

HERITAGE MEADOWS HOMEOWNERS'  
ASSOCIATION

DECLARATION & BY-LAWS

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Rochester Home Builders Association. The complete terms of the Limited Warranty are set forth as part of Exhibit "G", Form of Purchase Agreement for Individual Lots, of this Offering Plan.

5. Water service is required for watering Townhouse lawns during the June through September watering season, as may be required. Each Lot Owner will furnish water required for his lawn from his external hosebib. Personnel providing the watering service will endeavor to draw water equally from each Lot Owner's hosebib, as averaged over a sustained time period; however, no assurances can be given that the amount of water drawn from each Lot Owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the lawns of other Townhouse Lots.

6. Sponsor will not transfer title to the first Lot until it has five (5) contracts of sale.

7. Due to the useful life of vinyl siding, vinyl clad windows, insulated steel doors and steel garage doors, aluminum gutters and downspouts, and masonry, all exceeding 30 years, the Sponsor has not provided for any replacement reserve in the budget for common charges. When these items require replacement, a special assessment will be necessary to fund the cost of the capital improvement.

MEMBERSHIP IN  
HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

INTRODUCTION

MARK IV CONSTRUCTION CO., INC., (hereinafter referred to as "Sponsor"), is a New York corporation, with an office and principal place of business at 301 Exchange Blvd., Rochester, Monroe County, New York. The Sponsor acquired fee ownership of approximately 7 acres of land located in Henrietta, Monroe County, New York, on January 8, 1987. This property is bounded on the west by Pinnacle Road, on the south by Stone Road, on the north by the Pinnacle Road Volunteer Fire House and the rear yard of a single family home located at 220 Pinnacle Road, and on the east by an undeveloped parcel primarily composed of wetlands. The property is referred to in this Offering Plan as the "Subdivision." The Subdivision is located in the north western portion of the Town of Henrietta. The immediate area surrounding the Subdivision is devoted to residential uses and unimproved lands.

Heritage Meadows Townhomes is part of a larger residential development being constructed by the Sponsor. Please refer to Exhibit M for a graphic depiction of the overall subdivision plan. The remaining portion of the development is composed of single family detached homes and is shown as Sections 1 and 2 on Exhibit M. The single family detached homes are not part of this Offering Plan and/or Heritage Meadows Townhomes.

The Sponsor plans to improve the Subdivision with 50 single family Townhouses on separate Lots. A "Townhouse" shall mean and refer to a residential dwelling constructed upon a given Lot and attached to at least one (1) other Townhouse by means of a party wall or otherwise. A "Lot" shall mean and refer to any portion of the Subdivision identified as a separate parcel on the tax records of the municipality, or shown as a separate lot upon any recorded or filed subdivision map. Purchasers of Lots within the Subdivision are purchasing the Lot and the improvement constructed on it. The 50 Townhouses shall be commonly referred to, and known as, "Heritage Meadows Townhomes". All areas of the Subdivision not contained within the perimeter of the 50 building lots will be common areas and conveyed to the Heritage Meadows Homeowners Association, Inc. (hereinafter referred to as "Association") prior to the sale of the first Lot. The streets known as Churchview Lane, Legacy Oak Trail and Old Settlers Drive will be dedicated to the Town. These dedicated streets provide access to the existing dedicated streets known as Stone Road. The Sponsor shall not transfer title to the first Lot until it has five (5) contracts of sale.

All Owners of Lots at Heritage Meadows Townhomes, as defined in a certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration"), to be recorded in the Monroe County Clerk's Office prior to the transfer of title to the first Lot, automatically become Members in the Association which has been formed for the purpose of insuring the efficient preservation of the values and amenities of Heritage Meadows Townhomes. (See Exhibit B for a copy of the Certificate of Incorporation of the Association). The Members' obligation to become Members is set forth in the form of Purchase Agreement (see Exhibit G) which refers to the Declaration which governs the use and ownership of land within Heritage Meadows Townhomes. The complete text of the Declaration is set forth as Exhibit A of this Offering Plan. The By-Laws of the Association are set forth as Exhibit C of this Offering Plan.

The purchase price of a Lot in Heritage Meadows Townhomes includes the Townhouse constructed on it, the exclusive right to use the patio or deck, walk and driveway associated with the Townhouse, and the cost of the Association property. Purchasers are advised that purchase prices are set by the Sponsor and are not subject to review or approval by the New York State Department of Law or any other governmental agency.

Members of the Association will have the right to vote annually for the Board of Directors who will conduct the affairs of the Association. Members will pay monthly maintenance and utility charges to the Association for:

1. The operation and maintenance of the Association property.
2. The exterior maintenance of the Townhouses, including the repair and replacement of exterior siding, gutters, downspouts and roofs, painting of the trim, windows and doors, but not including repair or replacement of windows, window panes or doors, or maintenance, repair or replacement of patios, porches or wood decking due to surface wear or abuse or spalling of concrete walks, stoops or porches.
3. Fire and casualty insurance covering the Townhouses, Association property and liability insurance for the Association.
4. The creation of such reserves for contingencies as the Board of Directors may deem proper.

5. Maintenance, including repair and replacement, as necessary, of the common properties of the Association, including the non-public dedicated street, driveways and parking areas, signs, walks, and those portions of sewer, water, and utility laterals servicing one (1) or more Townhouse and not maintained by a utility company, public authority, municipality or other entity, and landscaping as may be installed by Sponsor.

Owners of Lots, excluding the Sponsor, are responsible for the payment of monthly maintenance assessments to the Association. The estimated charges for the first year that Heritage Meadows Townhomes is completed and operating are set forth immediately following this Section. A certification by an expert concerning the adequacy of such charges is set forth as Exhibit J. The Association may place a lien on Lots for which maintenance assessments have not been paid. This could result in foreclosure. Purchasers are advised to obtain a certificate from the Association (see Section 5.10 of Declaration set forth as Exhibit A), certifying to the status of payment of assessments, at the time they purchase their Lot.

Lot Owners will be solely responsible for the maintenance of the interior of their dwelling and the exterior maintenance of windows, sky lites, doors, patios, concrete walk and stoop, porches or wood decks, and, in addition, will be responsible for snow removal from the walks, deck and/or patio area which abut their dwellings. They may decorate their dwellings as they desire, subject only to such rules and regulations regarding the exterior appearance of the dwellings as may be promulgated from time to time by the Association's Architectural Committee (see Section 7.08 of the Declaration set forth as Exhibit A).

The County of Monroe and Town of Henrietta will provide police protection. The Town of Henrietta will provide fire protection. The Monroe County Water Authority will provide water service. The Monroe County Pure Waters District will provide sanitary sewer service. Storm sewers will drain to laterals dedicated to the Town of Henrietta. The cost of police and fire protection, sewer services and maintenance of dedicated improvements will be included in the Lot Owners real property tax. Water usage and pure waters service will be separately billed on the basis of consumption. Snow removal from paved areas and maintenance services are provided by the Association as discussed on the preceding page.

Owners of Lots may sell or mortgage their Lots to anyone without restriction. Each Lot is separate and not subject to mortgages of other Lots. Owners of Lots in Heritage Meadows

Townhomes should be aware that, if they resell their Lot, those who purchase from them will automatically become Members of the Association, assuming all rights and obligations (see Section 3.02 of the Declaration set forth as Exhibit A).

Owners of Lots may lease their Lots to anyone without restriction. An investor purchaser of Lots for lease and subsequent resale, rather than occupancy, is required to register pursuant to General Business Law §352-e and to provide prospective purchasers with the Offering Plan and all amendments.

The purpose of this Offering Plan is to set forth all the terms of the offer of membership in the Association. The Sponsor may amend the Offering Plan from time to time by filing an amendment with the New York State Department of Law. All amendments shall be served on purchasers and Members. A copy of this Offering Plan and all exhibits delivered to the Department of Law at the time this plan was filed are available for inspection, without charge to prospective purchasers and their attorneys, at the Sponsor's office.

THE PURCHASE OF A HOME ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOMEOWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ESTIMATE OF OPERATING EXPENSES AND RESERVES  
FOR THE FIRST YEAR OF OPERATION COMMENCING  
APPROXIMATELY JULY 1, 1992

This estimate of operating expenses and reserves has been made by the Sponsor and is based upon quotations obtained by Sponsor. This estimate cannot be construed as an assurance of actual expenses and is based merely upon information available to the Sponsor at the time of preparation.

A nominal provision has been made for real estate taxes on the Association Property; the Sponsor has been advised by the tax assessor that the value of the Association Property will be reflected in the assessments of the Lots. Should there be an assessment of the Association Property, nominal or otherwise, the Maintenance Assessments will necessarily be increased to fund the resulting taxes.

These operating expenses are based upon the cost of operating the entire project with 50 Lots transferred to third party purchasers. Each Lot transferred by Sponsor is assessed 1/50th of the total costs of operations. Based upon the following estimate, the yearly assessment per Lot is \$1,255.24, and the monthly assessment per Lot is \$104.65. The Sponsor's obligation for assessments shall be as set forth in Article V of the Declaration.

Assessments will be assessed yearly and payable monthly. Assessments will commence on the first day of the month immediately following the sale of the first Lot, or at such other time as the Sponsor shall determine. Yearly assessments will be prorated and adjusted in the year of sale.

If the projected commencement date of the budget year for the projected schedule of receipts and expenses differs by six (6) months or more from the anticipated date of closing of the first home or Lot, this Offering Plan will be amended to include a revised budget disclosing current projections. The amendment will be completed prior to closing the first home or Lot. If the amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for a reasonable period of time, to rescind their offer to purchase and to have their deposits refunded with interest, if any. The Sponsor's guarantee of the budget in this Offering Plan will not avoid an offer of rescission.



Projected Schedule of Receipts  
and Expenses for First Year  
of Operation Commencing July 1, 1992

Projected Income

I. Maintenance Charges:		
	\$1,255.24 per Lot per year, payable monthly at \$104.65, based on 50 Lots	\$62,787.00
II. Estimated Receipts from other sources		-0-
Total annual receipts		\$62,787.00

Projected Expenses

		-0-
1. Water		8,400.00
2. Management		5,500.00
3. Repairs and Maintenance		3,070.00
4. Private Right-of-Way/Drives/Parking		8,000.00
5. Landscape Maintenance		500.00
6. Offices Supplies		5,000.00
7. Snow Plowing		6,355.80
8. Refuse Removal		6,950.00
9. Insurance		825.00
10. Accounting		500.00
11. Legal		474.00
12. Taxes		16,413.00
13. Reserves		300.00
14. Contingencies/Petty Cash		500.00
15. Recording Secretary		500.00
Total annual expenses		\$62,787.00

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OFFERING PLAN # AMENDMENTS

THIS OFFERING RELATES SOLELY TO MEMBERSHIP IN THE HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC. AND THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS APPLICABLE TO ALL LOTS SOLD AT HERITAGE MEADOWS TOWNHOMES IN HERITAGE MEADOWS SUBDIVISION, HENRIETTA, MONROE COUNTY, NEW YORK. HERITAGE MEADOWS SUBDIVISION HAS A COMMON ADDRESS OF PINNACLE AND STONE ROADS, HENRIETTA, NEW YORK.

APPROXIMATE AMOUNT OF OFFERING INCLUDED IN PURCHASE PRICE OF LOTS: \$50,000.00 (value of common areas and amenities)

NUMBER OF LOTS FOR SALE: 50

NAME AND ADDRESS OF SPONSOR AND SELLING AGENT: MARK IV CONSTRUCTION CO., INC.  
301 Exchange Blvd.  
Rochester, New York 14608  
(716) 232-1760

THE DATE OF THE OFFERING PLAN IS MAY 28, 1992.

THIS PLAN MAY NOT BE USED AFTER MAY 27, 1993 UNLESS EXTENDED OR AMENDED.

SEE PAGE ONE FOR SPECIAL RISKS TO PURCHASERS.

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL MEMBERSHIP IN HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

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## Comments

(Numbered comments refer back to the numerical items of the Projected Expenses listed above.)

1. Water service is required for watering Townhouse lawns during the June through September watering season, as may be required. Each Lot Owner will furnish water required for his lawn from his external hosebib. Personnel providing the watering service will endeavor to draw water equally from each Lot Owner's hosebib, as averaged over a sustained time period; however, no assurances can be given that the amount of water drawn from each Lot Owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the lawns of other Townhouse Lots.

2. Management includes financial management, writing specifications and obtaining bids, negotiation of contracts, supervision and inspection of the work of contractors and labor and office services, as more fully set forth in the Management Agreement. The charges for a project of this type, taking into account the size of the project and also the value of the homes, is estimated by the Sponsor to run \$14.00 per Lot per month, for a total of \$8,400.00 per annum. As set forth in the Offering Plan, the Sponsor will serve as Managing Agent. See the Section of this Offering Plan titled "Management Agreement."

3. Repairs and Maintenance to the exterior of the Townhouse includes the siding and trim of the homes, fences, decks and railings and stairs, roofing and flashing (including skylights) and gutters and downspouts and cleanouts, project sign, drainage inlets and grates. Repairs which are specifically excluded from this category include fenestration, including fixed and operable windows, sky lights, sash, screens, doors and frames, storm doors, and lights, vents, air supply ducts, parts that connect to electric, gas, or HVAC equipment, which may be mounted on the exterior of homes, and any mechanical equipment servicing any home. Where such elements require periodic painting, that is included Item 12, Reserves. These services will be provided by skilled mechanics in the respective trades, on an "as-needed" basis. It can be expected that certain categories of repairs may increase substantially over time. The sum of \$5,500.00 has been estimated by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, NY 14608, who, in a letter to the Sponsor has stated that the estimate is based on first hand experience with the construction, operation, and management of similar townhouse projects for the Sponsor over the past ten years.

4. The private right of way has a life expectancy of over 30 years, provided that after seven years, on average, cracks are blown clean and sealed with hot asphalt, and

the road is sealed with "chipseal" consisting of crushed stone on hot asphalt, then brushed off; or alternatively, a 3/4" topping course. The driveways have a life expectancy of over 30 years, provided edges are trimmed, cracks sealed with hot asphalt, low spots patched, and driveway sealer applied every three years. The visitor parking spaces have a life expectancy of over 30 years, provided edges are trimmed, cracks blown clean and sealed with hot asphalt, low spots patched, and chip seal or 3/4" topping course applied every seven years, on average.

The cost of services described above for the private right-of-way and visitor parking, bid as a single job is, at seven year interval, \$1,770 per year reserve; the cost of service described above for the driveways is, at three year interval, \$1,300 per year reserve. This estimate is provided by Richard L. Rosen, Architect, 301 Exchange Boulevard, Rochester, New York 14608.

5. The total lawn area within the townhouse lots and the area of streets up to the actual pavement measures approximately 4.0 acres. In addition, planting beds are located around foundations, and trees and shrubs are located throughout the project, and as perimeter buffering in certain locations. The services to be provided include mowing for a 25 week season, edge trimming lawns twice yearly, application of fertilizer and weed killer twice yearly and grub killer annually, cultivating plant beds and weeding twice yearly, pruning trees and shrubs annually, and weeding and feeding evergreen plant materials twice yearly. The amount budgeted annually to provide such service is estimated at \$8,000, including sales tax. The Sponsor has agreed to provide the service for the stated amount, which amount is believed to be the going market rate.

As shrubs and trees mature, costs of pruning will increase, and also replacement landscape maintenance materials will be required (for example, mulch fabric and bark chips) so that this estimate can be expected to increase. Other factors in the care of the landscape cannot be completely anticipated. For example, the suggested spraying program would not be adequate for an unusual infestation (such as by gypsy moths) or if soil tests, after lawns have been established indicates a need to adjust the Ph. Responding to these factors would be an added expense.

6. Office supplies, printing, postage, copying, and bookkeeping materials. This amount has been estimated by Sponsor, and confirmed by the Rockhurst Corporation in its Certification of Adequacy of the Budget.

7. The driveways, the parking spaces, and that portion of Churchview Lane at the western extremity, which is not to be dedicated to the Town of Henrietta for maintenance, require

snow plowing. The Sponsor estimates 20 services per year will be required. Snow will be plowed from the paved surfaces and stored on lawn areas adjacent, including the lawn area of public right of way adjacent to paved surfaces. The contract for snow plowing shall specify that snow in excess of three inches shall be plowed. The Sponsor shall perform the service for \$5,000, including sales tax, which amount is believed to be the going market price.

8. Specifications for refuse disposal shall include once weekly pickup of refuse from in front of the garage door, in accordance with mandated requirements for recycling, in containers specified by the contractor. Pickup of bulk items shall be performed upon demand, but at the expense of the individual townhouse owner, and in accordance with requirements of approved sanitary landfill sites. A Contract Proposal has been received from Herberle Disposal Service, Inc. 269 Alvanar Road, Rochester, New York 14606 for \$6,355.80, including sales tax.

