

**DECLARATION  
OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

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**THIS DECLARATION**, made the \_\_\_\_ of \_\_\_\_ 1992, by COTTRONE DEVELOPMENT CO., INC., a New York corporation with its principal office located at 675 Ling Road, Rochester New York 14612, hereinafter called "Declarant".

WHEREAS, Declarant is the owner of certain real property in the Town of Greece, Monroe County, New York, more particularly described in Schedule "A" (Original 1992 budget; not attached.) attached hereto and which is known as the Rosewood Villas Homeowners Association; and

WHEREAS, the Declarant wishes to provide for the preservation of the values in this senior citizen community and for the maintenance of the buildings and the open spaces and desires to subject the real property described in Schedule "A" (Original 1992 budget; not attached.) to the covenants, conditions, easements and restrictions herein set forth, which are for the benefit of the Property and each owner of a home therein; and

WHEREAS, the Declarant has deemed it desirable for the preservation of the values and amenities in this senior citizen community to create an Association to which should be delegated the power to maintain and administer the Property with the power to enforce the covenants and restrictions and to collect and disburse the assessments and charges hereinafter created; and

WHEREAS, the Declarant has incorporated Rosewood Villas Homeowners Association, Inc., under the Not-For-Profit

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Corporation Law, of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, Declarant hereby declares that all of the real estate described in Schedule "A" (Original 1992 budget; not attached.) shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the real property, and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

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

**Section 2. "Common Area"** shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area shall be conveyed to the Association prior to the conveyance of the first unit in this project.

**Section 3. "Declarant"** shall mean and refer to Cottrone Development Co., Inc., its successors and assigns if such successor or assign shall acquire more than one undeveloped Lot from Declarant for the purpose of development.

**Section 4. "Declaration"** shall mean and refer to this Declaration of Covenants, Conditions, Easements and Restrictions

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as it may be from time to time amended or extended as provided herein.

**Section 5. "Lot"** shall mean and refer to any plot of land shown upon any recorded subdivision map or re-subdivision map of the Property, with the exception of the Common Area.

**Section 6. "Property"** shall mean and refer to that certain real property described in Schedule "A" (Original 1992 budget; not attached.), and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 7. "Owner"** shall mean and refer to the record Owner, whether it be one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

## ARTICLE II

### PROPERTY RIGHTS

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**Section 1. Owner's Easement of Enjoyment.** Every Owner shall have a right and an easement of enjoyment to the Common Area, including the right of ingress and egress to an Owner's Lot over the Common Area, 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, pursuant to its By-Laws, to adopt rules and regulations governing the use of the Common Area and the personal conduct of the members and their

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guests thereon, and to establish penalties for the infraction thereof.

- (b) the right of the Association to suspend the right to the use of the Common Area by an Owner for any period during which any assessment against that Owner's Lot remains unpaid, and for a period not to exceed 60 days for any infraction of the Association's published rules and regulations.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members approving such transfer. No such dedication or transfer shall be effective unless an instrument signed by 75% of each class of members, and their mortgagees, agreeing to such dedication or transfer has been recorded.
- (d) the right of the individual members to the exclusive use of any parking spaces which may be provided for members upon the Common Area.
- (e) the right of invitees and business visitors of any Owner for ingress and egress over those portions of the Common Area that lie within private roadways.
- (f) the right of the Association to designate certain portions of the Common Area as sidewalks for Owners, their invitees and business guests.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, that owner's right of enjoyment to

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the Common Area to family members, tenants or contract purchasers who reside on an Owner's Lot.

**Section 3. Rights of Association.** In accordance with the Certificate of Incorporation and with respect to the Common Area owned by the Association, the Association shall have the right:

- (a) to promulgate and enforce reasonable rules and regulations relating to the use, operation, and maintenance of the Association property, in the discretion of the Association; and
- (b) to grant easements or rights-of-way, with or without consideration, to any public or private utility, cable television company, governmental agency or political subdivision.

### **ARTICLE III**

#### **EASEMENTS**

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**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 until closing has occurred on the last Lot, provided that any such easement shall be located within ten (10) feet of a Lot line, or within the Common Area.

