

BY-LAWS
OF
THE COTTAGES AT AUBURN MEADOWS
HOMEOWNERS ASSOCIATION, INC.

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

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HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS

OF

THE COTTAGES AT AUBURN MEADOWS HOMEOWNERS ASSOCIATION, INC.

ARTICLE I NAME AND LOCATION

The name of the corporation is The Cottages at Auburn Meadows Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located in the Town of Farmington, County of Ontario and State of New York.

ARTICLE II DEFINITIONS

As used in these By-Laws, the following words, phrases or terms shall be defined as:

- A.** "**Declaration**" shall mean and refer to the document entitled "Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - The Cottages at Auburn Meadows imposed by the Developer Co-Sponsor on the Property, as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.
- B.** "**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 or shown as a separate lot upon any recorded or filed subdivision map, with the exception of Association Property as defined in the Declaration.
- C.** "**Member**" shall mean and refer to the Owner of a Lot or Unit subject to the Declaration whether the holder of record title of the fee interest in the Lot or Unit or the record holder of any leasehold estate, whether or not such holder actually resides on the part of the Property.
- D.** "**Lot Owner**" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- E.** "**Property**" shall mean and refer to all property and lands which are subject to the Declaration.
- F.** "**Developer Co-Sponsor**" shall mean and refer to A & D Development Company, its successors and assigns.

- G. **"Builder Co-Sponsor"** shall mean and refer to NVR, Inc., d/b/a Ryan Homes of New York
- H. **"Unit"** shall mean and refer to any completed living Unit situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

**ARTICLE III
MEMBERS**

3.01 Membership in the Association. The Members of the Association shall be the Owners of all Lots/Units on the Property, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member. Developer Co-Sponsor shall be a member for so long as Developer Co-Sponsor shall hold title to any Lot or Unit on the Property or Additional Property.

3.02 Right of Developer Co-Sponsor to Assign. The Developer Co-Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

3.03 Voting Rights. Each Lot Owner shall have one (1) vote for his respective Lot(s) or Unit(s) owned except that when a Unit comes into existence (by issuance of a Certificate of Occupancy or by occupation as provided in the Declaration) the Lot upon which such Unit is located shall not have a vote. Any Member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues provided that in no event may a Lot Owner's voting rights be suspended for nonpayment of Assessments to the Association.

3.04 Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the 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.

3.05 Corporate Members. Any votes of a corporate member may be cast by a duly authorized officer of such corporation.

3.06 Joint or Common Ownership. Any one joint or common owner of a Unit or Lot shall be entitled to cast the vote with respect to the Unit or Lot so owned.

3.07 Absentee Ballots. On any matter submitted to the Members for vote, other

than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and that the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the secretary of the Association.

ARTICLE IV MEETINGS OF MEMBERS

4.01 Annual Meeting. There shall be an Annual Meeting of the Members on the first Tuesday in May at such hour or at such other date and time and at such place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the Annual Meeting shall be a legal holiday, the meeting shall be held on the first day following, which is not a legal holiday. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, or at the request in writing of Members of the Association holding not less than one-third (1/3) of the votes entitled to be cast at the meeting.

4.03 Notice of Meetings. Not less than ten (10) days or more than thirty (30) days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

4.04 Quorum. Members holding not less than one-half (½) of the total votes of the membership shall constitute a quorum at any meeting. If a quorum is not present at any meeting of Members, a majority of the Members present may adjourn the meeting from time to time, without notice other than announcement at the meeting until a

quorum shall be present or be represented. The act of two-thirds (2/3) of the Members present at a meeting at which a quorum was present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration, or these By-Laws.

4.05 Waiver and Consent. Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

4.06 Order of Business at Meeting. The order of business at all regular meetings of members of the Association shall be as follows:

- (1) Call meeting to order;
- (2) Proof of Notice of meeting or waiver of notice;
- (3) Reading of minutes of preceding meeting;
- (4) Reports of officers;
- (5) Reports of committees;
- (6) Appointment of inspectors of election;
- (7) Election of Directors, if any;
- (8) Unfinished/old business;
- (9) New business;
- (10) Adjournment.

ARTICLE V BOARD OF DIRECTORS

5.01 Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be five (5) except that an initial Board of three (3) Directors shall be designated by the Developer Co-Sponsor to serve until the first Annual Meeting of the Association after 50% of the Units have been transferred to purchasers for occupancy, or five (5) years after the date of transfer of title to the first Unit, whichever first occurs.

5.02 Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. Nominations may also be made in writing in advance of the annual meeting or from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election of the Board of Directors as it shall in its sole discretion, determine, but not less than the number of vacancies that are to be filled.