9. Insurance of the individual Townhouses will be by a single master policy which includes fire, extended coverage, vandalism, and all risk, with a \$1,000.00 deductible. The limit of the policy will be \$4,450,000.00, the agreed amount replacement cost. Liability insurance for the Association Property and its officers, employees and agents, including cross liability and contractual liability will be provided. Personal injury and property damage liability shall be \$1,000,000.00 for each occurrence, \$1,000,000.00 aggregate. Medical payment insurance shall be \$5,000.00 each person, \$25,000.00 each accident. Directors and officers liability for wrongful acts shall be \$1,000,000.00 for each occurrence. Depositors forgery coverage shall be \$10,000.00. The cost of this coverage is based upon the estimate provided by Paris-Budlong-Esse, 1040 University Avenue, Rochester, New York, 14607, to the Sponsor. This item is budgeted at \$6,950.00.

10. Annual certified audited financial statement and federal tax returns. The cost is based upon the estimate provided by Cortland L. Brovitz & Co., P.C., 1235 Midtown Tower, Rochester, New York, 14604, to the Sponsor.

11. Legal counsel for ongoing operations. The estimate of services is provided by Woods, Oviatt, Gilman, Sturman & Clarke, 44 Exchange Street, Rochester, New York, 14614, to the Sponsor.

12. Franchise tax to be levied at the New York State minimum amount. Nominal property tax on Association Property per letter from Town Assessor estimated at \$100.00

13. Reserves and Replacement Fund:

- A. Roofing, asphalt 235 lb. or fiberglass 215 lb. shingles with 20 year useful life. 120,000 sq. ft. Replacement with re-roofing over existing every 20 years, annual reserve - \$3,780.
- B. Vinyl siding and Vinyl Clad Windows: useful life greater than 30 years, no reserve.
- C. Insulated Steel Doors and Steel garage doors: provided they are painted every 5 years as scheduled maintenance, the useful life is over 30 years, no reserve.
- D. Aluminum baked enamel or anodized finish gutters and downspouts, soffit systems, ventilation louvers, have a useful life of 30 years or longer and no reserve.
- E. Masonry: Useful life 40 years or greater, no reserve.
- F. Painting: Red Cedar shingles, wood trim, window bays, unclaid wood window and door framing, door faces, brackets, soffits, fascia, to be painted every 3 years. Going market rate is \$650.00 per unit, annual reserve is \$10,833.
- G. Water lateral: type k cooper; sanitary sewer laterals which are 4" PVC schedule 40 or SDR schedule 30. Useful life is 100 years, however breakage due to subsidence of the subsoil is budgeted as a contingency at \$200.00 per year.
- H. Replacement of diseased or blighted trees is budgeted as a contingency, and the specification for replacement plant material will be nursery stock of size considered standard for new construction. Provided that the Plant Material Schedule is designed for maximum diversity, to assure against risk or loss due to blight, the item is budgeted at \$500 per year.
- I. Concrete pavers, brick and stone paving have a useful life 30 years or greater, with no

reserve. A reserve replacement is established for poured in place concrete sidewalks, for the contingency of subsoil subsidence causing cracks and settlement requiring replacement. \$500 per year is budgeted.

A total annual budget of \$16,413.00 for reserves and replacement fund has been established by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, New York 14608, in a letter to the Sponsor.

14. Miscellaneous cash expenses.

15. Services of a recording secretary for 12 meetings per year at \$35.00 per meeting plus 20% miscellaneous payroll costs. These services are set forth in the Management Agreement discussed within the Plan and set forth as Exhibit D.



# Woods, Oviatt, Gilman, Sturman & Clarke

Attorneys

44 Exchange Street  
Rochester, New York 14614

(716) 454-5370  
Telecopier  
716-454-3968

Estates and Tax Departments  
2 State Street  
Crossroads Building  
Rochester, New York 14614

Telecopier  
716-423-2206

January 2, 1992

Mark IV Construction Co., Inc.  
301 Exchange Blvd.  
Penfield, New York 14608

Attn: Mr. Anthony M. DiMarzo  
President

Re: Heritage Meadows Homeowners  
Association, Inc.

Gentlemen:

In response to your request for our opinion in conjunction with your proposed sale of Lots at Heritage Meadows Subdivision with mandatory membership in the Heritage Meadows Homeowners Association, Inc., (the "Association") a not-for-profit corporation, please be advised as follows:

Taxation of Lot Owners: Under the provisions of Section 164 of the Internal Revenue Code and Section 615 of the New York Tax Law, each Lot Owner who itemizes deductions will be entitled to deduct from his adjusted gross income for Federal and New York State income tax purposes the real estate taxes assessed against his Lot and paid by him. Maintenance Assessments paid by each Lot Owner to the Association are not deductible from his adjusted gross income for Federal and New York State income tax purposes.

Association Validly Formed: The Association was validly formed under the Not-For-Profit Corporation Law of the State of New York.

Leon H. Sturman  
1908-1989

Robert W. Clarke\*  
Percival D. Oviatt, Jr.  
John S. Gilman  
Robert M. Schantz  
Harry P. Messina, Jr.  
Beryl Nusbaum\*  
Samuel P. Merlo  
Jack M. Battaglia  
Robert W. Kessler  
John A. Titus  
Gary F. Amendola\*  
Eugene Parra\*  
Samuel O. Tilton  
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Gay B. Montante  
Anthony Cotroneo  
Mary H. Gehl  
Patrick S. Sweeney†  
Robert D. Hooks  
Raymond L. Ruff  
David A. Sukert

Also Admitted to FL Bar\*  
FL Bar only†

Taxation of the Association: Section 528 of the Internal Revenue Code exempts qualifying homeowners associations from income taxes on "exempt function income." Exempt function income includes membership dues, fees, and assessments received from association members. Income which is not exempt function income is subject to income tax at the current rate of 30 percent. Examples of non-exempt function income are interest earned on a sinking fund for capital improvements, amounts from non-members for use of the association's facilities, and amounts paid by association members for special use of the association's facilities.

In order to qualify for this limited tax exemption an association must meet the following requirements:

1. It must be organized and operated for exempt function purposes;
2. At least 60% of its gross income must be received as membership dues, fees, or assessments from the Lot Owners;
3. At least 90% of the association's expenditures must be for the acquisition, construction, management, maintenance and care of association property;
4. No part of the association's earnings may inure to the benefit of any individual except through a rebate of excess membership dues or directly through the acquisition or upkeep of association property;
5. The association must file the appropriate election for the year with the Internal Revenue Service.

Based on our review of the estimate of projected income and expenses which you have provided, it is our opinion that the Association can qualify for the limited income tax exemption for homeowners associations under Section 528 of the Internal Revenue Code. We point out, however, that qualifying under Section 528 is determined on a year by year basis. The Association must therefore carefully monitor its operation to insure that the requirements set out above, as well as those that may be added by new legislation or administrative action, are satisfied each year. We also point out that the tax exemption is limited, so that even in years when the exemption applies the Association may nonetheless incur federal tax liability on non-exempt function income.

The Association will be subject to a franchise tax imposed under Article 9-A of the New York Tax Law, and will be required to pay an annual franchise tax upon the basis of its

entire net income or upon such other basis as may be applicable. The Association will not be exempt from New York sales taxes.

Enforceability of Declaration Provisions: Although we believe the provisions of the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration") to be enforceable under current law, we do not assure such enforceability. Because of the relatively recent popularity of homeowners associations throughout the United States, the case law with respect to enforceability of covenants, conditions and restrictions, such as are contained in the Declaration, is new and developing. In addition, the enforceability of some provisions of the Declaration will depend on factors other than the actual text of the document such as the establishment, reasonableness, dissemination, timeliness and uniformity of enforcement of rules, regulations and architectural standards by the homeowners association.

Site Plan Approval: We have received copies of the Final Plat for Heritage Meadows Townhomes approved by the Planning Board on January 14, 1992, and based upon this information, it is our opinion that if Heritage Meadows Townhomes are built in accordance with the plans and specifications, and approval requirements, they will conform to applicable zoning ordinances and statutes.

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel bases this opinion will not change. In no event will the Sponsor, the Sponsor's counsel, the Association, counsel to the Association, or any other person be liable if by reason of future changes in fact or applicable law, regulation, decisional law or Internal Revenue Service rulings the tax status should cease to meet the requirements contained in this opinion.

We understand that this letter will be made part of the Heritage Meadows Homeowners Association, Inc. Offering Plan.

Very truly yours,

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

DEVELOPMENT AND DESCRIPTION OF  
HERITAGE MEADOWS TOWNHOMES COMMON AREAS

The Sponsor will improve 50 Lots to be known as Heritage Meadows Townhomes on approximately 7 acres of Land. Construction on Heritage Meadows Townhomes commenced in the winter of 1992 and is anticipated to be completed by the fall of 1995. A site plan showing the details of the proposed development is contained herein as Exhibit E. BECAUSE OF A VARIETY OF CIRCUMSTANCES, INCLUDING CIRCUMSTANCES BEYOND THE SPONSOR'S CONTROL, SUCH AS MARKET ACCEPTANCE OF THE DEVELOPMENT, THE AVAILABILITY OF FINANCING, AND THE GENERAL CONDITION OF THE ECONOMY, THE SPONSOR GIVES NO ASSURANCE THAT ALL 50 LOTS NOW CONTEMPLATED WILL BE IMPROVED.

All areas which are not contained within the perimeter of a Subdivision Lot will be known as common areas, and will be conveyed to the Association prior to the closing of title to the first Lot. The common areas will consist of the private road visitor parking spaces and landscaped areas. The Sponsor reserves the right to convey the common areas to the Association prior to the completion of those improvements which could be materially and adversely affected by the completion of the improvement of Lots or could impede the improvement of such Lots. The improvements to the common areas which may be incomplete at the time of conveyance of the common areas to the Association will include such items as landscaping and the finished topping coat of paved areas. The incomplete items will be completed by the Sponsor, but are not secured by any letter of credit or completion bond.

Paved Areas.

The paved areas will be constructed with a base of six (6) inch crushed stone or better and two (2) inch asphaltic concrete topping. The paved areas are not subject to dedication and will be owned by the Association. The cost of maintenance shall be funded through the Association budget as a common expense. The private road at the northerly terminus of Churchview Lane will be built to local government specifications for public roads, however, the Town will not accept this private road in dedication.

Sub-soil Conditions.

Soils on the subject property range from sand and sand-gravel mixtures, and medium to stiff clays. The allowable bearing values, as prescribed by the New York State Building Code, and adopted by the Town of Henrietta as the applicable Building Code, are 4,000 to 8,000 pounds per square foot for these soil categories. The foundations and footings are designed so that

loading on the soil shall not exceed 2,000 pounds per square foot. Therefore, normal construction processes may, and will, be utilized.

#### Landscaping.

Heinrich Fischer, a licensed landscape architect in New York State, has prepared the landscape plan for Heritage Meadows Townhomes.

Each dwelling Lot will be completely landscaped, with a decorative planting bed containing at least 1 Viburnum, 1 dwarf Burnish Bush or 1 ornamental Crabapple, Amur Maple or Shadblow and 5 compact Andorra Juniper or Denisformis Yews. Substitution of comparable species and sizes may be made due to availability.

The entire site will be covered with topsoil and seeded with grass seed hardy to the area.

#### Water Service.

Water is supplied by the Monroe County Water Authority. Each Lot will be individually metered and water charges will be billed to each individual Lot Owner.

The Monroe County Water Authority will assume ownership and responsibility for the main water line system. Main water line construction shall conform to the standard drawings, specifications and requirements of the Authority.

The Association will own and maintain the service lines between the principal main water line curb stop and box, and the individual Townhouses. Maintenance shall be limited to leakage and structural failure of the laterals. The cost of maintenance of the lateral lines shall be funded through the Association budget as a common expense. The Association will be granted an easement over individual Lots to own and maintain the lines.

#### Electric and Gas Service.

Electricity will be supplied by the Rochester Gas & Electric Corporation. The entire installation will be Underground Residential Distribution Lines (U.R.D.) and will be in conformity with the standards promulgated by the New York State Uniform Fire Prevention and Building Code. The U.R.D. will be installed by the Commission on permanent easements to be granted by the Sponsor prior to the conveyance of the common areas. The installation, to and including the meters, will be owned, operated and maintained by

the Commission. Each Lot will have its own meter and each Lot Owner will be responsible for the cost of electric service consumed on his Lot.

Gas will be supplied by the Rochester Gas and Electric Corporation. The entire installation will be underground and will be in conformity with the standards promulgated by the Rochester Gas and Electric Corporation. The system is owned by the Rochester Gas and Electric Corporation on existing permanent easements. The system, to and including the meter, will be owned, operated and maintained by the Rochester Gas and Electric Corporation. Should the Sponsor install a gas appliance at a Lot Owner's request, Rochester Gas and Electric Corporation will install a lateral and meter. The Lot Owner will be responsible for the cost of gas service consumed on his Lot.

#### Telephone.

Telephone service will be by means of underground lines installed by the Rochester Telephone Company over easements granted by the Sponsor prior to the conveyance of the common areas.

#### Refuse Disposal.

Refuse will be collected from the driveways on a weekly basis by a private contractor. The cost will be included in each Lot Owner's monthly common charge.

#### Parking Areas.

Each Townhouse will have its own integral garage and driveway for the use of the Townhouse Owner, his guests and invitees. Additionally, the common area will have parking spaces which may be used for transient purposes of Lot Owners and the general public having cause to be within the development. The parking spaces may not be used for the storage of any vehicle or any other object by any Lot Owner. Parking is on a first come first served basis and is unattended. These areas are located as shown on the site plan included as Exhibit E.

#### Storm Sewer System.

Surface water will be collected in storm receivers and carried away from the site. The main lateral will be constructed of reinforced concrete and 16 gauge coated corrugated steel pipe. Lateral drains will be constructed of PVC SDR 35.

### Sanitary Sewer System.

The sanitary sewers will be constructed of PVC plastic, Schedule 35, eight inches (8"). The main sanitary sewer system will be connected to and become part of the Town and/or County sanitary sewer system.

The sanitary sewer system, except for the laterals, will be dedicated to the Town of Henrietta. The cost of maintenance shall be funded through Town taxes. The Town will be granted an easement over Association property to own and maintain the system.

Each lot owner will own and the Association will maintain, the sanitary service house laterals between the sanitary sewer and the individual Townhouses. These house laterals shall be four (4) inch diameter PVC pipe.

### Mail Boxes.

The U.S. Post Office Department has advised the Sponsor that mail delivery will be made to cluster mail box units. The cluster mail box units will be owned and maintained by the U.S. Post Office Department. Keys will be issued by the Post Office. A One Dollar (\$1.00) security deposit for each key will be collected by the Post Office.

### Cable Television.

The Sponsor has been advised that cable television service will be available to the Heritage Meadows Townhomes. Each Lot Owner may participate in the service by paying a monthly charge directly to the company. The Sponsor makes no representation as to when such cable television service will be available initially or the cost of such service. The Declaration prohibits the erection of exterior television antennas or dishes on Lots in Heritage Meadows Townhomes without the prior consent of the Association's Architectural Committee.

### Signs.

Street name signs, speed limit signs, stop signs and no parking signs will be installed by the Sponsor in accordance with town requirements. All other signs require a permit from the Town of Henrietta.

Common Property Liens.

At the time of its conveyance to the Association, the common property will be free and clear of all liens and encumbrances, except:

1. Those created by or pursuant to the Declaration (see Exhibit A),
2. Easements and rights of way granted to governmental authorities for drainage, sewers, and other municipal purposes,
3. Public utility easements,
4. Sewer, drainage or utility easements which may be granted in the future.

The Sponsor will provide and pay for a title insurance policy to cover the common property conveyed to the Association. The policy will be in the amount of \$50,000.00, the amount of the offering.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

Heritage Meadows Homeowners Association, Inc. (hereinafter referred to as the Association) was formed on January 2, 1992, under the Not-for-Profit Corporation Law of the State of New York. The Association is a Type "A" corporation under the aforementioned law. The Certificate of Incorporation is set forth as Exhibit B. The Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the Declaration), which is set forth as Exhibit A, provides the framework and procedures by which the Association, upon conveyance of common properties to it by the Sponsor, will maintain and administer the lands and the facilities comprising the Association property. The By-Laws which shall govern the operation of the Association are set forth as Exhibit C.

Any land or construction loan mortgage on any part of Heritage Meadows Townhomes will be subordinate to the Declaration.

Summary of the Declaration.