**Section 2. Association Easements.** An easement is hereby granted to the Association, its officers, agents, and employees, including employees of any management company having a contract with the Association, over all of the Common Area, to perform the duties of maintenance and repair to the Common Area, to maintain

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any utilities for which an easement has been granted and to prevent damage to the Common Area. An easement is hereby reserved to Declarant to enter the Common Area during the period of construction and sale of the Property to maintain the Common Area and to perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots, including, without limitation, a business office, sales office, storage area, construction yard, signs and model units, provided that this does not unreasonably obstruct access by members of the Association.

### **ARTICLE IV**

#### **MEMBERSHIP AND VOTING RIGHTS**

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**Section 1. Membership.** Every Owner of a Lot which is subject to this Declaration and to assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting Rights.** The Association shall have two classes of voting membership. Class A members shall be all members with the exception of the Declarant, and any other person or entity which acquires title to all or a substantial portion of the Property for the purpose of developing thereon a residential community. Each Class A member shall be entitled to only one vote regardless of the number of Lots owned. When more than one (1) person holds an interest in any Lot, such persons together

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shall constitute an organization which shall be one member entitled to cast one vote. The vote for such Lot shall be exercised as the persons who constitute the organization shall among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Each person who is a part of such organization shall severally be entitled to the other rights and subject to the other obligations of membership. Class B members shall be the Declarant or its successors or assigns, and shall be entitled to one vote for each Lot owned. The Class B membership shall cease and be converted into Class A membership on July 1, 1996, or when twenty-seven (27) Lots within the Association have closed and record title transferred, whichever is earlier. Prior to such date, Class A members shall not be entitled to vote for membership on the Board of Directors.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

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**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of a Lot by acceptance of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay as of the date of transfer of title to the Association annual maintenance assessments or charges, such assessments to be established and collected as hereinafter provided. The annual maintenance assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the

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person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

**Section 2. Rate of Assessment.** Maintenance assessments shall be fixed at a uniform rate for all Lots. Once assessments have been established, during the period the Declarant owns more than forty-nine percent (49%) of the Lots, the maintenance assessment shall not be raised more than fifteen percent (15%) above the prior year's assessment except that an increase may be cumulative to the extent of the unused portion of the previous year or years' increases and the fifteen percent (15%) maximum increase.

**Section 3. Due Dates for Annual Assessment.** The Board of Directors shall fix the amount of the annual assessment against each Lot at least forty-five (45) days in advance of the start of the Association's fiscal year. Written notice of the annual assessment shall be sent to every Owner subject thereto. Unless the Board otherwise provides, one-twelfth (1/12th) of the annual maintenance assessment shall be due on the first day of each month. The Association or the Managing Agent shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Managing Agent setting forth whether the assessments on a specified Lot have been paid.

The Owner shall pay a prorated share of one-twelfth (1/12) of the monthly assessment at the time of acceptance of the deed.

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**Section 4. Effect of Non-payment of Assessment and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall become a lien against that Lot, and shall bear interest from the due date at the legal rate. The Association may bring an action at law against the Declarant or Owner personally obligated to pay the same, or may foreclose the lien against the Lot, and late charges, interest, costs and reasonable attorneys' fees for any such action shall be added to the amount owing. Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each charge, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association the power of sale in connection with such lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at a foreclosure sale and may acquire such interest to hold, lease, mortgage or convey the same. No Owner may waive or otherwise escape liability for the

assessments provided for herein by non-use of the Common Area or abandonment of the Lot.

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**Section 5. Subordination of the Lien to Mortgages.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

**Section 6. Special Assessments.** Special assessments may be levied by a vote of two-thirds (2/3) of both Class A members and Class B members.

## ARTICLE VI

### EXTERIOR MAINTENANCE

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

**Section 2. Exterior Building Maintenance.** In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each building as follows: paint, stain, repair, replace and protect roofs, gutters, downspouts,

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exterior building services, and other exterior improvements including snowplowing of driveways. Such exterior maintenance shall not include any patios, glass surfaces or doors, screen, or screen doors, or exterior light fixtures.

**Section 3. Repairs and Maintenance Which Are Not the Responsibility of the Association.** Any maintenance, repair, or replacement necessary to preserve the appearance and value of the Property but which is occasioned by a negligent or willful act or omission of an Owner (including any family member, tenant, guest or invitee of the Owner) or the Declarant shall be made at the cost and

expense of such Owner or the Declarant, 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 rather shall be considered an expense attributable to the specific Lot and such cost shall be added to that Owner's assessment and shall constitute a lien on the Lot to secure the payment thereof. Maintenance of the Lot and the home thereon shall not be provided by the Association, and shall be the responsibility of the Lot Owner.

