allocation of Award.** The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceedings affecting Association Property to all Lot Owners and to those lending

institution first mortgagees of Lots whose names appear on the books or records of the Association.

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

## **ARTICLE V ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW**

**Section 5.01 Imposition, Personal Obligation, Lien.** Each Lot or Unit Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

(a) monthly assessments or charges for the maintenance and operation of Association Property, or other property which the Association is obligated to maintain, unless otherwise specified by the Board of Directors ("Maintenance Assessments"); and

(b) special assessments for capital improvements to Association Property, or property which the Association is obligated to maintain, and unbudgeted or extraordinary expenses of the Association ("Special Assessments");

together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot and Unit against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot and Unit at the time the Assessment falls due.

**Section 5.02 Purpose of Maintenance Assessment.** The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Association Property and the Association's officers, directors, Members and employees obtained pursuant to Article VIII of this Declaration, for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots, such as roadways and landscaped areas, if applicable, and the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise. Funding of expenses as herein described, may be on a current basis, or by establishing such reserve accounts as the Board of Directors in its judgment deems appropriate, or a combination thereof.

**Section 5.03 Date of Commencement and Notice of Assessments.** The Assessments provided for herein shall commence on the day on which the first Unit is conveyed or on such date thereafter as determined by the Developer Co-Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Unit at least thirty (30) days in advance of each monthly Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Written notice of the monthly Assessments shall be sent to every Owner subject thereto.

**Section 5.04 Assessments for Specific Units.** Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Unit subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, except that the Developer Co-Sponsor will only be obligated for the lesser of (i) the difference between the actual Association expenses (including budgeted amounts for reserves) and the aggregate amount of assessments levied on Owners who have closed title to their Units; or (ii) Maintenance Assessments and Special Assessments on all unsold Units.

**Section 5.05 Basis for Maintenance Assessment.** Subject to a lesser amount payable by the Developer Co-Sponsor as permitted by Section 5.04 above, the monthly Maintenance Assessment shall be the same for all Units subject to this Declaration so that the number of assessed Units divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the monthly Maintenance Assessment for each Unit.

**Section 5.06 Change in Basis of Assessments.** The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Unit Owners, excluding the Developer Co-Sponsor, voting in person or by proxy, written notice of which change shall be sent to all Unit Owners at least forty (40) days in advance of the date or the initial date set for voting thereon, except that, so long as the Sponsor holds title to any dwelling unit on lands described in any Schedules to this Declaration (whether or not subject to this Declaration), any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold dwelling Units shall require the specific consent of the Developer Co-Sponsor in writing.

Any change in the basis of Assessments shall be equitable and non-discriminatory within the following classifications: (i) Units paying full Maintenance Assessments, and (ii) Units paying less than full Maintenance Assessments pursuant to Section 5.04 above.

**Section 5.07 Special Assessments for Capital Improvements.** In addition to the monthly Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of or repair of a capital nature (but excluding items the cost of repair or replacement of which is included

in the Maintenance Assessment) to the Association Property or to any other property which the Association has the responsibility to maintain, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of monthly Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Unit Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Unit Owners at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

**Section 5.08 Non-Payment of Assessment.** If an Assessment, or installment thereof, is not paid on the due date established pursuant to Section 5.03 hereof, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such late charges and interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation notwithstanding a disposition by such Owner of his interest.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 2% per month of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within thirty (30) days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the Unit of such Owner, and the cost of such proceedings, including reasonable attorneys' fees shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

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

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

**Section 5.09 Notice of Default.** The Association, when giving notice to a Unit Owner of a default in paying Assessments, may, if its officers so determine, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address appears on the Association's records. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of said Assessments.

**Section 5.10 Right to Maintain Surplus.** The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

**Section 5.11 Assessment Certificates.** Upon written demand of an Owner, mortgagee or lessee with respect to a Unit which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or mortgagee of the Lot or Unit on which such certificate has been furnished.

**Section 5.12 Subordination of Assessment Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which shall have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Lot from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

**Section 5.13 Right to Borrow and Mortgage.** In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with lenders shall be subject solely to the discretion of the Board of Directors, except that (i) any member of the Board of Directors of the Association who has been elected or appointed by the Developer Co-Sponsor shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Developer Co-Sponsor, and (ii) any consent of

the Developer Co-Sponsor as required by Section 3.09 of this Declaration must be obtained.