Prior to the closing of title to any Lot in Heritage Meadows Townhomes, the Sponsor will file a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") in the



Office of the Monroe County Clerk. The Declaration is set forth in this Offering Plan as Exhibit A.

The Declaration provides that its provisions shall run with the land and shall be enforceable by the Sponsor, the Association and the Owner of any Lot. The Declaration does not provide for annexation of additional land. With respect to the legal enforceability of the provisions of the Declaration, see the opinion of Sponsor's counsel, Woods, Oviatt, Gilman, Sturman & Clarke.

By accepting a deed, lease or other instrument conveying any interest in a Lot, the grantee, lessee, or other person accepting such interest covenants to observe, perform and be bound by the provisions of the Declaration, including the personal responsibility for the payment of all charges and assessments which may become liens while such person holds an interest in a Lot.

The following is a summary of the important provisions of the Declaration:

Article III - The Association Structure, Membership and Voting Rights

There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until five (5) years after the transfer of the first Lot, or until 50 Lots are transferred, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote.

The Declaration also provides that for five (5) years from the date of recording of the Declaration or until the Sponsor or its designee no longer owns a Lot then covered by the Declaration, whichever first occurs, the Board of Directors may not, without the Sponsor's written consent, which consent shall not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Association property, costing more than 20% of the then current annual budget; (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses bears to the total amount of the initial budget of estimated expenses; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of estimated expenses except for

services or maintenance to facilities not in existence on said date; or (v) reduce the quantity or quality of the services or maintenance of Association Property. (See Section 3.12 of the Declaration set forth as Exhibit A.)

#### Article IV - Property Rights and Easements

Every Member shall have:

- a) A right of easement and enjoyment in Association property;
- b) An easement of ingress and egress by vehicle or on foot over Association property;
- c) An easement to use and maintain all pipes, wires, conduits, drainage areas and public utility lines servicing such Member's Lot and located on other Lots or on the Association property;
- d) An easement over Association property and over the property of any adjacent Lot for performance of routine maintenance on a Member's Townhouse;
- e) An easement over Association property for the exclusive use and enjoyment of the Lot Owner's deck or patio, if any, as constructed by the Sponsor, servicing the Owner's Townhouse.

These rights and easements shall be in common with other Members of the Association and are subject to the rights of the Association (i) to promulgate rules and regulations relating to the use, operation and maintenance of Association property; (ii) to grant easements or rights of way to utility corporations or governmental entities; (iii) to transfer Association property upon the consent of two-thirds (2/3) of all Members; (iv) to charge reasonable fees for the use of Association property; (v) to enter into agreements for the sharing of facilities with other associations, cooperatives or condominiums upon the consent of two-thirds (2/3) of all Members. Such rights shall be subject to the rights of the Sponsor (i) to have or grant easements and rights of way for access to, and utility lines for, the development of the Lots and (ii) to use the Association property for a sales center and parking area for prospective purchasers. The rights of each Member shall further be subject to the right of any other Member to maintain and use the pipes, wires, conduits, etc. servicing such other Member's Lot.

The Association shall have:

- a) The right to use electricity from outdoor sockets on any Lot, the cost of which shall be reimbursed to the Lot Owner based upon the difference calculated between the current utility bill and the average of the last two (2) preceding utility bills, or actual consumption determined by submeters attached by the Association to the outlets of any Lot;
- b) The right to use water without charge;
- c) An easement to permit the maintenance, repair and replacement of paved areas, light standards, signs and other property of the Association;
- d) An easement for access to each Lot for the maintenance, repair and replacement of the exterior of the dwellings and the storm water, sanitary and utility laterals;
- e) An easement for access to each Lot for the maintenance, repair and replacement of any pipes, wires, conduits, drainage areas, utility lines and facilities and cable television lines and facilities located on any Lot and servicing any other Lot;
- f) An easement over the Lots for placement, maintenance, repair and replacement of utility banks, telephone and cable television pedestals.

#### Article V - Assessments

Each Lot Owner, excluding the Sponsor, by becoming a Lot Owner shall be deemed to covenant and agree to pay to the Association annual Assessments or charges for the maintenance and operation of Association Property, for utilities and other services, consumed and/or used on or at the Lots and which are not individually metered or billed and for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots, such as landscaped areas, and of the exteriors of the Townhouses. (See Sections 6.01 and 6.02 of the Declaration and page 7 of this Plan for specific types of maintenance, repair and replacement included or excluded, as the case may be.) The Assessments shall be the personal obligation of the Lot Owner and shall, together with any late charges, accelerated installments thereof, interest and the cost of

collection, be a charge and continuing lien upon the Lot against which the assessment is made.

The method for determining Maintenance Assessments is summarized on page 5 of this Offering Plan.

#### Article VI - Maintenance by the Association

The following maintenance services shall be performed by the Association and the cost of such maintenance shall be funded from the Maintenance Assessments:

- a) Maintenance of the signs and those landscaped areas within the perimeter of Townhouse Lots and Association property.
- b) With respect to the Townhouses, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts and roofs, paint the trim, windows and doors, but shall not repair or replace windows, sky lites, window panes or doors. Exterior items which are vinyl coated and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations. The Association shall not be responsible for the removal of snow from roofs.

With respect to the other improvements on the Townhouse Lots, the Association shall stain, repair and replace fences or railings and decks initially installed by the Sponsor, but shall not repair or replace spalling concrete walks, stoops or porches. The water, storm sewer and sanitary sewer laterals servicing a Townhouse will be maintained by the Association. Maintenance and repair shall be limited to leakage and structural failure only. A lateral shall be deemed to terminate at the outer surface of the foundation wall.

- c) Plowing of snow from the paved areas.
- d) Obtain and maintain (i) fire and casualty insurance on the Townhouses, (ii) fire, casualty and liability insurance on the Association property and (iii) directors' and officers' liability insurance for the officers and directors of the Association. (See Sections 9.01 and 9.03 of the Declaration for specific types of

coverage obtained by the Association and coverages which are not obtained by the Association.)

- e) Enforcement of restrictive covenants and establishment of rules and regulations governing the use of the Association Property and the conduct of the Lot Owners.
- f) Maintenance, including repair and replacement, as necessary, of the Association property, including paved areas, walks, signs, and those portions of sewer, water, and storm water utility laterals (limited, however, to repair necessitated by leakage or structural failure) servicing one (1) or more Townhouses and not maintained by a utility company, public authority, municipality or other entity. A lateral shall be deemed to terminate at the outer surface of the foundation wall.

#### Article VII - Architectural Controls

An Architectural Standards Committee shall be appointed by the Board of Directors for the purpose of enforcing certain provisions of the Declaration and controlling any change in use or any additions, modifications or alterations to any improvement within the Heritage Meadows Townhomes within guidelines and/or policies established by the Board of Directors. The Architectural Committee shall not have any authority over any property owned by the Sponsor. No such addition, modification or alteration shall be made until plans setting forth such change are submitted to and approved by the Architectural Committee and a Building Permit has been issued by the appropriate municipal authority, if required. Any Owner, lessee or occupant may obtain from the Architectural Committee a written certificate stating whether or not a particular parcel violates any provisions of the Declaration. A reasonable charge may be imposed for the issuance of such certificate. (See the opinion of Sponsor's counsel, Woods, Oviatt, Gilman, Sturman & Clarke, as to the enforceability of architectural controls.)

#### Article VIII - Party Walls and Encroachments

An easement shall exist for encroachments by any Townhouse, including but not limited to patios, porches, decks, privacy fencing and all other improvements, on any adjacent Lot as a result of construction, settling or shifting.

The cost of repair to a party wall shall be borne equally by the Lot Owners who share such wall, assuming the damage was not the result of negligence or a willful act by one (1) of such Lot Owners.

Article IX - Fire and Casualty Insurance, Reconstruction

The required insurance coverages for the Association are set forth in Article IX of the Declaration set forth as Exhibit A of this Offering Plan.

A. Insurance Obtained by Board of Directors. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors determines to be appropriate, unless otherwise required in the Declaration: (i) fire, casualty and liability insurance for Association Property, (ii) directors' and officers' liability insurance, (iii) fidelity bond, and (iv) fire and casualty insurance for the Townhouses. The cost of all insurance obtained by the Board of Directors will be included in the Maintenance Assessment charges billed to each Lot Owner by the Association.

The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

The Board of Directors shall not be liable for the failure to obtain such coverages 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 demonstrably unreasonable costs.

1. Fire and Casualty. Coverage shall be for the unit value of each Townhouse, including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings, and all machinery servicing the Lots and common facilities, excluding the land, foundations, the personal property of Lot Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by present or prior

Lot Owners or occupants, and Lots for which the Sponsor is not paying full Maintenance Assessments as provided in Section 5.04 of the Declaration. The policies shall not provide for coinsurance. For additional provisions, endorsements and coverages see Section 9.01 of Declaration set forth as Exhibit A. The policies shall provide that adjustment of loss shall be made by the Board of Directors of the Association.

The proceeds of all policies of physical damage insurance shall, as provided in the Declaration, be payable to the Association or to an insurance trustee (bank, trust company or law firm) to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Lot Owners as hereinafter set forth. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The amount of fire insurance to be maintained until the first meeting of the Board of Directors following the first annual meeting of the Lot Owners shall be in at least the agreed replacement amount. Prior to the completion of dwellings, they will be insured under the provisions of a builders risk policy maintained by the Sponsor.

Each Townhouse Lot Owner and such Lot Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage. Upon request, duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of the Lots.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Lot Owners, but not the liability of Lot Owners arising from occurrences within such Owner's dwelling or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

Until the first meeting of the Board of Directors elected by the Lot Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage provides for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Lot Owners, the directors' and officers' liability coverage shall be in at least the sum of \$1,000,000.00.

4. Fidelity Bond and Surety Bond. The fidelity bond shall cover up to five (5) directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.

Until the first meeting of the Board of Directors elected by the Lot Owners, the coverage shall be \$10,000.00 for forgery.

5. Allocation of 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 may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of a Lot Owner against such Lot Owner.



B. Insurance Obtained by Lot Owners. The Sponsor suggests that purchasers of Lots obtain coverage for the following:

1. Fire and casualty coverage for (i) any upgrading, i.e., any replacement to the original construction of the dwelling or equipment in the dwelling which is of better quality, larger, or more costly than a replacement to the item as installed in the dwelling at the time it was initially offered for sale. Such upgrading items may include kitchen and bathroom flooring, carpeting, bathroom tile and fixtures, lighting fixtures, kitchen cabinets, carpeting and wall covering; (ii) any fixtures installed or improvements made by the Lot Owner which are not replacements of items in the dwelling at the time the dwelling was initially offered for sale; (iii) the personal property of the Lot Owner.

2. Liability coverage for occurrences within the dwelling or on the Lot of the Lot Owner. The customary form of policy for the above coverages is HO-6 or equivalent. Lot purchasers may obtain such coverage by making arrangements with their own insurance agent or with the insurance agent for the Association (whose name is available from the Sponsor on request).

Lot purchasers may also wish to obtain coverage for living expenses in the event their dwelling cannot be occupied because of fire or other casualty and to cover their liability for any "deductible" or other shortfall in the Association's coverage where the loss suffered was the result of their gross negligence or wantonly malicious act.

All policies obtained by Lot Owners must contain waivers of subrogation and the liability of carriers issuing insurance procured by the Board of Directors must not be affected or diminished by reason of any insurance obtained by a Lot Owner.

C. Reconstruction after Fire or Other Casualty. The proceeds of fire and casualty insurance obtained by the Association must be applied to the repair and restoration of the dwellings or other insured property damaged. To the extent the repair and restoration will not duplicate the original exterior features, the prior approval of the Architectural Committee shall be required.

In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as existed prior to the fire or other casualty, the Board of Directors shall levy a Special Assessment to make up the deficiency in such amounts and against such Lot Owners as the Board of Directors deems fair and equitable taking into account the damage sustained and any negligence which may have contributed to the damage and loss.

#### Article X - General Covenants and Restrictions

There are general prohibitions against the following unless the consent of the Architectural Committee and/or Board of Directors, where applicable, has first been obtained:

a) Placing or displaying for public view any advertisement or sign, other than a professional shingle indicating the name of a firm or person and such person or firm's profession, unless the size, materials, design, style and color of which has been first approved by the Architectural Committee, and a permit issued by the Town of Henrietta.

b) Except for one (1) dog and one (1) cat belonging to an Owner or tenant of a Lot, fish, or birds kept in a cage, no animals, birds or insects shall be kept or maintained on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. In any event, pets may be allowed outdoors only within the area fully enclosed by privacy fencing, unless accompanied by a responsible person and leashed. A kennel or outdoor enclosure for retaining a pet out of doors may be constructed only within an area fully enclosed by privacy fencing. The Board of Directors of the Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled, or privacy fencing has not been approved for construction and the animal is kept outdoors.

c) Construction of walls or fences other than chain link fences.

d) Using a temporary building, trailer, basement, tent, shed or garage as a dwelling.

e) Outside antennas or dishes for any purpose whatsoever.

f) Removal of any tree or shrub (this restriction shall not apply to the Sponsor).

g) Operation of a snowmobile.

h) Use of the property for wholesale or retail business or service occupations in conflict with applicable municipal laws and ordinances.

i) Outside storage for more than one 72 consecutive hour period per month of a commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer.

j) Outdoor performance of repair work (other than minor servicing) on any motor vehicle, boat or machine.

k) Outdoor drying or airing of any clothing or bedding outside of enclosed private yards.

l) Oil and mining operations.

The following are completely prohibited:

a) Noxious or offensive activities;

b) Keeping out of doors overnight any commercial vehicle weighing two (2) or more tons or any unlicensed vehicle in excess of a 72 hour period;

c) Construction of chain link fences.

#### Article XI - Enforcement, Amendment and Duration of the Declaration

The costs of any action brought by the Association to enforce the Declaration, including legal fees, shall be a binding personal obligation of the violator. If the violator is (i) a Lot Owner, or (ii) any family member, tenant, guest or invitee of a Lot Owner, or (iii) a family member of a guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Lot Owner's family or (2) any family member of the tenant of such Lot Owner, such costs shall also be a lien upon the Lot owned by such Lot Owner.

The Association shall have the right to enter Lots to determine whether or not any improvements thereon are in compliance with the Declaration or the rules and regulations of the Association.

The Declaration may be amended or terminated upon the consent of the Members having not less than two-thirds (2/3) of the votes of all Lots subject to the Declaration except that so long as the Sponsor owns a Lot subject to the Declaration, no amendment shall be made which adversely affects the interest of the Sponsor, unless specifically approved by the Sponsor in writing.

The Declaration shall continue in full force and effect until December 31, 2012 and shall be extended, as then in force, automatically and without further notice, for successive periods of ten (10) years.

#### Management and Operation.

The business and affairs of the Association shall be managed by a five (5) member Board of Directors (see Article V of By-Laws set forth as Exhibit H), except that an initial Board of three (3) directors shall be designated by the Sponsor. The initial Board of Directors shall hold its first meeting within 30 days of transferring title to the first Lot in Heritage Meadows Townhomes. The initial Board of Directors designated by the Sponsor shall serve until the first annual meeting after the Sponsor has transferred title to 50 Lots or five (5) years after the date of recording of the Declaration, whichever first occurs. Thereafter, directors of the Association shall be elected.

No Director shall be required to be a Member of the Association and the number of Directors may be changed by amendment of the By-Laws. 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. Write in votes for persons other than those nominated shall be permitted.

The term of office of the members of the Board of Directors shall normally be two (2) years or until their successors are elected, except that at the aforementioned first annual meeting of the Association after the transfer of 50 Lots or five (5) years after the date of recording of the Declaration, whichever first occurs, the Members shall elect three (3) directors for a two (2) year term and two (2) directors for a one (1) year term. 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. (See Article V of By-Laws set forth as

Exhibit H). A member of the Board of Directors may be removed, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members.

The initial Board of Directors will be composed of Anthony M. DiMarzo, Patsy DiMarzo and Donald Riley, the President, Vice-President and Executive Assistant of the Sponsor, respectively. The officers of the Association shall be Anthony M. DiMarzo, as President, Patsy DiMarzo, as Vice-President and Secretary, and Donald Riley, as Treasurer. The business address of these individuals is 301 Exchange Blvd., Rochester, New York, 14608.

As long as the Sponsor has unsold homes or Lots which are offered for sale pursuant to the Offering Plan, Sponsor shall amend the plan whenever there is a change in the budget or when one year has passed since the last budget was updated, and include the prior year's certified financial statements, if such are provided to homeowners pursuant to the terms of this Offering Plan.

Sponsor may not exercise its veto power or use its control of the Board of Directors to reduce the level of services described in the Offering Plan or prevent capital repairs, or prevent expenditures required to comply with applicable laws or regulations.