## **ARTICLE VII**

### **OWNERSHIP AND OCCUPANCY OF HOMES**

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**Section 1. Ownership Restriction.** Ownership of homes in this project shall be restricted to individuals who are at least 55 years of age at the time they take title to a home. If more

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than one individual holds title to the home, at least one of those individuals must be at least 55 years of age.

**Section 2. Occupancy of the Homes.** Persons under the age of 12 years old are not permitted to be residents of the homes in this project. Persons under the age of 12 are permitted to visit owners of homes and to occupy those homes for a period of time which shall not be in excess of ten (10) consecutive days.

**Section 3. Renting of Homes.** Homes in this project may not be rented to anyone who is under the age of 55 years. In the event of a rental to an individual or individuals who are at least 55 years of age, such rental must be for a minimum period in excess of 30 days. Residents, pursuant to a rental agreement with an owner, shall not be any younger than 12 years of age. Any resident who is between the ages of 12 and 55 and who occupies the home as a tenant must be an immediate family member (son or daughter, brother or sister of a tenant who is at least 55 years of age).

## **ARTICLE VIII**

### **ALTERATION OF UNITS AND USE OF PROPERTY**

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**Section 1. Alteration to Improvements.** Once initially constructed improvements have been completed on a Lot, no exterior alteration, addition or modification to these improvements may be made by an owner or his successor without first obtaining the prior written



approval of the Board of Directors which, in its discretion, may require such reasonable

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plans and specifications before reviewing any such request for alteration.

**Section 2. Advertising and Signs.** Except for signs erected by or with the permission of the Declarant in connection with the initial development, lease, or sale of Lots, no additional sign or other advertising device of any nature shall be placed for display to the public on any Lot or other portion of the Property, except temporary signs placed in building windows advertising property for sale or rent.

**Section 3. Animals Including Birds and Insects.** No animals of any kind shall be raised, bred or kept in any dwelling or lot except that dogs and cats not weighing more than twenty-five (25) pounds, or other domesticated household animals may be kept inside the dwelling, provided that they are not kept, bred or maintained for commercial purposes. The Board of Directors may set reasonable rules and regulations regarding pets. The Board of Directors of the Association may, from time to time,

- (i) impose reasonable rules and regulations setting forth the type and number of animals, including birds and insects and;
- (ii) prohibit certain types of animals, including birds or insects entirely.

Notwithstanding the above, the Board of Directors of the Association shall have the right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, including birds or insects, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal is creating a nuisance

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because, but not limited to, the Owner does not clean up after the animal, the animal is too noisy, or the animal is not leashed or properly controlled, or if the animal could pose a threat to the health or safety of the Association members.

**Section 4. Plantings, Screening and Fences.** Any plantings, fence enclosures, or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence, or wall except with the permission of the Board of Directors or the Architectural Committee if one has been appointed.

Except for the foregoing, no fence, wall, or planting of any kind shall be planted, installed, or erected upon a lot or other portion of the Property unless approved by the Board of Directors or the Architectural Committee if one has been appointed. Notwithstanding the foregoing, no fence, wall, or planting shall be maintained so as to obstruct sight lines for vehicular traffic.

**Section 5. 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 (all of which are referred to hereinafter as "Trash") 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 in the open within 24 hours of a scheduled pick-up, at such place designated by the Board of Directors or the Architectural Committee so as to provide access

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to persons making such pick-up The Board of Directors or the Architectural Committee 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.

**Section 6. No Above Surface Utilities Without Approval.** Except for electric transformers and connecting terminals, no facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary, and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Board of Directors or the Architectural Committee.

**Section 7. Noxious or Offensive Activities.** No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled so as not to

(i) be detrimental to or endanger the public health, safety, comfort, or welfare,

(ii) be injurious to property, vegetation, or animals,

- (iii) adversely affect property values or otherwise produce a public nuisance or hazard, or
- (iv) violate any applicable zoning regulation or other governmental law, ordinance, or code.

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**Section 8. Dwelling in Other Than Residential Units.** No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction, or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors.

**Section 9. Television and Radio Antennas.** No outside television or radio antennas, nor any satellite dish or disc shall be erected on any Lot or other portion of the Property except with the consent of the Board of Directors or the Architectural Committee.

**Section 10. Residential Use Only.** Except as provided in Section 10 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.