**Section 5.14 Repayment of Monies Borrowed.** In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

(a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments and Special Assessments hereunder;

(b) to enter into agreements with lenders with respect to the collection and disbursement of funds, including, but not limited to, agreements wherein the Association covenants to:

(i) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;

(ii) establish sinking funds and/or other security deposits;

(iii) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or in the Board's discretion to apply the same to such purpose after providing for costs of collection;

(iv) establish such collection, payment and lien enforcement procedures as may be required by the lenders;

(v) provide for the custody and safeguarding of all funds received by it.

## **ARTICLE VI MAINTENANCE**

**Section 6.01 Units.** With respect to the Units, the Unit Owners or Lot Owner shall be responsible for all maintenance and repairs necessary to the interior and exterior thereof. All Units shall be maintained in a uniform fashion by the Owner thereof, with any color, structural or design changes subject to written approval from the Board of Directors.

The Association may increase (or decrease) its maintenance responsibilities, provided (i) such increase or decrease is approved in writing by two-thirds (2/3) of all Owners other than the Developer Co-Sponsor and (ii) if such increase or decrease is proposed while the Developer Co-Sponsor holds title to any portion of the Property or Additional Property, (whether or not subject to this Declaration) the written consent of the Developer Co-Sponsor will be required.

Any maintenance, repair or replacement with respect to the Units which is not the responsibility of the Association is the responsibility and shall be made at the cost and expense of the respective Owner(s).

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.03 of this Declaration.

**Section 6.02 Repairs and Maintenance Which Are Not the Responsibility of the Association.** Any maintenance, repair or replacement necessary to preserve the appearance, aesthetic quality, character, structural integrity and value of the Property or any improvement thereon made pursuant to Section 6.01 above but which is occasioned by a negligent or willful or intentional act or omission of an Owner (including (a) any family member, tenant, guest or invitee of such Owner; (b) any family member, guest or invitee of the tenant of such Owner; and (c) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner), or the Developer Co-Sponsor shall be made at the cost and expense of such Owner or the Developer Co-Sponsor as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit, as the case may be, to secure the payment thereof. Unit Owners shall be responsible for repair and replacement of driveways and paved walkways located on the individual Lots.

Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing only one (1) Unit and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall be the responsibility of, and at the expense of, the Owner of the Unit so serviced. The Owner of the Unit served by the sewer lateral shall be responsible for cleaning or unclogging it.

**Section 6.03 Quality and Frequency of Maintenance and Repairs.** All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the aesthetic quality, character, structural integrity and appearance and value of the Property.

**ARTICLE VII**  
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**ARTICLE VIII**  
**INSURANCE**

**Section 8.01 Insurance to be Carried.** To the extent reasonably obtainable and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (i) casualty insurance for the Association Property, as appropriate, (ii) liability insurance for occurrences on the Association Property, (iii) directors' and officers' liability insurance

covering negligent or wrongful acts or omissions of officers and directors of the Association, (iv) fidelity bond covering those who handle association funds, (v) worker's compensation insurance covering Association employees, and (vi) "umbrella" catastrophe coverage, if deemed necessary or appropriate.

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

**Deductible.** The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense; provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the negligent, malicious or wrongful act or omission 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 Unit 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.

**Section 8.02 Insurance Carried by Unit Owners.** Each Owner of a Lot or Unit shall be responsible for and shall obtain their own fire and casualty insurance covering such Unit in an amount necessary and sufficient to assure the full replacement and reconstruction of the damaged Unit. Such Unit Owners shall also maintain comprehensive general liability insurance coverage on their Unit and Lot. All Unit and Lot Owners shall be responsible individually for insurance coverage for their contents and personal property.

## ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS

### ARCHITECTURAL CONTROL COMMITTEE

An Architectural Control Committee ("ACC") shall be and is hereby established. It shall consist of NVR Inc., d/b/a Ryan Homes of New York ("Ryan"). No home owner involvement will be allowed until 100 percent of the homes in the Subdivision are sold and closed. If Ryan has title to any lot in the Subdivision, it shall have the exclusive right to act on behalf of the ACC. However, if Ryan no longer owns any lot in the Subdivision, has no valid and binding contract to acquire lots in the Subdivision, or is in default beyond any applicable notice and cure period under its contract to purchase lots in the Subdivision, or upon the recording of the last deed to a lot in the Subdivision to Ryan, A & D Development Company shall have the exclusive right to act for the ACC. When Ryan and A & D Development company own no further lots in the Subdivision, the ACC will consist of three (3) homeowners chosen by the owners of the lots in the Subdivision. The members of the ACC shall then designate one member to serve as Chairperson. Approval of the ACC shall be a majority vote.

**Section 9.01 Approvals.** When the approval of the ACC is required, such approval shall be in writing and signed by the Chairperson of the ACC. Applications for such approval shall be in writing unless the requirement is waived by the ACC.

**Section 9.02 Residential Usage.** No home sites shall be used for other than residential purposes and the usual and normal uses connected therewith. No structure except for the home shall be used as a residence either temporarily or permanently.

**Section 9.03 House Design, Change and Additions.** No building shall be erected or altered on any home site until location, construction plans and specifications have been approved by the ACC, with regard to both quality of materials and workmanship. No building, additional buildings or structures on any home site may be altered or added in any way that affects the exterior appearance without the above-mentioned approval of the ACC, including, but not limited to, dog houses, fences, additions to the frame of the home, porches, sheds and fireplace chases. No metal sheds are permitted. A non-metal shed, tool-house, greenhouse, hot tub or wooden deck may be placed on any home site if the design is compatible with the main house, in compliance with all applicable laws of the town, and is out of view from the street and approved by the ACC.

**Section 9.04 Maintenance and Upkeep.** Each homeowner shall maintain his home site and any structures contained within, including, but not limited to, repairing, staining and painting.

**Section 9.05 Fences.** Fences shall not be erected and placed on any home site nearer to any street than the rear line of the home. Fences are limited to six (6) feet in height and may not be chain link or wooden type (locations and type to be approved by the ACC) and must comply with all Town requirements. These structures shall be maintained in such a manner so that they do not obstruct sight lines of vehicular traffic.

**Section 9.06 Gardens, Lawns and Decorations.** Homeowners shall be responsible for additional seeding, watering and mowing of the entire home site, including street rights-of-way. Lawns must be seeded within nine (9) months after the date of transfer of the title. Responsibilities also include the trimming and pruning of trees, hedges and plantings. Holiday decorations must be removed within thirty (30) days of the holiday. Decorations or ornaments shall be maintained in such a manner so that they do not obstruct sight lines of vehicular traffic.

**Section 9.07 Parked, Motorized, and Stationary Vehicles.** Motorized or stationary recreational vehicles including, but not limited to, mobile homes, campers with or without trailers, snowmobiles, boats, commercial vehicles and motorcycles may not be stored or parked on any outside portion of any home site, unless they are hidden behind a fence and out of public view. An exception will be made to permit these vehicles to be parked within public view for no longer than seventy-two (72) hours.

No extensive repair work on any of the items referred to in this subparagraph shall be permitted outdoors on any home site.

Non-operable and/or non-registered motor vehicles will not be permitted to be stored or parked on any outside portion of any home site. No snowmobiles or all-terrain vehicles are permitted for operation in the Subdivision.

No overnight parking shall be permitted on or along the main Subdivision streets.

**Section 9.08 Pets.** No animals/livestock or poultry of any kind shall be raised, bred or kept in any home site except for domestic or customary household pets.

**Section 9.09 Garbage Containers and Clotheslines.** Garbage and other waste materials shall be kept in sanitary containers and concealed from public view. No clotheslines shall be permitted and clothes are not to be hung or placed anywhere in public view.

**Section 9.10 Signs.** Signs shall not be displayed to the public on any home site unless it is approved by the ACC; provided, however, any sign used by either Ryan or A&D Development Company to advertise the property during the sale and construction period or real estate agent's signs shall be permitted without consent. These signs will be placed in a manner which will not obstruct sight lines of traffic.