The Sponsor agrees not to place a mortgage on any property owned by the Association while it is in control of the Board of Directors, without the consent of 51% of the Lot Owners, excluding itself.

While the Sponsor is in control of the Board of Directors, certified financial statements will be provided each year to the Lot Owners.

#### Membership and Voting Rights.

As defined in the Declaration, the Sponsor and all Lot Owners shall automatically be deemed to have become Members of the Association (see Section 3.02 of the Declaration set forth as Exhibit A). There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until five (5) years after the transfer of the first Lot, or until 50 Lots are transferred, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote.

The Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots. In addition, until five (5) years from the date of recording of the Declaration, or so long as the Sponsor owns a Lot subject to this Declaration, the written consent of the Sponsor will be required for amendment which adversely affects the Sponsor's interest.

The By-laws of the Association may be repealed or amended by a vote of a majority of Lot Owners or by the affirmative vote of a majority of the whole Board of Directors.

A Special Assessment for the construction of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments must be approved by the vote of two-thirds (2/3) of the Lot Owners voting in person or by proxy at a meeting duly called.

#### Assessments.

The costs and expenses of operating the Association and of making capital improvements, if any, will be allocated among the Lot Owners, excluding the Sponsor, and assessed by the Board of Directors (See Article V of Declaration set forth as Exhibit A.) Every Owner of a Lot, excluding the Sponsor, merely by becoming an Owner, covenants and agrees to pay annual Maintenance Assessments, payable monthly, and Special Assessments, if any, payable when due, to enable the Association to carry out its functions. Maintenance Assessments shall commence on the first day of the month following the sale of the first Lot, or at such later time as the Sponsor shall determine. All Maintenance and Special Assessments become a lien and charge against the Lot and shall also be a personal obligation of the Lot Owner at the time the assessment falls due. If an assessment or installment thereof is not paid within ten (10) days of the due date, the Association may impose a late charge and, if the assessment or installment thereof is not paid within 30 days of the due date, the Association may collect interest on the amount due, accelerate the remaining installments, if any, bring legal action against the Owner personally obligated to pay the assessment, and/or foreclose the lien against the Lot. The waiver of the use or enjoyment of the Association Property or the abandonment of a Lot shall not be grounds for exemption from the obligation to pay Assessments. In no event shall voting rights be suspended for the non-payment of assessments.

The lien of the Assessments shall be subordinate to the lien of any purchase money 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 have become due and payable prior to a sale or

transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

After Association charges have been levied on one or more Owners who have closed title to their Lots, the Sponsor's obligation for Association charges for unsold Lots shall be an amount calculated in accordance with the following provision: the Sponsor shall be obligated for the differences between the actual Association expenses, including reserves applicable to completed improvements, and the Association charges levied on Owners who have closed title to their Lots. For those Lots owned by Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of a Certificate of Occupancy.

The Maintenance Assessment for each Lot not owned by Sponsor shall be determined by multiplying the total annual Maintenance Assessment by 1/50. Any change in the basis of determining the Maintenance Assessment shall require the consent of not less than two-thirds (2/3) of the total votes of Members (see Section 5.06 of the Declaration set forth as Exhibit A). In addition, the written consent of the Sponsor will be required for any change which materially adversely affects the interest of the Sponsor with respect to Lots covered by the Declaration, which consent will not be unreasonably withheld.

#### Working Capital Fund and Reserve Fund.

The Sponsor will advance to the Association prior to the conveyance of the first Lot \$175.00 per Lot as a Working Capital Fund.

The Purchase Agreement requires the initial purchaser of each Lot to reimburse the Sponsor for the \$175.00 advance per Lot made by the Sponsor to the working capital of the Association. The reimbursement will be made at the time of closing title to the Lot. Such advance to the Association is intended to fund the initial start up expenses of the Association, and will be used for such Purposes as the Board of Directors, in its sole discretion, may determine, such as prepaid expenses of the Association, including, but not necessarily limited to fire, casualty and liability insurance obtained by the Association. It is believed the working capital fund is sufficient to meet the Association's initial start up expenses, and will be replenished as funds become available from Assessments collected. In no event will the working capital contribution be used to defray any Lot Owner's (including

the Sponsor's) obligation for the payment of Maintenance Assessments. After the first election of a Board of Directors which is not controlled by the Sponsor, the funds will be turned over to the new Board of Directors with an accounting.

The Association's reserve fund is part of the common charge assessment as discussed in the Budget Section of this Plan. It is believed the reserve fund is sufficient to meet the Association's reserve fund needs based on the level of service discussed in the Budget Section of this Plan. The reserve fund will not be used to defray any Lot Owner's (including the Sponsor's) obligation for the payment of Maintenance Assessments. After the first election of a Board of Directors which is not controlled by the Sponsor, the funds will be turned over to the new Board of Directors with an accounting.

Neither the New York State Department of Law, nor any other government agency, has passed upon the adequacy of the working capital fund or reserve fund.

#### LOCAL GOVERNMENT APPROVAL

On January 14, 1992, the Planning Board for the Town of Henrietta approved the Site Plan and Final Plat for Heritage Meadows Townhomes.

#### OBLIGATIONS OF THE SPONSOR

The following are obligations of the Sponsor with respect to this offering of interest in the Association:

1. Complete Construction of Common Areas and Facilities. The Sponsor will complete construction of the common areas and facilities as set forth in this Offering Plan and any amendments hereto. The Sponsor will pay for the authorized and proper work involved in the construction, establishment and transfer of all Association property that the Sponsor is obligated to complete under this Offering Plan. The Sponsor agrees to cause all mechanics' liens with respect to Association property to be promptly discharged or bonded.

The Sponsor will complete construction of any street, driveway and parking facilities serving a Lot and any other facility that is vital to the health and safety of the Lot Owners prior to the conveyance of the Lot, subject to the terms of this Offering Plan. If the Town of Henrietta permits occupancy, and if the incomplete items are not vital to the health and safety of the Lot Owners, then closing may occur. The Sponsor anticipates the project to be completed by the fall of 1995.

The Sponsor has obtained adequate and firm commitments for the construction of the Association property and the Townhouses on the individual Lots. The Town of Henrietta holds irrevocable Letters of Credit securing the land development of Heritage Meadows Townhomes.



This representation in no way shall be deemed a limitation of any liability on the part of the Sponsor or of any right or remedy of the Association or the Lot Owners pursuant to law.

2. Service of Common Areas and Facilities. The Sponsor will make periodic checks of the property conveyed to the Association and correct any defect in construction due to improper workmanship or material substantially at variance with this Offering Plan, provided the Sponsor is notified of or otherwise becomes aware of any such defect within one (1) year from the date of completion of such construction or 12 months from the date of transfer of title to the first Lot, whichever is later. The Sponsor shall have no obligation to make any repair to or replace any of the Association Property except as expressly set forth in this Offering Plan. The quality of construction shall be comparable to local standards customary in the particular trade and in accordance with the plans and specifications. In no event shall the Sponsor be responsible for the partial or total death of any trees, shrubs, bushes or other landscape improvements.

3. Pay Assessments. The Sponsor will pay assessments for each unsold Lot owned by the Sponsor in accordance with the Declaration. (See Article V of Declaration set forth as Exhibit A).

4. Conveyance of Common Areas and Title Insurance. Prior to the transfer of title to any Lot, the Sponsor will file the Declaration and convey, by deed with covenant against grantor's acts, the Association Property to the Association and furnish the Association with a policy of title insurance covering such property from a title company authorized to do business in New York. The policy covering the common areas shall be in the amount of \$50,000.00. Such policy will be furnished at Sponsor's sole cost and expense, and shall evidence insurable title. The lien of any construction loan mortgage will be released from the common areas prior to the transfer of title to the Association.

5. File Subdivision Map. The Sponsor will file a subdivision map in the office of the Monroe County Clerk and the Town of Henrietta prior to the conveyance of the first Lot in Heritage Meadows Townhomes, which map shall show the Lots upon which the dwellings are or will be located.

6. Defend and Indemnify. The Sponsor will defend and indemnify the Board of Directors against any suits or proceedings arising out of its acts or omissions.

7. Plans. The Sponsor will provide the Board of Directors and the Town of Henrietta with a set of "as built" plans, and certify construction is in substantial compliance with the plans and specifications set forth herein. If the certification cannot be made, the offering plan will be amended and recision offered to the Purchasers.

8. Right of Access. The Sponsor shall have the right of access in accordance with the Declaration to complete construction of the project. The Sponsor will repair and restore the area as required. The Sponsor does not anticipate any interference with a Lot Owner's use and enjoyment of the area, except on a temporary basis.

9. Hold Down Payments and Deposits in Escrow or Furnish Letter of Credit or Bond Until Closing. The Sponsor will furnish a letter of credit (see Exhibit K) to assure the return of downpayments and deposits if the Sponsor defaults in its obligations under the Purchase Agreement.

10. Sponsor's Control of Development. Until (i) 11 months after the transfer of control of the Board of Directors, or (ii) 11 months after the closing of title to the last Lot, whichever is sooner, the Sponsor will not voluntarily assign, transfer or sell its interest in the real estate which is the subject of this Offering Plan, except in accordance with this Offering Plan, and the principals of the Sponsor will not voluntarily reduce by more than 49% their ownership of stock or their voting rights in the Sponsor. Further, during such period, the principals of the Sponsor shall not voluntarily liquidate the Sponsor except for the payment of any expenses (including salaries, fees and other expenses) and the repayment or reduction of the obligations of the Sponsor pertaining directly or indirectly to this Offering Plan. The transfer of the Sponsor's interest in the real property which is the subject of this Offering Plan, or the Sponsor's liquidation, within the time periods set forth above, will not have an effect on the Sponsor's obligations under this Offering Plan.

NO BOND OR OTHER SECURITY HAS BEEN POSTED BY THE SPONSOR TO SECURE THE PERFORMANCE OF ITS OBLIGATIONS AS ABOVE SET FORTH, EXCEPT AS SET FORTH IN SPECIAL RISK #2 AT PAGE 1. ACCORDINGLY, THE SPONSOR'S ABILITY TO MEET SUCH OBLIGATIONS COULD DEPEND ON ITS FINANCIAL CONDITION AT THE TIME IT IS CALLED UPON TO PERFORM.

## TRUST FUND PROVISIONS

The Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

Any provision of any contract or agreement, whether oral or in writing, by which a purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any conflicting or inconsistent provision in the Offering Plan or in a purchase agreement. Purchasers shall not be obligated to pay any legal or other expense of the Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

The Sponsor has obtained an irrevocable Letter of Credit from Central Trust Company, a banking corporation with an office at 44 Exchange Street, Rochester, New York in the amount of Fifteen Thousand Dollars (\$15,000.00) to secure the return of purchasers' deposits in the event the Sponsor defaults in its obligation to deliver the Lot as required in the Purchase Agreement. The Letter of Credit amount is 125% of the aggregate of all down payments or payments expected to be received from purchasers and not retained in escrow during such period of time as the Letter of Credit will be needed. If circumstances warrant, the amount of the Letter of Credit will be reduced or increased pursuant to a filed amendment to the Offering Plan. The letter is issued to Spiro P. Janetos, Esq., as attorney, the Escrow Agent, and provides that payment will be made upon presentation of the Letter of Credit together with a signed certification from Spiro P. Janetos, Esq., "that MARK IV CONSTRUCTION CO., INC. has failed to refund deposit monies to purchasers ... in accordance with the terms of the Purchase Agreement." A copy of the Letter of Credit is set forth as an Exhibit and is available on written request of the purchasers or prospective purchasers to Spiro P. Janetos, Esq., 301 Exchange Blvd., Rochester, New York 14608. The Sponsor anticipates obtaining additional letters or a renewal of existing letters during development of Heritage Meadows Townhomes. In the event that a renewal of such Letter of Credit is not obtainable with respect to any purchaser's deposit, Spiro P. Janetos, Esq. will draw upon such Letter of Credit in an amount to fully cover all down payments secured by such Letter of Credit.

All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, will

be placed, within five business days after the agreement is signed by all necessary parties and a deposit check has been delivered by purchaser, in a segregated special escrow account of Spiro P. Janetos, as attorney, the Escrow Agent, whose address is 301 Exchange Boulevard, Rochester, New York 14608, and whose telephone number is (716) 232-1760. The signatory on this account authorized to withdraw funds is:

Spiro P. Janetos, Esq.

301 Exchange Boulevard  
Rochester, New York 14608

The name of the account is HERITAGE MEADOWS ESCROW ACCOUNT, located in Central Trust Company at 44 Exchange Street, Rochester, New York 14614. This bank is covered by federal bank deposit insurance to a maximum of \$100,000 per account. If an individual makes a down payment in excess of \$100,000 for the purchase of a lot, it is a special risk of this offer that such deposit will not be federally insured in excess of \$100,000.

The account will be an Interest-On-Lawyer's-Account ("IOLA") pursuant to Judiciary Law Section 497. Interest earned will not be the property of the purchaser, Sponsor or escrow agent, but rather will be paid to the New York State IOLA Fund.

All instruments shall be made payable to or endorsed to the order of Spiro P. Janetos, as attorney, as Escrow Agent.

Within ten business days after tender of the deposit submitted with the purchase agreement, the Escrow Agent will notify the purchaser that such funds have been deposited into the escrow account and will provide the account number. If the purchaser does not receive notice of such deposit within fifteen business days after tender of the deposit, the purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety days after tender of the deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the purchaser in conformity with the Attorney General's regulations.

The Escrow Agent shall release such funds to the Sponsor, provided the Escrow Agent has documentation showing that the Letter of Credit, or a renewal or replacement Letter of Credit, has been issued and is in effect. The Escrow Agent shall not release funds from escrow unless 125% of the amount to be released is secured by the Letter of Credit, or, if the Escrow Agent receives notice or information warranting the draw-down of the Letter of Credit.

The Escrow Agent as the beneficiary of the Letter of Credit, acting as a fiduciary for the benefit of purchasers under the plan whose funds were released from escrow, shall have the duty and the right to draw upon and collect the proceeds of the Letter

of Credit, ten (10) business days after notice to the Sponsor and Sponsor's failure or refusal to restore such funds to the Escrow Agent, without the consent or despite the objection of the Sponsor or the provider of the credit, upon the following events or circumstances:

1. Timely rescission of a purchase agreement by a purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;
2. Acceptance for filing by the Department of Law of an amendment abandoning the plan;
3. Determination by the Attorney General mandating that rescission or the return of funds is required;
4. Failure by the Sponsor to obtain a renewal or replacement Letter of Credit no later than sixty (60) days prior to the expiration of the existing Letter of Credit;
5. Direction by the Sponsor upon request of the purchaser;
6. Notice of impending cancellation of the Letter of Credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a federal or state authority, and no proper replacement of the Letter of Credit has been furnished.

In the event of a dispute, the Sponsor shall apply, and the purchaser, the Escrow Agent or the bank issuing the Letter of Credit may apply to the Attorney General for a determination on the disposition of funds secured by the Letter of Credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. See Exhibit L. The party making such application shall contemporaneously send to the other three parties a copy of such application.

Pending the determination of the Attorney General to grant or deny the application, the Sponsor, the purchaser, the Escrow Agent and the bank shall abide by an interim directive issued by the Attorney General.

If the application permitting release of funds is granted, such funds secured by the Letter of Credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.

The Attorney General shall act upon the application within thirty (30) days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

In no event shall the disputed funds secured by the Letter of Credit be paid to the purchaser nor shall the Letter of Credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

Attached to this Plan as an Exhibit L is a copy of the Escrow Agreement which incorporates the terms of the Attorney General's regulations.

The Escrow Agent will maintain all records concerning the escrow funds for seven years after the release of funds.

#### MANAGEMENT AGREEMENT

The Sponsor will enter into an agreement on behalf of the Association under the terms of which the Sponsor will act as Managing Agent of the Association for a period of two (2) years from the date of the first closing of title to a Lot. For its services, the Managing Agent will receive a fee of \$8,400.00 per year, which amount is a reasonable market rate. In addition, the Managing Agent will receive reimbursement for all out-of-pocket expenditures. The Management Agreement will be assignable by the Managing Agent with the consent of the Association, which consent will not be unreasonably withheld, and will be cancelable by the Managing Agent, within the first year of its term, upon not less than 60 days prior written notice, only if the Association fails or refuses to comply with or abide by any rule, order, determination, ordinance or law of any federal, state or municipal authority or to perform its obligations under the Management Agreement. The Management Agreement will be cancelable by the Managing Agent at any time after the first year of its term on not less than 60 days written notice. The Association may cancel the Management Agreement at any time provided the Managing Agent is in default under the Management Agreement. Upon the termination of the Management Agreement, it most likely will be necessary or desirable

for the Association to obtain professional management services. The Sponsor makes no representations as to the availability of such professional management services or the terms of any contract which the Association may be able to negotiate with a professional property manager. Neither the Association nor the Managing Agent is obligated to continue the management arrangement after the two (2) year period.