5.03 Election. At the first Annual Meeting, after 50% of the Units have been sold or five (5) years after transfer of title to the first Unit, whichever first occurs, the members shall elect three (3) Directors for a term of two (2) years, two (2) Directors for a term of one (1) year. At each Annual Meeting thereafter, the Members shall replace those Directors whose terms have expired and elect such successor Directors for a term of two (2) years. So long as Sponsor holds title to at least one (1) Lot or Unit, it shall have the right to appoint one (1) member of the Board of Directors. Voting shall be by secret written ballot which shall:

- (a) set forth the number of vacancies to be filled;
- (b) set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- (c) contain space for a write-in for each vacancy.

The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Developer Co-Sponsor shall not cast its vote as Owner of Units or Lots to elect a majority of Directors after five (5) years from the date of recording of the Declaration.

5.04 Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. The Developer Co-Sponsor has the right to appoint one (1) member to the Board of Directors so long as Developer Co-Sponsor continues to own at least one (1) Unit or Lot. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

5.05 Removal. At any meeting of Members, duly called at which a quorum is present, the Members may, by the affirmative vote of not less than two-thirds (2/3) of the Members, remove any Director or Directors elected by the Members from office with or without cause and may elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. Any Director appointed by the Developer Co-Sponsor may be removed without cause only by Developer Co-Sponsor, but may be removed for cause in the same manner as a member of the Board of Directors elected by the Unit Owners may be removed for cause - such removed Director shall be replaced by another Director appointed by Developer Co-Sponsor. In addition the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings.

5.06 Compensation. Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for his actual expenses incurred in the

performance of his duties. A Director who serves the Association in any capacity other than as a Director or officer, however, may receive compensation therefor.

5.07 Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

5.08 Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any two (2) Directors after not less than two (2) days notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of, any Special Meeting, need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

5.09 Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, or by the By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

5.10 Informal Action by Directors. Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be, and provided further such written consent is filed with the minutes of proceedings of the Board or committee.

5.11 Powers and Duties. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or the By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to the following:

(a) To determine, levy and collect the assessments and common charges as provided for in the Declaration.

(b) To collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the

Association and exterior of the Units as permitted by the Declaration.

(c) To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Units as it deems appropriate.

(d) To repair, restore or alter the properties of the Association after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(e) To adopt and publish rules and regulations governing the use of Association Property and facilities, and the personal conduct of the members and other guests thereon, and establish penalties for infractions thereof.

(f) To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.

(g) To pay all taxes owing by the Association.

(h) Maintain, repair and replace, as necessary, all properties and facilities owned by the Association or for which the Association has maintenance responsibilities under the Declaration.

(i) To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.

(j) To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of Members, or at any special meeting of Members when such a statement is requested in writing by not less than one-fourth (1/4) of the Members entitled to vote.

(k) To issue, or cause to be issued, upon demand by any person an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Unit.

(l) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.

ARTICLE VI OFFICERS

6.01 Officers. The officers of the Association shall be the President (who shall be a Member of the Board of Directors), one or more Vice Presidents, (the number thereof

to be determined by the Board of Directors), the Secretary and the Treasurer. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. Two or more offices may not be held by the same person.

6.02 Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

6.04 Resignation and Removal. 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. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date or receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.05 President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, and if there is no Chairman of the Board, shall preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board of these By-Laws.

6.06 Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board, and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

6.07 Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association, shall keep records of the members of the Association and the mortgagees of dwelling Units on the Property, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

6.08 Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she will account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him

or her by the President, the Board or these By-Laws.

6.09 Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

ARTICLE VII COMMITTEES

7.01 Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided, however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to the By-Laws or a plan or merger or consolidation.

All actions by any such committee shall be reported to the Board of Directors at its meeting next succeeding such actions. Such actions shall be subject to control, revision, alteration and approval by the Board of Directors.

7.02 Committees of Members. The Association shall have such committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors.

7.03 Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. Each committee shall keep regular minutes of its proceedings and shall report such proceedings to the Board of Directors as required by the Board.

ARTICLE VIII FINANCE

8.01 Checks. All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness, issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer and countersigned by one Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

8.02 Fiscal Year. The fiscal year of the Association shall be the twelve (12) calendar months, ending December 31st of each year, unless otherwise provided by the Board of Directors.

8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including an annual review of operation for the preceding fiscal year prepared by a certified public accountant and including a

certification signed by the certified public accountant to the effect that the financial statements present fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with the that of the preceding period except as specified therein. Such report shall be submitted at the Annual Meeting of the Members and filed within twenty (20) days thereafter at the principal office of the Association.

ARTICLE IX BOOKS AND RECORDS

The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member, Lot Owner, title insurer and mortgagee. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any of the foregoing parties at the principal office of the Association.

ARTICLE X CORPORATE SEAL

If so determined by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

ARTICLE XI AMENDMENTS

11.01 Alteration, Repeal or Amendment. These By-Laws may be altered, repealed or amended and new By-Laws may be adopted at any regular or special meeting of the Members, by vote of two thirds majority of all Members of the Association.

11.02 Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.