**Section 11. Commercial and Professional Activity on Property.** No wholesale or retail business, including any 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

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not intended to preclude the operation of an in-home office for purposes other than those set forth above.

**Section 12. Outside Storage.** Outside storage or parking of commercial or recreational vehicles, camper bodies, boats, and trailers shall be prohibited except as may be otherwise permitted by the Association's Board of Directors, (unless prohibited altogether by the applicable zoning requirements).

**Section 13. Outdoor Repair Work.** With respect to a Lot or other portion of the Property to which title has been transferred by the Declarant, no work on any motor vehicles, boats, or machines of any kind shall be permitted outdoors on the Property, except with the consent of the Board of Directors.

**Section 14. Oversized, Commercial, or Unlicensed Vehicles.** Unless used in connection with the construction or sale of Units by the Declarant, or maintenance of the Property, or unless otherwise consented to by the Board of Directors, the following shall not be permitted to remain overnight on the Property:

- (a) commercial vehicles of a weight of one and a half (1 1/2) tons or more
- (b) unlicensed motor vehicles of any type.

**Section 15. Clotheslines.** No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Board of Directors or the Architectural Committee.

**Section 16. Pools.** No in-ground or above ground pool shall be permitted anywhere on the Property.

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## ARTICLE IX

### INSURANCE AND CASUALTY DAMAGE

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**Section 1. Fire and Casualty Insurance.** The Association will obtain and maintain in force and effect a policy of fire and other casualty insurance, in an amount, and with such coverage, as is acceptable to the Association, and with coverage adequate to cover the full replacement cost of any repair or reconstruction work on the Buildings. An annual evaluation shall be made by the Board of Directors to determine the adequacy of the insurance. Each Owner will be issued a certificate from the master policy which will indicate the amount of coverage on the Owner's unit and will name the Owner and the Association as the insured. The premium for this fire and casualty insurance shall be billed to the Association and the cost thereof shall be included in the annual assessment to the Owners.

In the event of damage or destruction by fire or other casualty insured against to an Owner's unit, the Association shall receive the proceeds of such insurance, and make such proceeds available to the Owner for repair or replacement of the Owner's unit. The Owner shall, upon receipt of notification of the availability of insurance proceeds, repair

or rebuild such damaged or destroyed portions of the exterior of the Owner's unit in a good workmanlike manner substantially the same as the original plans and specifications of said unit. If the Owner refuses or fails to repair or rebuild the exterior within 30 days, the Association may repair or rebuild such exterior, paying

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for the same from the insurance proceeds, and shall deliver to the Owner any excess insurance proceeds.

If the insurance proceeds are insufficient to complete the repairs, the Owner is required to reimburse the Association for the cost of such repairs or reconstruction, and the Association shall have a lien on the Owner's unit to secure such reimbursement. The lien is enforceable in the same manner as the lien for annual assessments.

**Section 2. Liability Insurance.** The Association shall obtain and keep in full force and effect a policy of general liability insurance on the Common Area. The premium for this insurance shall be billed to the Association and the cost thereof shall be included in the annual assessment to the Owners. This will be the only insurance coverage maintained by the Association.

Each Owner should maintain a policy of homeowner's coverage insuring against fire and casualty damage to an Owner's home and for insurance covering the contents, personal property and liability for injury occasioned to persons outside the Common Area.

## ARTICLE X

### ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION

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**Section 1. Additions to the Property by the Association.** Annexation of additional property by the Association shall require the assent of two-thirds of both classes of members at a

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meeting duly called for this purpose on the same notice, and in the same manner as is required for meetings and voting by the By-Laws.

## ARTICLE XI

### GENERAL PROVISIONS

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**Section 1. Duration and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association. or the Owners of any

land subject to this Declaration, their respective heirs, successors and assigns for a period of 30 years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten years each, unless an Instrument signed by seventy-five percent (75%) of the then Owners of the Lots has been recorded, agreeing to change said covenants and restrictions, in whole or in part. This Declaration may be amended during the first 30-year period by an Instrument signed by not less than 90 percent of the then Owners of the Lots, and thereafter by an Instrument signed by not less than 75 percent of the then Owners of the Lots any amendment must be recorded in Monroe County Clerk's Office to be effective.

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

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**Section 3. Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant, herein, has hereunto set its hand and seal this day of \_\_\_\_\_ 1992.

COTTRONE DEVELOPMENT CO., INC.

By:

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Thomas M. Cottrone, President

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