As long as the Sponsor shall control the Board of Directors, the Sponsor will not commit the Board of Directors or the Association to any other Management Agreement which extends beyond the date on which the Sponsor's control ceases.

Services rendered to the Association by the Managing Agent will include:

- a. Billing and collecting common charges and expenses;
- b. Supervising landscape maintenance, snow removal from the roadways, parking areas and driveways, and repairs to the common elements;
- c. Hiring and discharging employees;
- d. Maintaining the Association books and attending meetings of the Board of Directors and Lot Owners;
- e. Maintaining payroll records and filing withholding tax statements for employees;
- f. Furnishing monthly reports of receipts and disbursements to the President and Treasurer of the Association.

The Managing Agent will not prepare the Association's annual certified financial statement. Such statement will be prepared by an independent certified public accountant employed by the Board of Directors at the expense of the Association. This expense is provided for in the estimate of common expenses for the first year of Association operation contained herein.

The Association will indemnify and defend the Managing Agent against all suits brought in connection with the Association and from liability for loss of person or property. The Association will also pay all expenses of the Managing Agent in defending against such suits.

Except as set forth above, no other contracts or agreements have been entered into by the Sponsor at this time which would bind the Association after closing of title to the first Lot. Any and all such agreements shall be entered into by the Association on its own behalf on its own authority.

#### IDENTITY OF PARTIES

##### Sponsor

Mark IV Construction Co., Inc., a New York corporation, with its principal office and business address of 301 Exchange Boulevard, Rochester, New York 14608, was formed in 1967 and has built approximately 2,400 townhouses, apartments, and detached homes.

Mark IV is currently developing the following projects:

1. The Commons at Cornhill, Rochester, New York, 168 single family detached and townhouse dwellings; since 1982.
2. Edgewood Estates Townhouses, Henrietta, New York, 66 townhouse dwellings; since 1987.
3. Springbrook, Perinton, New York, 250 single family detached and attached dwellings; since 1985.
4. Heritage Meadows, Henrietta, New York, 100 single family detached homes; since 1990.
5. Canalview Townhomes, Fairport, New York, 25 townhouse dwellings; since 1989.
6. Brookview Townhomes, Greece, New York, 82 townhouse dwellings; since 1986.
7. Village Walk Townhouses, Village of Webster, 56 townhouse dwellings; since 1986.
8. Huntington Park Townhomes, Henrietta, New York, 64 townhouse dwellings; since 1987.
9. Riverview Townhomes, Henrietta, New York, 80 townhouse dwellings; since 1989.



The controlling principals of Mark IV are:

1. Anthony M. DiMarzo, President, since 1969 with a business address of 301 Exchange Blvd., Rochester, New York, 14608. Bachelor of Business Administration, Syracuse University, 1965. Mr. DiMarzo is chief operating officer of the corporation and is responsible for arranging interim and permanent financing for projects, and for personnel management at the managerial level.

2. Patsy DiMarzo, Vice President, since 1969 with a business address of 301 Exchange Blvd., Rochester, New York, 14608. Mr. DiMarzo is a licensed electrician and has extensive experience in all aspects of site development and maintenance. He is responsible for the operations of Martex Management Company, which will initially manage the Heritage Meadows Homeowners Association, Inc., and for supervision of field superintendents and subcontractors. He directly supervises all landscape, grounds and structures maintenance for the 800 plus apartment and townhouse units owned and managed by Mark IV.

#### Consultants

In an effort to develop and sell Lots at Heritage Meadows Townhomes, the Sponsor has retained a number of professional consultants including:

Budget Review - Mr. William G. Tomlinson, Rockhurst Corp., R48 South Estate Drive, Webster, New York.

Survey and Engineering - Mr. Edward Parrone, 400 Whitney Road, Penfield, New York 14626.

Legal Counsel - Woods, Oviatt, Gilman, Sturman & Clarke, Louis M. D'Amato, of counsel, 44 Exchange Street, Rochester, New York, prepared the Offering Plan. Spiro P. Janetos, Esq., 301 Exchange Blvd., Rochester, New York, will represent Sponsor in Lot sales.

Architect - Mr. Richard Rosen, 301 Exchange Blvd., Rochester, New York.

Landscape Architect - Heinrich Fischer, 1379 Brighton-Henrietta Town Line Road, Rochester, New York.

Managing Agent

In accordance with the terms of the Offering Plan, the Sponsor will enter into a management agreement on behalf of the Association with itself. The Sponsor which has managed townhomes and apartment complexes in the Monroe County area since 1971.

The Sponsor is currently managing the following properties:

1. Chartwell Townhouse Estates, French Road, Rochester, New York, 62 townhouse dwellings; since 1971.
2. Clearview Farms, Scottsville Road, Scottsville, New York, 311 townhouse and garden apartments; since 1972.
3. Littlecreek Apartments, Coldwater Road, Rochester, New York, 196 garden apartments; since 1972.
4. Willow Pond Apartments, Route 441, Penfield, New York, 181 townhouse and garden apartments; since 1975.
5. The Commons at Cornhill, South Fitzhugh Street, Rochester, New York, 34 townhouse dwellings and 16 detached homes; since 1982.
6. Pine Ridge Townhomes, Old Stone Lane, Greece, New York, 64 townhouse dwellings; since 1983.
7. Edgewood Estates Townhouses, Henrietta, New York, 66 townhouse dwellings; since 1987.
8. Woodsvievw Townhomes, Perinton, New York, 128 townhouse dwellings (partial completion); since 1987.
9. Village Walk Townhouses, Village of Webster, 56 townhouse dwellings; since 1986.
10. Huntington Park Townhomes, Henrietta, New York, 64 townhouse dwellings; since 1987.

DOCUMENTS TO BE RECEIVED PERIODICALLY BY  
ASSOCIATION MEMBERS

All Members of the Association will be entitled to receive annually from the Association, at the expense of the Association, copies of the following:

1. An annual audited financial statement to be received at the Annual Meeting.
2. Notice of the Annual Meeting, to be given not less than ten (10) days or more than 30 days before the date of the Annual Meeting.

DOCUMENTS ON FILE

In accordance with Section 352-e (9) of the General Business Law of the State of New York, copies of this Offering Plan and all exhibits or documents filed with the New York State Attorney General shall be available for inspection by prospective purchasers and by any person who shall have purchased securities offered by this Offering Plan or who shall have participated in the offering of such securities, at the on site office of the Sponsor and shall remain available for inspection for a period of six (6) years from the date of transfer of the first Lot.

GENERAL INFORMATION

Pending Litigation

The Sponsor is not involved in any litigation, nor is the subject of any investigation, which may materially affect the offering, the property, the Sponsor's capacity to perform all of its obligations under the Plan, or the operation of the Association.

Non-Discrimination

In accordance with the provisions of the laws of the State of New York, the Sponsor represents that it will not discriminate against any person because of race, creed, color, sex, national origin or ancestry or any basis prohibited by civil rights laws in the sale of Lots or in the offering of memberships in the Association.

No Offering to Minors

This Plan is not offered to persons less than 18 years of age.

No Prior Offering

As of the date of the first presentation of this Offering Plan, neither the Sponsor nor any representative or agent of the Sponsor, has raised funds or made any preliminary offering or entered into any binding agreement to or with prospective Lot purchasers.

No Contracts Binding Association

Except for the Management Agreement referred to above, the Sponsor has entered into no contract which will be binding upon the Association. The Sponsor, however, reserves the right to enter into contract substantially in accordance with the description of services and charges set forth in the Estimate of Operating Expenses and Reserves set forth in this Offering Plan.

Offering Plan is Fair Summary

This Offering Plan contains a fair summary of the pertinent provisions of the various documents referred to herein and does not knowingly omit any material fact or contain any untrue statement of a material fact relating to the offering. Any information or representation which is not contained in this Offering Plan must not be relied upon. This Offering Plan may not be modified orally. No person has been authorized to make any representations which are not expressly contained herein.

MARK IV CONSTRUCTION CO., INC.

By:   
Anthony M. DiMarzo, as President

EXHIBIT "A"

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DECLARATION

Establishing Heritage Meadows Homeowners Association, Inc.

NAME: HERITAGE MEADOWS HOMEOWNERS  
ASSOCIATION, INC.

SPONSOR: MARK IV CONSTRUCTION CO., INC.  
301 Exchange Blvd.  
Rochester, New York 14608

DATED:

RECORDED:

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Attorneys for the Sponsor

44 Exchange Street  
Rochester, New York 14614

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

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

THIS DECLARATION, made this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, by MARK IV CONSTRUCTION CO., INC., a New York corporation, which has offices at 301 Exchange Blvd., Rochester, New York, being hereinafter referred to as "the Sponsor".

W I T N E S S E T H :

WHEREAS, the Sponsor is the owner of the real property described in Article II of this Declaration, being Heritage Meadows Subdivision as the same is shown on a map of said subdivision recorded in the Monroe County Clerk's Office in Liber \_\_\_\_\_ of Maps, at page \_\_\_\_\_, which the Sponsor desires to develop as a residential community with open spaces and other common facilities for the benefit of said community, and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described above 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 owner thereof, and

WHEREAS, the Sponsor desires that certain portions of said 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 the Sponsor desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community, and

WHEREAS, the Sponsor has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an Association 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, the Sponsor has incorporated the Heritage 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.

NOW THEREFORE, the Sponsor, for itself, its successors and assigns, declares the real property described in Section 2.01 hereof, 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.

ARTICLE I  
DEFINITIONS

Section 1.01. 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 HERITAGE 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. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Henrietta or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- F. "OWNER" shall mean and refer to the holder of record title, whether one (1) 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.



- G. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- H. "SPONSOR" shall mean and refer to Mark IV Construction Co., Inc.
- I. "TOWNHOUSE" shall mean a single family dwelling, and all improvements associated with it, on the Property that is attached to at Least one (1) other Townhouse by means of a party wall or otherwise.
- J. "UNIT" shall mean and refer to each completed Townhouse, as evidenced by issuance of a Certificate of Occupancy issued by the Town of Henrietta including garage, situated upon the Property or any such structure or improvement on the Property which is intended to be occupied as a residence or in conjunction with a residence.

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 Henrietta, County of Monroe 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 "Initial Property".

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

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

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed 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 specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, and as they may be amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a Not-for-Profit Corporation as contained in the Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Sponsor. All Owners, upon becoming such, shall 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. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until five (5) years after the transfer of the first Lot, or until 50 Lots are transferred, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. Lots Owned or Held by More Than One Person or by Corporation. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common

ownership or interest such Owners shall collectively be entitled to only that number of votes prescribed herein for such Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. The 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 take successive like assignments. All such assignments shall be subject to the provisions of the Offering Plan pursuant to which the Sponsor has offered interests in the Association, including any duly filed amendments thereof.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law 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 3.09. 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.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. 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, reasonably incurred by or imposed upon 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 of Directors 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 director or officer may otherwise be entitled.

Section 3.12. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, until five (5) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, the Board of Directors may not, without the Sponsor's written consent, which consent will not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Property of the Association costing more than 20% of the then current annual budget, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Lot, or (v) reduce the quantity or quality of services or maintenance of the Association Property. Until five (5) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, this Section of the Declaration shall not be amended without the prior written consent of the Sponsor.

ARTICLE IV  
PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The 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, which land shall hereinafter be referred to as "Association Property". The Association shall accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association, the Sponsor, and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner.

Every Member (and such Member's guests, licensees, tenants and invitees) also shall have an easement for ingress and egress by vehicle or on foot over Association Property and the common utility and conduit easements described in Section 4.06 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

Section 4.03. Rights of Association. With respect to the Association Property, and/or 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 the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

(b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

(c) to dedicate or transfer 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 the total votes of all Members who

shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;

(d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of 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 60 days in advance of the vote on the proposed agreement;

(e) to use electricity from outdoor sockets on any Lot, the cost of which shall be reimbursed to the Lot Owner based upon the difference calculated between the current utility bill and the average of the last two (2) preceding utility bills, or actual consumption as determined by submeters affixed by the Association to the outlets of any Lot;

(f) to draw water more or less equally from Lot Owners outdoor hose bibs for watering lawns and shrubs. Lot Owners shall have the responsibility to have their water supply valve for the outdoor bibs in the open position from May 1st through October 31st of each year.

Section 4.04. Rights of Sponsor. With respect to Association Property, the Sponsor shall have the right until the improvement, marketing and sale of all Lots is completed:

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

(b) to 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) to use the Association Property for ingress and egress to those portions of the Initial Property (as described in Section 2.01 of this Declaration);

(d) to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not limited to, the paved areas;

(e) to 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.

All easements, rights-of-way and other rights granted by the Sponsor pursuant to (a), (b), (c) and (e) above, shall be permanent, run with the land and be binding upon and for the benefit of the Association and the Sponsor and their respective successors and assigns. The rights granted to the Sponsor shall remain in effect until the Sponsor completes the improvement, marketing and sale of all Lots or the Sponsor records a written memorandum releasing its rights hereunder.

→ Section 4.05. Rights of Individual Lot Owners. Each Lot Owner shall have an easement over Association Property and over the property of adjacent Lot Owners for the performance of routine maintenance on a Lot Owner's Townhouse, provided, however, the right of entry shall be exercised upon reasonable notice to the adjoining Lot Owner, except in the case of an emergency, shall be limited to reasonable times, and shall be exercised so as not to impair the enjoyment of the adjacent Lot. The easement area shall be limited to that area reasonably necessary to effect repairs and maintenance of the Owner's Townhouse. The easement area shall be used for actual repairs and maintenance only; the storage of material, supplies and other objects associated with the work to be completed shall not be permitted. The Owner entering upon an adjacent Lot shall perform the contemplated work with dispatch, and shall be responsible for all costs for the repair and restoration of any damage caused to the adjacent Lot, including but not limited to structural repairs, replacement of lawns, bushes and similar objects. An Owner entering upon an adjacent Lot shall indemnify and hold harmless the adjacent Lot Owner against any and all claims which may arise by virtue of the repair or maintenance work performed.

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's driveway as constructed by the Sponsor.

Each Lot Owner also shall have an easement for the exclusive use and enjoyment of the Lot Owner's deck or patio, if any, as constructed by the Sponsor, servicing the Owner's Townhouse.

Section 4.06. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot. The Association shall have the right of access to each Lot and residential dwelling thereon for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot or within any residential dwelling thereon. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Lot Owner or Owners, it shall be considered a special expense allocable to the Lot Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Lot Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots to secure the payment thereof.

Section 4.07. Omitted

Section 4.08. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.09. 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. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.



Section 4.10. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and, in its discretion, may establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment.

Section 4.11. Common Access Easement. The Sponsor and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways and drives located on the Association Property and the Association shall have an access easement to each Lot for the maintenance, repair and replacement of paved areas and any other property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.12. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional 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 New York.

ARTICLE V  
ASSESSMENTS

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, excluding the Sponsor, 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) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); (b) special assessments for capital improvements ("Special Assessments"); hereinafter collectively 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 interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and also shall be the personal obligation of the Owner of such Lot 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 recreation, 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 and liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as landscaped areas, and of the Townhouse exterior, including roof, gutters, and downspouts repairs and maintenance, exterior siding, including the painting of exterior surface frame and trim of windows and doors, the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise, but excluding the repair or maintenance of any glass surface, door, stoop, porch or stair.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such other date as determined by the 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 Lot

at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration, excluding the Sponsor, shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any. For so long as Sponsor owns a Lot, the Maintenance Assessment for Lots owned by someone other than Sponsor shall not be less than the amount set forth in the Offering Plan, that is \$1,255.24 per Lot per year, without the prior written consent of the Sponsor. The Maintenance Assessment on the Lots owned by the Sponsor shall be an amount calculated in accordance with the following: The Sponsor shall be obligated for the difference between the actual Association expenses, exclusive of reserves applicable to completed improvements, and the Association charges levied on owners who have closed title to their Lots. For those Lots owned by Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of a Certificate of Occupancy. This Section may not be amended without the prior written consent of the Sponsor.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot transferred to a third party purchaser for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by one-fiftieth (1/50).

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until five (5) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns a Lot then subject to this Declaration, whichever shall first occur, no change in the basis of Maintenance Assessments which adversely affect the interest of the Sponsor with respect to unsold Lots shall be valid except with the specific consent of the Sponsor in writing. A written certification of any such change shall be

executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year 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 to, the Association Property, including the necessary fixtures and personal property related thereto, 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 annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 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 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 and shall not pass to such Owner's successors in title unless expressly assumed by them.