**Section 9.11 Audio and Visual Disturbances.**

(a) **Sound.** Sound levels produced within a home are not to exceed the average intensity of the street traffic noise in that area.

(b) **Lighting.** Lighting shall not disturb or adversely affect neighboring properties and/or safety of those in motor vehicles. Except during construction of improvements on a home site, no activity, which is considered offensive due to odor, sound or appearance shall be permitted.

**Section 9.12 Exterior Coverings/Color Schemes.** Color schemes of homes upon closing shall stay intact for five (5) years unless a variation is approved by the ACC.

**Section 9.13 Pools.** Professionally installed in-ground pools are acceptable if built and located in accordance with Town requirements. ABOVE GROUND POOLS ARE NOT PERMITTED IN ANY CIRCUMSTANCE. All in-ground pools must be out of public view from the street and must be enclosed by a wooden or approved fence.

**Section 9.14 Antennas.** Antennas for both radios and televisions will be permitted if built and located in accordance with Town requirements.

**Section 9.15 Satellite Dishes.** Full size satellite dishes will not be permitted in the community. Up to eighteen (18") inch satellite dishes are permitted. Satellite dishes cannot be mounted on the front of any home or garage and if mounted in the side of the home, they must be in the rear.

**Section 9.16 Enforcement of Covenants and Restrictions.** The ACC or any homeowner shall have the right, but not the obligation, to enforce by any proceedings at law or in equity, all covenants, restrictions and conditions now or hereafter imposed by

the provisions of this Declaration. Failure to enforce any covenants, restrictions and conditions set forth herein shall in no event be deemed a waiver to the right to do so thereafter. Violations must pay all attorneys fees and expenses of enforcement.

**Section 9.17 Headings.** Headings are for the purpose of convenience and identification only and shall not be used to interpret or otherwise construe the covenants, restrictions and conditions as set forth in this Declaration.

**Section 9.18 Survival.** The invalidity of any one or more of these covenants, restrictions and conditions by judgement or court order shall in no way affect the continuing validity of the remaining covenants, restrictions and conditions which shall continue in full force and in effect.

**Section 9.19 Duration.** The covenants, restrictions and conditions set forth herein shall run with the land and be binding upon all lot owners, their heirs, legal representatives, successors and assigns for a period of fifteen (15) years from the date of this Declaration is recorded and then they shall automatically be extended for successive periods of ten (10) years, unless an instrument terminating or amending said covenants, restrictions and conditions is signed by a majority of the lot owners in the Subdivision and is recorded in the Ontario County Clerk's Office.

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

**Section 10.01 Declaration Runs With the Land.** Each person or entity acquiring an interest in a Lot, or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner or occupant thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument transferring an interest in such Unit or other portion of the Property.

**Section 10.02 Enforcement.** The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of any be enforceable by the Developer Co-Sponsor and the Association (being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors and assigns.

**(a) Actions at Law or Suits in Equity.** The Association, or any Member or 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. Before an individual Owner may take any action to enforce this Declaration, written demand must be made on the Board of Directors of the Association to take such action as contemplated by the Owner. The Board of Directors shall have thirty (30) days in which to proceed or permit the Owner to proceed. As it may be impossible to

measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of this Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

(b) **Penalties and Fines.** In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or rules and regulations of the Association or any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Unit Owner or Unit occupant shall be deemed a Special Assessment against the Unit and Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Unit, shall constitute a personal obligation of the Unit Owner and such occupant if other than the Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

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

**Section 10.04 Obligation and Lien for Cost of Enforcement by Association.** If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, or the rules and regulations promulgated pursuant hereto, the costs of such action, including legal fees, shall become a binding, Personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Unit or other portion of the Property owned by such Owner.

**Section 10.05 Notification to Association of Mortgagees and Default Notice to be Sent to Mortgagees.** The Association shall be notified by each Unit Owner or such Unit Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Lot/Unit. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

**Section 10.06 Amending or Rescinding.** The Sponsor, during the time the Sponsor owns any lots, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any home

Owner without such home Owner's written consent. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of the Owners of not less than two-thirds (2/3) of all homeowners which are subject to this Declaration, not including those homeowners owned by the Sponsor. In addition, and notwithstanding the above, so long as the Sponsor holds title to any Lot or dwelling homeowner on lands described in any Schedules to this Declaration (whether or not subject to this Declaration), the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, as determined by the Sponsor, which consent may be withheld by the Sponsor in its sole discretion.