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 ten percent (10%) 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 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) 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 ten percent (10%) per annum, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, 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 services furnished by the Association, under no circumstances, shall entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or at the request of a mortgagee, shall send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.09. 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 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall 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; (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 these 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 or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money 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 have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. 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 note holders shall be subject to (i) the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

Section 5.13. 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 Assessment hereunder;

- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
- (1) assess the Maintenance Assessment 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;
  - (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
  - (3) provide for the custody and safeguarding of all funds received by it;
  - (4) establish sinking funds and/or other security deposits;
  - (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

ARTICLE VI  
MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all paved areas on the Association Property, snow removal from all paved areas, and the maintenance of all landscaped areas within Lots and Association Property shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether such lines and facilities are on individual Lots or Association Property) also shall be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

- a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including paved areas, walkways and landscaped areas within Lots and Association

Property. The Association also shall be responsible for snow removal from paved areas. Individual Lot Owners are responsible for snow removal from the walks and entry ways abutting their dwellings.

- b. Maintenance of Townhouses. With respect to the Townhouses, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts and roofs; paint the trim, windows and doors, but shall not repair or replace windows, sky lights, window panes or doors. Exterior items which are vinyl coated and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations. The Association shall not be responsible for the removal of snow from roofs.

With respect to the other improvements on a Townhouse Lot, the Association shall stain, repair and replace fences, railings and decks initially installed by the Sponsor, but shall not repair or replace spalling concrete walks, stoops or porches. The water, storm sewer and sanitary sewer laterals serving a Townhouse will be maintained by the Association. Maintenance and repair shall be limited to leakage and structural failure only. A lateral shall be deemed to terminate at the outer surface of the foundation wall.

The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company, (iii) the



maintenance, repair or replacement of the dedicated improvements, or (iv) obstructed sewer laterals.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner or the Sponsor shall be made at the cost and expense of such Lot Owner or the 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 Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

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 appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) upon reasonable notice to the Owner(s), shall have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

## ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property, shall be the responsibility of the Association, acting

through the Architectural Standards Committee (hereinafter referred to as the "Architectural Committee") as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Standards Committee. The Architectural Committee shall be a permanent committee of the Association and shall approve all proposed improvements, additions, modifications or alterations to any existing improvements or any proposed change in the use of a Lot or any other portion of the Property, including Association Property, after transfer of title to such Lot or other portion of the Property, working within guidelines and policies established by the Board of Directors. The Architectural Committee also may assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three (3) or more persons, as determined by the Board of Directors of the Association, for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor no improvement, exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee, working within guidelines and policies established by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee, working within guidelines and policies established by the Board of Directors, may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;

- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, or proposed parking;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, preservation, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee.

Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record, together with such qualifications, or provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 45 days after submission thereof, the applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;
- b. Seventy (70) days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Architectural Committee as long as the number and identity of such staff or members, and the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of

plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Architectural Committee.

Section 7.10. Liability of Architectural Committee.  
No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 7.11. Architectural Committee Certificate.  
Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Architectural Committee Certificate was issued.

ARTICLE VIII  
PARTY WALLS AND ENCROACHMENTS

Section 8.01. Party Walls. Each wall which is built as part of the original construction of the Townhouses, whether or not such wall is on the dividing line between two (2) adjacent Lots, and which serves as the exterior limit of the two (2) Townhouses, shall be considered a party wall.

Section 8.02. Maintenance of Party Walls. Each Townhouse Owner whose Townhouse contains a party wall shall have an easement to enter upon the Townhouse with which the party wall is shared to effect necessary repairs or maintenance of said party wall. Each Townhouse Owner shall be responsible for the ordinary maintenance and repair of such Townhouse Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two (2) Townhouse Owners which share such wall.

In any event where it is necessary for a Townhouse Owner, its authorized employees, contractors or agents, to enter upon a Townhouse owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Townhouse Owner, shall be limited to reasonable times, and shall be exercised so as not to impair enjoyment of said adjacent Townhouse.

Section 8.03. Exposure of Wall. A Townhouse Owner who, by negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used and Workmanship. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Townhouse which used the wall may restore it. The Townhouse Owner who undertakes such restoration shall be entitled to a contribution equalling one-

half (1/2) the cost of such restoration from the Owner of the other Townhouse which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of a Townhouse Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Townhouse Owner.

Section 8.07. Encroachments and Projections. If any Townhouse and all improvements associated with it, including but not limited to patios, porches, walks, decks, and privacy fencing, or any other improvement installed by the Sponsor, encroaches or projects upon any other Townhouse Lot or upon any portion of the Association Property as a result of the construction of such Townhouse, or if any such encroachment or projection shall occur as a result of settling or shifting of such Townhouse or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Townhouse or portion thereof shall stand. In the event one (1) or more Townhouses or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or Proceedings of similar import and effect, and such Townhouse(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Townhouse(s) or portions thereof upon any other Townhouse or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

ARTICLE IX  
INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) fire and casualty insurance on the Association Property, the Townhouses,

(ii) liability insurance on the Association Property, (iii) directors and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

1. Fire and Casualty. Coverage shall be for the unit value of each Townhouse under the "single entity" concept, i.e. covering the Townhouses as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings and all machinery servicing the Townhouses and common facilities, excluding the land, foundations, the personal property of Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, and wall coverings) made by present or prior Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, vandalism and malicious mischief, (ii) inflation guard, (iii) coverage for loss of Maintenance Assessment from Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association, (v) a provision that the policy shall in no event be brought into "contribution" by individual Owners or mortgagees, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (vii) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage, (x) a provision that adjustment of loss shall be made by the Board of Directors and (xi) a provision that the policy not require the insured to be a co-insurer in the event of loss or claim under the policy.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or otherwise for the purpose of determining the amount of fire insurance to be effected pursuant to this section.



The proceeds of all policies of physical damage insurance, if \$50,000.00 or less shall be payable to the Association, and if \$50,000.00 or more, to an Insurance Trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 9.02 of this Declaration.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the Trustee shall be paid by the Association and shall be a common expense of the Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to the mortgagees as its interest shall appear, subject, however to the loss payment provisions in favor of the Association and the Insurance Trustee. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Each Owner and such Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing insurance coverage.

Duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of Townhouses.

If the Board of Directors decides not to insure the Townhouses or decides to insure the Townhouses in an amount less than that necessary to provide for the full replacement or reconstruction of the damaged improvements taking into account co-insurance provisions, each Owner shall, at the Owner's sole cost and expense, purchase and maintain fire and extended coverage insurance in such amounts as from time to time may be required by the Board of Directors, from a company licensed to do business in the State of New York. Such insurance shall be in the standard New York State form and shall cover loss and damage to the Lot, Townhouse (including garage), and all other improvements on the Lot. All insurance policies shall cover the interest of the Owner, the Association, and mortgagees, if any, as their interests may appear.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners of Townhouses, but not the liability of Townhouse Owners arising from occurrences within such Owner's Townhouse or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) Personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$1,000,000.00.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget, but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000.00 for forgery.

5. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

6. 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 demonstrably unreasonable cost.

7. 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 gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Option to Have Insurance Paid  
by Lot Owners Directly

The Board of Directors may, at its option, elect to have any insurance which it obtains, paid for directly by the Owners of the Lots rather than from assessments paid to the Association. However, should any Owner fail to pay such Owner's portion of such insurance premium, the Board of Directors may elect to pay such amount on behalf of such Owner in which event such amount so advanced shall be a charge and continuing lien upon the Lot of such Owner and shall also be the personal obligation of such Owner. Such amount shall bear interest and shall be collectible in the same manner as a delinquent assessment as set forth in Section 5.08 of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Townhouse, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if the Owners of 75% or more of all Townhouses do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Townhouse Owners in proportion to the damage to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to a Townhouse Owner until there has first been paid out of such

Townhouse Owner's share of such funds all liens on such Owner's Townhouse. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners of the damaged Townhouses in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse and any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to the respective mortgagees and Townhouse Owners in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse and Lot, provided, however, that no part of a distribution that results from an Assessment paid by a Townhouse Owner, shall be made to all Townhouse Owners and their mortgagees as their interest may appear.

Section 9.03. Insurance Carried by Owners. Owners of Townhouses shall not be prohibited from carrying other insurance for their own benefit, provided that such policies contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

#### ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots, no additional sign (other than a professional shingle affixed to the dwelling indicating the name of a firm or person and/or such firm's or person's profession, the materials, size, design, style and color of which shall be approved by the Architectural Committee) or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property, including but not limited to temporary signs advertising property for sale or rent, except with the consent of the Architectural Committee.

Section 10.02. Animals, Birds and Insects. Except for one (1) dog and one (1) cat belonging to an Owner of a Lot, fish, or birds kept in a cage, no animals, birds or insects shall be kept or maintained on any Lot on which a Townhouse is or will be constructed or other portion of the Property except with the

consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. In any event, pets may be allowed outdoors only within the area fully enclosed by privacy fencing, unless accompanied by a responsible person and leashed. A kennel or outdoor enclosure for retaining a pet out of doors may be constructed only within an area fully enclosed by privacy fencing. The Board of Directors of the Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled, or privacy fencing has not been approved for construction and the animal is kept outdoors.

Section 10.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially installed by the Sponsor on a Lot or other portion of the Property and not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Association so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic 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 Association.

Section 10.06. 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 to 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 electro-magnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 10.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Association.

Section 10.08. Dwelling in Other Than Residential Unit. 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 Association.

Section 10.09. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.10. Trees and Other Natural Features. After the transfer of title by the Sponsor to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.11. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 10.12. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association, subject, however, to the Town of Henrietta Zoning Code and the Parks and Recreation Law of the State of New York.

Section 10.13. Commercial and Professional Activity on Property. No wholesale or retail business, service occupation or home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, except by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots, except that Association consent shall not be required for a legal home occupation requiring no visitor parking or employee parking.

Section 10.14. Outside Storage. Outside storage or parking for more than one 72 consecutive hour period per month of commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited.

Section 10.15. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

Section 10.16. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property for more than 72 hours within any month:

- a. any vehicle which cannot fit into a garage of the size constructed by the Sponsor with the Units with the overhead garage door closed;
- b. commercial vehicles of a weight of two (2) tons or more, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 10.17. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Association.

Section 10.18. Chain Link Fences. Unless otherwise consented to by the Association, no chain link fence shall be erected anywhere on the Property.

#### ARTICLE XI ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. 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 the 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 the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other



instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the 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.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the 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 a similar violation occurring prior to or subsequent thereto. No liability shall attach to the Sponsor, the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. 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 the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any.

Section 11.05. Inspection and Entry Rights. Any agent of the Association or the Architectural Committee may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other

improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the view of street traffic, or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. 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 11.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration. In addition, until five (5) years from the date of recording of this Declaration, or so long as the Sponsor owns a Lot subject to this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor.

In voting for such amendment or rescission, the Members voting rights shall be as set forth in Article III hereof.

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

In addition to the approval of the Lot Owners and Sponsor, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the 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 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. 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 received and filed with the Board.

Section 11.09. 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 until December 31, 2012, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 11.10. 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.

Any conflict in construction or interpretation between the Association and any other person or entity entitled 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 making and 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 interest of the Owners and other residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

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

Section 11.11. 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 11.12. 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 11.13. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII GENERAL

Section 12.01. 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 12.02. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Sponsor, 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 Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 12.04. 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 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 the Association, for any reason, 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 a 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 12.05. 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.

MARK IV CONSTRUCTION CO., INC.

By: \_\_\_\_\_  
Anthony M. DiMarzo, President

HERITAGE MEADOWS HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Anthony M. DiMarzo, President

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

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally came ANTHONY M. DiMARZO, to me personally known, who, being by me duly sworn, did depose and say that he resides at Rochester, New York; that he is the PRESIDENT of MARK IV CONSTRUCTION CO., INC., the corporation described in and which executed the within Instrument; and that he signed his name thereto by like order.

---

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

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally came ANTHONY M. DiMARZO, to me personally known, who, being by me duly sworn, did depose and say that he resides at Rochester, New York; that he is the PRESIDENT of HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC., the corporation described in and which executed the within Instrument; and that he signed his name thereto by like order.

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EXHIBIT "B"

CERTIFICATE OF INCORPORATION  
OF  
HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, being of the age of 18 years or older, under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the Corporation is HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

2. The Corporation has not been formed for pecuniary profit or financial gain and no part of the assets, income or profit of the Corporation is distributable to or inures to the benefit of its members, directors or officers. The Corporation shall be a Type A Corporation under Section 201 of the Not-for-Profit Corporation Law.

3. The purposes for which the Corporation is formed are to acquire, construct upon, manage, maintain, care for, preserve, protect and enhance the value of that certain tract of property known as Heritage Meadows Subdivision in the Town of Henrietta, County of Monroe, State of New York, and such additions thereto as may hereafter be brought within the jurisdiction of this Corporation and structures, fixtures and improvements thereon, and community facilities and rights, privileges and easements benefiting such property (the "Property") and being initially the premises described in that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Heritage Meadows Homeowners Association, Inc. and any supplements or additions thereto (the "Declaration") and to promote the health, safety and welfare of the owners of interests in the Property.

4. In furtherance of, and not in limitation of, the purposes of the Corporation, the Corporation shall have all the powers now or hereafter granted to corporations of its type under the Not-for-Profit Corporation Law of the State of New York and any successor statute, including, without limiting the generality of the foregoing, the power to acquire, invest in, hold, sell, exchange and dispose of real and personal property of all kinds and varieties and interests, including security interests and mortgages therein.

5. Nothing herein contained shall authorize the Corporation to undertake or carry on any of the activities specified in Section 404(a)-(u) of the Not-for-Profit Corporation Law of the State of New York, to operate a hospital, drug maintenance program, certified home health agency, health maintenance organization or to provide hospital or health related services, or to offer a comprehensive health services plan as any of the foregoing are respectively defined in Articles 28, 33, 36, and 44 of the Public Health Law.

6. The office of the Corporation will be located in the County of Monroe, State of New York.

7. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is 301 Exchange Boulevard, Rochester, New York 14608.

8. Every person or entity who is a record owner of a fee interest in any Lot in the Property which is subject by covenants of record to assessments by the Corporation, including contract vendors and, in addition, the Sponsor so long as it shall be the record owner of a fee interest in any Lot in the Property, whether or not subject to assessments by the Corporation, shall be a member of the Corporation. The Corporation shall have two (2) classes of membership. No person shall be a member of the Corporation solely on account of ownership of an interest in a Lot in the Property solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot in the Property subject to assessment by the Corporation.

9. The initial directors of the corporation until the first annual meeting are as follows:

Anthony M. DiMarzo	11 Pine Acres Drive Rochester, New York 14618
Patsy DiMarzo	1 Bay Point Circle Rochester, New York 14622
Donald Riley	213 Country Circle Rochester, New York 14615

10. Upon dissolution of the Corporation other than incident to a merger or consolidation, no part of the assets of the Corporation nor any of the proceeds thereof shall be distributed to the members, officers or directors of the Corporation as such, but all such property and proceeds shall,



subject to the discharge of the Corporation's liabilities, be distributed as directed by the members of the Corporation to a public agency to be used for not-for-profit purposes similar to those for which the Corporation was created or for the general welfare of the residents of the municipality in which the Property is located or to a corporation, association, trust or other organization not organized for profit and operated exclusively for the promotion of social welfare, subject to the approval of a Justice of the Supreme Court of the State of New York.

11. Neither this Certificate of Incorporation nor the Corporation's By-Laws shall be amended in any manner which conflicts with the Declaration.

IN WITNESS WHEREOF, the undersigned has subscribed and affirmed this Certificate as true under the penalties of perjury this 9th day of December, 1991.

/S/ Louis M. D'Amato  
Louis M. D'Amato  
44 Exchange Street  
Rochester, New York 14614

EXHIBIT "C"

BY-LAWS

Establishing Heritage Meadows Homeowners Association, Inc.

NAME: HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

SPONSOR: MARK IV CONSTRUCTION CO., INC.  
301 Exchange Blvd.  
Rochester, New York 14608

DATE OF BY-LAWS: \_\_\_\_\_, 19\_\_

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WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Attorneys for the Sponsor

44 Exchange Street  
Rochester, New York 14614

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BY-LAWS  
OF  
HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS  
OF  
HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

SECTION 1.01 Name and Location. The name of the corporation is the HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Association shall be located in the Town of Henrietta, County of Monroe and State of New York.

ARTICLE II

DEFINITIONS

As used in these By-Laws, the following terms shall have the definitions ascribed to them below:

SECTION 2.01 Association. HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, Inc., a New York not-for-profit corporation.

SECTION 2.02 Declaration. The document entitled "Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens" imposed by the Sponsor of the Property, as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

SECTION 2.03 Lot. Any portion of the Property identified as a separate parcel on the tax records of the Town of Henrietta or shown as a separate lot upon any recorded or filed subdivision map, with the exception of Association Property as defined in the Declaration.

SECTION 2.04 Member. Every person or entity who is a record owner of a fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract vendors and, in addition, the Sponsor, as that term is defined in the Declaration, so long as it shall be the record owner

of a fee interest in any Lot subject to the Declaration, whether or not subject to assessments by this Association. No person, however, shall be a member of the Association solely on account of ownership of an interest in a Lot solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot subject to assessment by the Association.

SECTION 2.05 Property. All property within Heritage Meadows Townhomes.

SECTION 2.06 Sponsor. Mark IV Construction Co., Inc., its successors and assigns.

SECTION 2.07 Townhouse. A single family dwelling on the property that is attached to at least one (1) or more Townhouses by means of a party wall or otherwise.

### ARTICLE III

#### MEMBERS

→ SECTION 3.01 Membership in the Association. The Members of the Association shall be the Owners of Lots within 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. The Association shall have two (2) classes of Membership. Class A members shall be all Owners of Lots except the Sponsor and the sole Class B member shall be the Sponsor or assignee. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until five (5) years after the sale and transfer by the Sponsor of the first Lot, or until 50 Lots are sold and transferred by the Sponsor. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights.

SECTION 3.02 Right of Sponsor to Assign; Otherwise No Assignment. 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.

## ARTICLE IV

### MEETINGS OF MEMBERS; VOTING

SECTION 4.01 Annual Meeting. There shall be an Annual Meeting of the Members on the first Tuesday of March at 8:00 p.m., or at such other date and time and at such other 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.

SECTION 4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, and shall be called by the Secretary of the Association at the request in writing of Members of the Association holding not less than the ten percent (10%) of the votes entitled to be cast at the meeting.

SECTION 4.03 Notice of Meetings. Not less than ten (10) days or more than 30 days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member 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 without objection to lack or deficiency of notice prior to the conclusion of the meeting, 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.

→ SECTION 4.04 Voting Rights. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until five (5) years after the sale and transfer by the Sponsor of the first Lot, or until 50 Lots are sold and transferred by the Sponsor. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights.

SECTION 4.05 Quorum and Vote. The presence in person or by proxy of Members having not less than the lesser of one-half (1/2) or 100 of the total votes of the Membership entitled to vote shall constitute a quorum at any meeting. However, if a meeting cannot be held because a quorum is not present, the majority of the Members present, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours later, until a quorum shall be present in person or by proxy, with the quorum required for each reconvened meeting being one-half (1/2) of the quorum required for the previous meeting, but never less than the lesser of one-tenth (1/10) or 100 of the total votes of the Membership entitled to vote. Directors shall be elected by the affirmative vote of Members entitled to vote and casting a plurality of the vote cast at a meeting of Members. With respect to all acts other than the election of Directors, the act of Members casting a majority of the votes cast at a meeting 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.

SECTION 4.06 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 and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

SECTION 4.07 Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

SECTION 4.08 Joint or Common Ownership. Any one (1) joint or common fee owner of a Lot shall be entitled to cast the vote with respect to the Lot so owned, but all such joint or common owners shall together cast only one (1) vote for each Lot conferring voting rights. If the owners are unable to determine how the vote shall be cast, no vote shall be cast.

SECTION 4.09 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.

SECTION 4.10 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.

## ARTICLE V

### BOARD OF DIRECTORS

SECTION 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 Sponsor. The initial Board of Directors shall hold its first meeting within 30 days of transferring title to the first Lot. The initial Board of Directors shall serve until the first annual meeting after the Sponsor has sold and transferred title to 50 Lots or until five (5) years after the date of selling and transferring the first Lot, whichever first occurs. Directors need not be Members.



SECTION 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 also may be made 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 determine, in its sole discretion, but not less than the number of vacancies that are to be filled and such nomination may be made from Members of the Association.

→SECTION 5.03 Election. At the first Annual Meeting after 50 Lots have been sold and transferred or five (5) years after the date of transferring the first Lot, whichever first occurs, the Members shall elect three (3) Directors for a term of two (2) years and 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. 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.

→SECTION 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 (although less than a quorum) 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. 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.

SECTION 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 entitled to vote, remove any Director or Directors from office with or without cause and may by plurality vote elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. 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.

SECTION 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.

SECTION 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.

SECTION 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 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 without objection to lack or deficiency of notice prior to the conclusion of such 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.

SECTION 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 as otherwise required by law, by the Certificate of Incorporation of the Association or by these By-Laws. Except in cases in which it is provided otherwise by law, by the Certificate of Incorporation or by these By-Laws, a vote of a majority of Directors present 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.

SECTION 5.10 Informal Action by Directors. Any action required or permitted to be taken by 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. Such written consent shall be filed with the minutes of proceedings of the Board or committee.

SECTION 5.11 Powers of the Board. 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 these 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 expand the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association and the exteriors of the Townhouses (and other improvements, to the extent now or hereafter required or permitted under the Declaration) 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 Townhouses as it deems appropriate.

d. To repair, restore or alter the properties of the Association and the exteriors of the Townhouses (or such other improvements for which the Association may now or hereafter have such responsibility under the Declaration, as amended) after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

e. 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 and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce 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 expenses incurred by the Association and all taxes owing by the Association.

h. 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.

i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.

j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.

k. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.

l. To dedicate or transfer 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, however, require the consent of two-thirds (2/3) of the total votes of all Members at any meeting duly called and held or who shall vote upon written ballot which shall be sent to every

Member not less than 30 days nor more than 60 days in advance of the canvass thereof. In addition, no such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance.

m. To enter into agreements, reciprocal or otherwise, with other homeowners and residents associations, condominiums and cooperatives for the use of 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 10 days nor more than 60 days in advance of the vote on the proposed agreement.

n. 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.

SECTION 5.12 Duties of the Board. It shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.

b. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:

(1) Fix the amount of Special Assessments and Maintenance Assessments and other assessments to be assessed and levied against each Lot at the time or times and in the manner provided in the Declaration.

(2) Send written notice of each assessment to every owner of a Lot subject thereto at the time and in the manner provided in the Declaration.

(3) Foreclose the lien against any Lot for which assessments are not paid within 30 days after their due date, and to bring an action at law against the Member thereof personally obligated to pay the same.

d. Issue, or cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a Certificate states an assessment has been paid, such Certificate shall be conclusive evidence of such payment.

e. Procure and maintain adequate liability and hazard insurance for the Townhouses and Association Property.

f. Cause the Association Property and the exteriors of the Townhouses to be maintained.

g. Cause all officers or employees having fiscal responsibilities to be bonded, as the Board of Directors may deem appropriate.

h. Prepare annual finance statements of the Association which are to be mailed to each Member by March 15th of each year.

SECTION 5.13 Performance of Duties: Conflict of Interests. The Directors and Officers of the Association may freely make contracts, enter transactions or otherwise act for and in behalf of the Association relating to or incidental to its operations, notwithstanding the fact that they may also be acting as individuals or as Directors of the Association and as agents for other persons or business concerns or may be interested therein as stockholders of said corporations or business concerns or otherwise, provided, however, that all such dealings shall at all times be at arm's length for and in the best interests of the Association and otherwise lawful.

## ARTICLE VI

### OFFICERS

SECTION 6.01 Officers. The officers of the Association shall be the President (who shall be a member of the Board of Directors), one (1) or more Vice Presidents (the number to be determined by the Board of Directors), the Secretary and the Treasurer and shall be appointed by the Board of Directors. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Two (2) or more offices may not be held by the same person.

SECTION 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.

SECTION 6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold offices 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.

SECTION 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 of 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.

SECTION 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, 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 or these By-Laws.

SECTION 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.

SECTION 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, 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.

SECTION 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 shall 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.

SECTION 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.

SECTION 6.10 Compensation. No executive officers of the Association shall receive any stated salary for their services, provided that nothing herein contained shall preclude any executive officer from serving the Association in any other capacity and receiving compensation therefor.

## ARTICLE VII

### COMMITTEES

SECTION 7.01 Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one (1) 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 these By-Laws or a plan of merger or consolidation.

SECTION 7.02 Committees of the Association. The committees of the Association shall be the Architectural Standards Committee, the Nominating Committee and such other 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. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration.

SECTION 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.

## ARTICLE VIII

### FINANCE

SECTION 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 (1) Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

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

SECTION 8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members and filed within 20 days thereafter at the principal office of the Association.

ARTICLE IX

BOOKS AND RECORDS

SECTION 9.01 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. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

ARTICLE X

CORPORATE SEAL

SECTION 10.01 Corporate Seal. The Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

ARTICLE XI

AMENDMENTS

SECTION 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 a majority of Members entitled to vote present in person or by proxy or (except as to any matter affecting membership qualifications or voting rights) at any regular or special meeting of the Board of Directors or by the affirmative vote of a majority of the whole Board of Directors.

SECTION 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.

ARTICLE XII

INDEMNIFICATION

SECTION 12.01 Indemnification. To the extent permitted by law, the Association shall indemnify and hold harmless any person made a party to any proceeding by reason of the fact that such person is or was a Director or officer of the Association against any loss or expense incurred by said person by reason of such proceeding, including the settlement thereof, except in relation to matters which such person is adjudicated to be liable for gross misconduct in the performance of that person's duties.

EXHIBIT "D"

MANAGEMENT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC. (hereinafter "Association") and MARK IV CONSTRUCTION CO., INC. (hereinafter "Agent").

W I T N E S S E T H:

WHEREAS, the Offering Plan of the Association provides for the Sponsor to enter into a Management Agreement on behalf of the Association, and

WHEREAS, the Sponsor desires to employ the Agent to manage the Association and the Agent desires to be employed to manage the Association,

NOW, THEREFORE, in consideration of the covenants herein, the parties agrees as follows:

1. The Agent is employed to manage the Association for a period of two (2) years, beginning \_\_\_\_\_, and thereafter the Agent has the option of making its services available to the Association, but neither party is obligated to continue the management arrangement after the two (2) year period.

2. The Agent shall manage the Association to the extent, for the period, and upon the terms of this Agreement. The Agent shall perform the following services in the name of and on behalf of the Association, and the Association hereby gives the Agent the authority and powers required to perform these services:

2.1 The Agent shall collect and, as necessary, receipt for all monthly or other assessments and other charges due to the Association and all rental or other payments from concessionaires, if any, provided that the Agent shall have no responsibility for collection of delinquent assessments or other charges, except sending notices of delinquency.

2.2 The Agent shall maintain records showing all its receipts and expenditures relating to the Association and shall promptly submit to the President and Treasurer of the Association a cash receipts and disbursements statement for the preceding month and a statement indicating the balance

or deficit in the Agent's custodial account for the Association on or before the 15th day of the following month.

2.3 The Agent shall prepare and submit to the Association on or about December 1st of each year, a recommended budget for the next year showing anticipated receipts and expenditures for such year.

2.4 Within 45 days after the end of each calendar year, the Agent shall submit to the Association a summary of all receipts and expenditures for the preceding year. This service shall not be construed to require the Agent to supply an audit. Any audit required by the Association shall be prepared at its expense by accountants of its selection.

2.5 Subject to the direction and at the expense of the Association, the Agent shall cause the common properties of the Association to be maintained according to appropriate standards of maintenance consistent with the character of the project including negotiating all contracts as Agent for the Association for lawn mowing, snow removal, and other necessary services as the Board may deem advisable. All such contracts shall be made in the name of the Association, and signed by an officer of the Association.

A. Maintenance, including repair and replacement as necessary, of the common properties including the driveways and parking areas, signs, and those portions of sewer, water and utility laterals servicing one or more townhouses and not maintained by a utility company, public authority, or other entity, provided, however, that the maintenance of the laterals will be limited to repair necessitated by leakage or structural failure.

B. Exterior maintenance of the Townhouses as required by the Offering Plan and Declaration establishing the Association.

C. Plowing of snow from the areas.

D. Obtaining fire and casualty insurance of the Townhouses, and fire, casualty and liability insurance on the Association Property.

E. Enforcement of restrictive covenants and establishing of rules and regulations governing the use of the Association Property and the conduct of Lot Owners.

2.6 On the basis of the budget, job standards, and wage rates approved by the Association, the Agent shall hire, pay, negotiate collective bargaining agreement, if necessary, supervise and discharge janitors and other personnel required to maintain and operate the Association's common properties and Townhouse exteriors. All such personnel shall be employees of the Association. All salaries, taxes, and other expenses payable on account of such employees shall be operating expenses of the Association.

2.7 The Agent shall execute and file all returns and other instruments and do and perform all acts required of the Association as an employer under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, Subtitle C of the Internal Revenue Code of 1954, and the New York State Income Tax Act with respect to wages paid by the Agent on behalf of the Association and under any similar Federal, State, or Municipal law. The Association shall, upon request, execute and deliver promptly to the Agent all necessary powers of attorney, notices of appointment, and the like.

2.8 Subject to the direction of the Association, the Agent shall negotiate and execute on behalf of the Association, contracts for services for the common properties of the Association and the Townhouse building exteriors, as may be necessary or advisable. The Agent also shall purchase on behalf of the Association such equipment, tools, appliances, materials and supplies as are necessary for the proper operation and maintenance of the Association. All such purchases and contracts shall be in the name and at the expense of the Association.

2.9 The Agent shall pay from the funds of the Association all taxes, water rates and other governmental charges, and all other charges or obligations incurred by the Association with respect to the maintenance or operation of the Association or incurred by the Agent on behalf of the Association pursuant to the terms of this Agreement or pursuant to other authority granted by the Association.

2.10 The Agent shall maintain appropriate records of all insurance coverage carried by the Association. The Agent shall cooperate with the Association in investigating and reporting all accidents or claims for damage relating to the ownership, operation and maintenance of the common properties of the Association, including any damage or destruction to them, however, the Agent will not be responsible for reconstruction supervision in excess of \$2,500.00 unless additionally compensated in such amount as may be mutually agreed upon.

2.11 The Agent shall not be responsible for activities of an Architectural Committee, if any, or for assisting individual owners or the Association in obtaining approvals for capital improvements or changes to the exterior of structures, fences, landscaping or like.

3. In discharging its responsibilities under Paragraph 2 of this Agreement, the Agent shall not make any expenditures, nor incur any non-recurring contractual obligation exceeding \$2,000.00, without the prior consent of the Association, provided that no such consent shall be required to repay any advances made by the Agent under the terms of Paragraph 5. Notwithstanding these limitations, the Agent may, on behalf of the Association without prior consent, expend any amount or incur a contractual obligation in any amount required to deal with emergency conditions which may involve a danger of life or property or may threaten the suspension of any necessary service to the owners' dwellings.

4. Notwithstanding any other provision of this Agreement, the Agent has no authority or responsibility for maintenance of, or repairs to, the interior of individual dwelling units. Such maintenance and repairs shall be the sole responsibility of the owners individually. Each individual dwelling owner may contract with the Agent on an individual basis for the provision of certain maintenance and other related services which will be paid for in accordance with the Agreement between the Agent and the individual dwelling owner. This shall not be considered to be a conflict of interest or otherwise obligate the Agent to take any action except as it may agree to with an individual dwelling owner.

5. All monies collected by the Agent on behalf of the Association shall be deposited in a custodial account in a state or national bank where deposits are insured by the Federal Deposit Insurance Corporation, separate and apart from the Agent's own funds. All expenses of operation and management may be paid from the Association's funds held by the Agent, and the Agent is authorized to pay any amounts owed to the Agent by the Association

from such account at any time without prior notice to the Association. The Agent shall have no obligation to advance funds to the Association for any purpose whatsoever.

All Agent's employees who handle or are responsible for the safekeeping of any monies of the Association shall be covered by a fidelity bond protecting the Association and paid for from Association funds.

6. The Association shall pay the Agent a management fee equal to \$\_\_\_\_\_ per year. The management fee shall be paid monthly in advance. No further charge shall be made by the Agent for the services of the Account Manager pursuant to Paragraph 7, its services pursuant to Paragraph 2, and the other services of the Agent's professional staff, except as otherwise expressly provided in this Agreement. Any clerical services performed by the Association, such as the preparation and circulation of notices and newsletters and general correspondence of the Association, shall be at the expense of the Association.

7. One (1) of the Agent's employees shall be designated Account Manager for the Project. The Account Manager or other representative of the Agent shall attend one regular meeting of the Board of Directors of the Association each month and the annual meeting of the Association's members. The Account Manager or other representative of the Agent shall, upon no less than 24 hours' notice, attend additional meetings of the Association or the owners as requested, provided that the Association shall pay the Agent \$35.00 per hour for the Account Manager's or other representative's attendance at each meeting.