In voting for such amendment or rescission, Owners shall have one (1) vote each regardless of the number of homes owned.

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

In addition to the approval of the Owners and Sponsor as provided for herein, no amendment or rescission which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose Owners specifically consent in writing to such termination, extinguishment or modification.

**Section 10.07 Owner Responsible for Tenants.** Any lease of a homeowner shall provide and specify in writing that the tenant shall comply in all respects with the terms of this Declaration, and the By-Laws, rules and regulations, if any, of the Association. If a tenant or guest of a Lot Owner or tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Sections 10.02 and 10.04 of this Declaration.

**Section 10.08 When Amendment or Rescission Becomes Effective.** Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Ontario County Clerk's Office. Such instrument need not contain the written consent of the required

number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been given in writing or by vote duly taken at a meeting of the Association.

**Section 10.09 Duration.** The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof perpetually, unless terminated or its duration shortened by affirmative vote of not less than 80% of Lot Owners after a hearing is held to discuss same.

**Section 10.10 Construction and Interpretation.** The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

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

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

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

**Section 10.12 Change of Conditions.** No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

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

## **ARTICLE XI GENERAL**

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

**Section 11.02 Right Reserved to Developer Co-Sponsor to Impose Additional Protective Covenants.** The Developer Co-Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

**Section 11.03 Notice.** Any notice required to be sent to the Developer Co-Sponsor or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Developer Co-Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

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

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

A & D DEVELOPMENT COMPANY

By: \_\_\_\_\_  
Anthony DiPrima, President

NVR, INC., d/b/a Ryan Homes of New York

By: \_\_\_\_\_  
Thomas Delaney, Vice President and  
Market Manager

STATE OF NEW YORK     )  
COUNTY OF ONTARIO   ) ss:

On the \_\_\_\_\_ day of July in the year 2018, before me, the undersigned, a Notary Public in and for the State, personally appeared Anthony DiPrima, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
COUNTY OF ONTARIO   ) ss:

On the \_\_\_\_\_ day of July in the year 20168 before me, the undersigned, a Notary Public in and for the State, personally appeared Thomas Delaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

A & D DEVELOPMENT COMPANY

By: \_\_\_\_\_  
Anthony DiPrima, President

NVR, INC., d/b/a Ryan Homes of New York

By: Thomas Delaney  
Thomas Delaney, Vice President and  
Market Manager

STATE OF NEW YORK     )  
COUNTY OF ONTARIO    ) ss:

On the \_\_\_\_\_ day of July in the year 2018, before me, the undersigned, a Notary Public in and for the State, personally appeared Anthony DiPrima, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
COUNTY OF ONTARIO    ) ss:

On the 31<sup>st</sup> day of July in the year 20168 before me, the undersigned, a Notary Public in and for the State, personally appeared Thomas Delaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Tricia M. Banks  
Notary Public

Tricia M. Banks  
Notary Public, State of New York  
No. 01BA6157706  
Qualified in Monroe County  
Commission Expires Dec. 11, 2018

A & D DEVELOPMENT COMPANY

By: *Anthony DiPrima*  
Anthony DiPrima, President

NVR, INC., d/b/a Ryan Homes of New York

By: \_\_\_\_\_  
Thomas Delaney, Vice President and  
Market Manager

STATE OF NEW YORK )  
COUNTY OF ONTARIO ) ss:

On the 5<sup>th</sup> day of September in the year 2018, before me, the undersigned, a Notary Public in and for the State, personally appeared Anthony DiPrima, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

*[Signature]*  
Notary Public

CORRECTION  
Notary Public in the State of New York  
MONROE COUNTY #4725888  
Commission Expires April 30, 2022

STATE OF NEW YORK )  
COUNTY OF ONTARIO ) ss:

On the \_\_\_\_\_ day of July in the year 20168 before me, the undersigned, a Notary Public in and for the State, personally appeared Thomas Delaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public