8. The Association's Board of Directors shall designate a single individual who shall be authorized to deal with the Agent on any matter relating to the management of the Association. The Agent is directed not to accept directions or instructions with regard to the management of the Association from anyone else. In the absence of any other designation by the Board of Directors, the President of the Association shall have this authority.

9. The Agent shall have no authority to make any alterations or repairs not authorized by the Declaration establishing the Association.



The Agent has no responsibility for the compliance of the Association or any of its equipment with the requirements of any ordinances, laws, rules, or regulations of the Village, Town, County, State, or Federal Government, or any public authority or official thereof having jurisdiction over it, except to notify the Association promptly of, or forward to the Association promptly, any complaints, warnings, notices, or summonses received by it relating to such matters.

10. The Association shall:

10.1 Indemnify, defend, and save the Agent harmless from all suits in connection with the Association and from liability for damage to property, and injuries to or the death of any employee or other person whomsoever, and carry at its own expense public liability and workers' compensation insurance naming the Association and the Agent in form, substance, and amounts reasonably satisfactory to the Agent, and furnish to the Agent certificates evidencing the existence of such insurance. Unless the Association shall provide such insurance and furnish such certificates within thirty (30) days from the date of this Agreement, the Agent may, but shall not be obligated to, place said insurance and charge the cost thereof to the account of the Association.

10.2 Pay all expenses incurred by the Agent including, without limitation, attorneys' fees for counsel employed to represent the Agent or the Association in any proceeding or suit involving an alleged violation by the Agent or the Association, or both, of any constitutional provision, statute, ordinance, law, or regulation of any governmental body pertaining to environmental protection, fair housing, or fair employment including, without limitation, those prohibiting or making illegal discrimination on the basis of race, creed, color, sex, religion, or national origin in the sale, rental, or other disposition of housing or any services rendered in connection therewith, or in connection with employment practices (unless, in either case, the Agent is finally adjudicated to have personally, and not in a representative capacity, violated such constitutional provision, statute, ordinance, law or regulation), but nothing herein contained shall require the Agent to employ counsel to represent the Association in any such proceeding or suit.

10.3 Indemnify, defend and save the Agent harmless from all claims, investigations, and suits with respect to any alleged or actual violation of state or federal labor laws. The Association's obligation under this Paragraph

10.3 shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, litigation expenses, and attorneys' fees.

11. The Agent may cancel this Agreement within the first year of its term upon not less than sixty (60) days prior written notice, only if the Association fails or refuses to comply with or abide by any rule, order, determination, ordinance, or law of any federal, state or municipal authority, or to perform its obligations under this Agreement. The Association may cancel this Agreement at any time upon thirty (30) days written notice in the event of a default on the part of the Agent. The Agent may assign this Agreement with the consent of the Association, which consent will not be unreasonably withheld.

Upon termination of this Agreement, the Agent shall account for all sums received, and transfer said sums and complete Association records in accordance with written instructions received from the Association.

12. Any notice required or permitted to be served hereunder may be served by registered or certified mail or in person as follows:

12.1 If to the Agent:

Mark IV Construction Co., Inc.  
301 Exchange Boulevard  
Rochester, New York

12.1 If to the Association, to the President of the Association at his or her home address.

Either party may change the address for notice by notice to the other party. Notice served by mail shall be deemed to have been served when deposited in the mails.

13. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Agent and the Association, respectively.

13.1 This Agreement shall constitute the entire Agreement between the contracting parties, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement, and shall be construed according to New York State Law.

13.2 For the convenience of the parties, the Agreement has been executed in several counterparts, which are in all respects identical and each of which is deemed to be complete in itself so that any one may be introduced in evidence for any other purpose without the production of the other counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

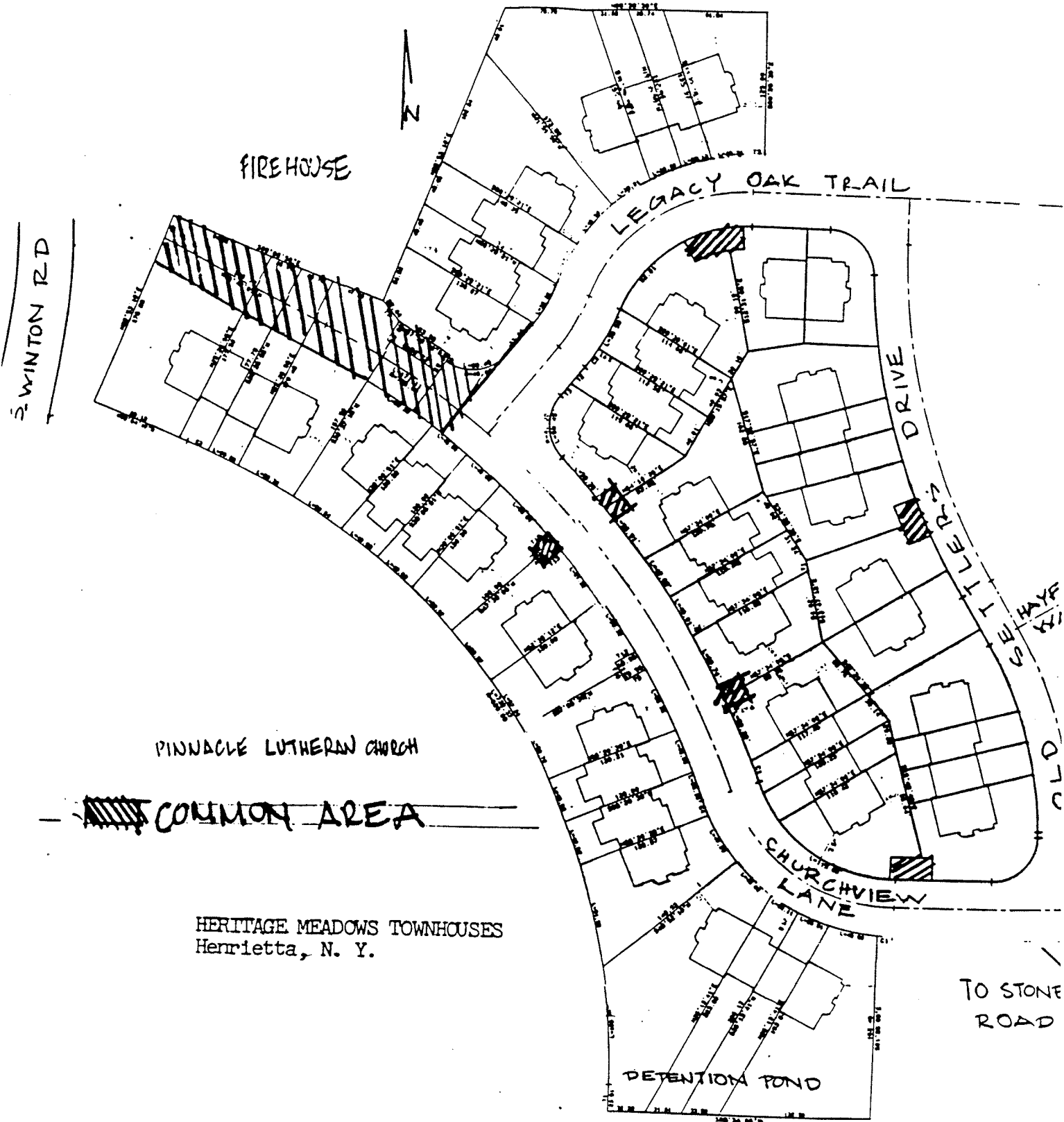
MARK IV CONSTRUCTION CO., INC.

By: \_\_\_\_\_  
Anthony M. DiMarzo, President

HERITAGE MEADOWS HOMEOWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Anthony M. DiMarzo, President

Exhibit E Site Plan



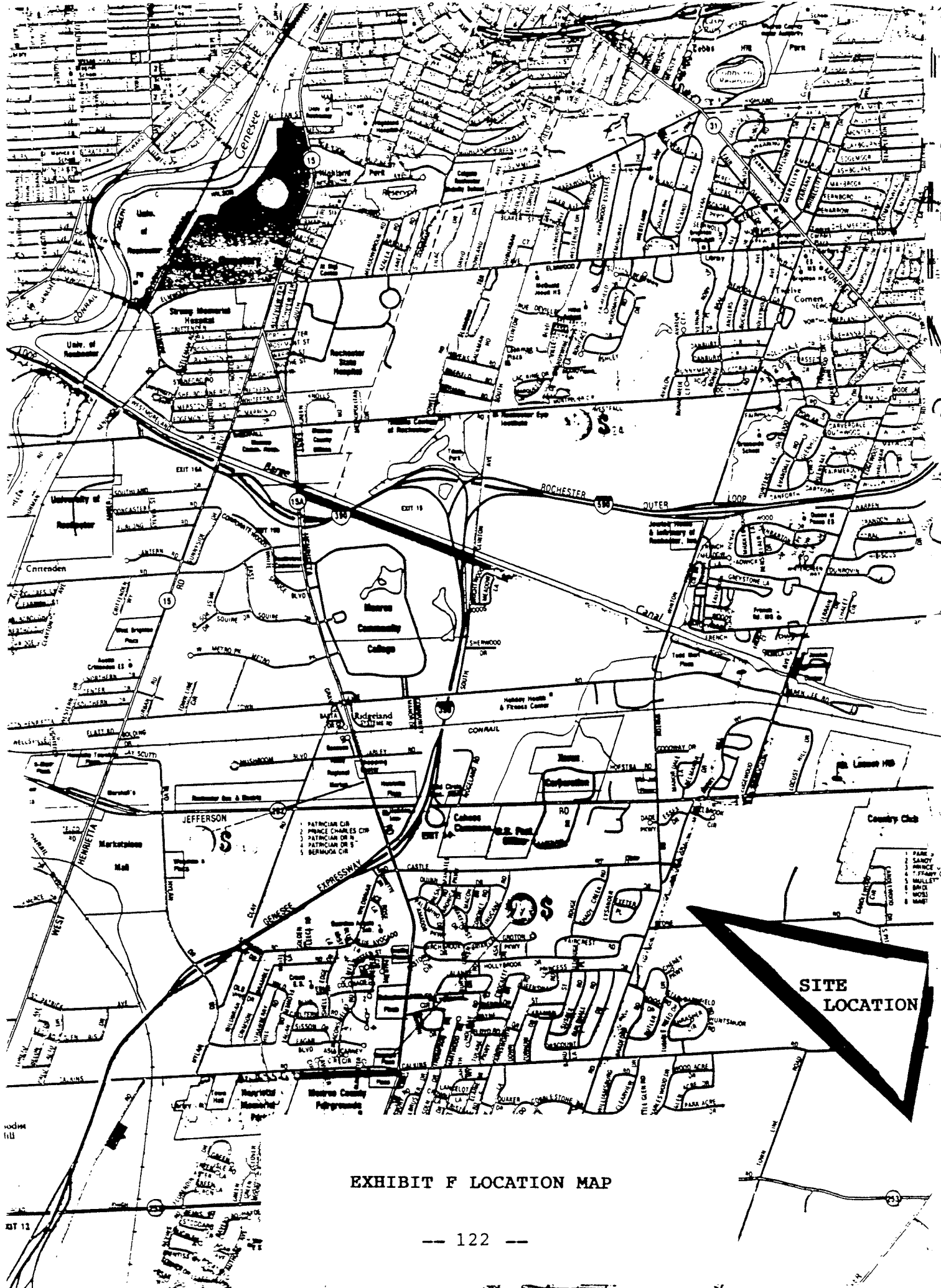


EXHIBIT F LOCATION MAP

EXHIBIT "G"

PURCHASE AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
by and between MARK IV CONSTRUCTION CO., INC. having an office at  
301 Exchange Blvd., Rochester, New York ("Seller") and  
\_\_\_\_\_, residing at  
\_\_\_\_\_, ("Purchaser").

W I T N E S S E T H :

In consideration of the mutual promises herein made, Seller agrees to sell and Purchaser agrees to purchase the premises described below for the price and upon the terms and conditions set forth below.

1. PREMISES: Those certain premises located in the Town of Henrietta, County of Monroe and State of New York, known and designated as Lot No. \_\_\_\_ of the Heritage Meadows Subdivision, on a map filed in the Monroe County Clerk's Office.

The premises are sold together with all rights of Seller in and to any and all streets, roads, highways, alleys, driveways, easements and rights of way appurtenant thereto.

The premises are sold subject to restrictive covenants of record provided they have not been violated, unless enforcement of the covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; utility easements of record, easements common to the tract or subdivision, easements and rights of way shown on the subdivision map, and easements and party wall agreements recorded in the Monroe County Clerk's Office, and also subject to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, and the By-Laws for the Heritage Meadows Homeowners Association, Inc. both of which are included in the Offering Plan for the Heritage Meadows Homeowners Association, Inc. Purchaser acknowledges receipt of the Offering Plan at least three (3) business days prior to the date of this Agreement and the Offering Plan is incorporated in this Agreement by reference and made a part of this Agreement with the same force and effect as if set forth in full. Purchaser agrees to be bound by the Declaration, By-Laws and any Rules and Regulations of the Association as they may be amended from time to time. Purchaser acknowledges that he is purchasing an interest in the Association, and that except as stated in this Agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any

representations or other statements of any kind or nature made by Seller or otherwise.

2. PRICE: Purchaser shall pay to Seller for the premises the sum of \$\_\_\_\_\_ payable as follows:

Upon signing this Agreement:	\$
Upon Purchaser's receipt of a mortgage commitment:	\$
Upon _____	\$
Upon delivery of the deed:	\$
TOTAL	\$

3. DWELLING: Seller agrees to sell and Purchaser agrees to purchase the \_\_\_\_\_, now on the premises or to be constructed on the premises in accordance with plans and specifications on file in the office of Mark IV Construction Co., Inc. including the Extras requested by Purchaser, in accordance with Exhibit "A" attached. Seller reserves the right to make such changes and/or substitutions in the construction of the dwelling as may be required, authorized, and/or appointed by the lending institution granting Purchaser's mortgage loan or by any governmental agency having jurisdiction, provided any such changes are of comparable value. Seller also shall have the right to determine the grading, elevation and design (including reversal of the building layout) of the lot and dwelling to fit into the general pattern of the development. Purchaser understands that he may make changes and alterations in the plans provided that such changes are made prior to the start of construction and are listed on a change authorization form signed by Purchaser and Seller. The cost of the changes and alterations shall be paid for at the time the Purchaser executes and submits to the Seller the change authorization form.

4. DEPOSITS: Purchaser is advised that to assure the return of his payments ("deposits") before delivery of the deed in the event this Agreement is terminated for reasons other than Purchaser's default:

The Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

The Sponsor has obtained an irrevocable Letter of Credit from Central Trust Company, a banking corporation with an office at 44 Exchange Street, Rochester, New York in the amount of Fifteen Thousand Dollars (\$15,000.00) to secure the return of purchasers' deposits in the event the Sponsor defaults in its obligation to deliver the Lot as required in the Purchase Agreement. The Letter of Credit amount is 125% of the aggregate of all down payments or payments expected to be received from purchasers and not retained in escrow during such period of time as the Letter of Credit will be needed. If circumstances warrant, the amount of the Letter of Credit will be reduced or increased pursuant to a filed amendment to the Offering Plan. The letter is issued to Spiro P. Janetos, Esq., as attorney, the Escrow Agent, and provides that payment will be made upon presentation of the Letter of Credit together with a signed certification from Spiro P. Janetos, Esq., "that MARK IV CONSTRUCTION CO., INC. has failed to refund deposit monies to purchasers ... in accordance with the terms of the Purchase Agreement." A copy of the Letter of Credit is set forth as an Exhibit and is available on written request of the purchasers or prospective purchasers to Spiro P. Janetos, Esq., 301 Exchange Blvd., Rochester, New York 14608. The Sponsor anticipates obtaining additional letters or a renewal of existing letters during development of Heritage Meadows Townhomes. In the event that a renewal of such Letter of Credit is not obtainable with respect to any purchaser's deposit, Spiro P. Janetos, Esq. will draw upon such Letter of Credit in an amount to fully cover all down payments secured by such Letter of Credit.

All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, will be placed, within five business days after the agreement is signed by all necessary parties and a deposit check has been delivered by purchaser, in a segregated special escrow account of Spiro P. Janetos, as attorney, the Escrow Agent, whose address is 301 Exchange Boulevard, Rochester, New York 14608, and whose telephone number is (716) 232-1760. The signatory on this account authorized to withdraw funds is:

Spiro P. Janetos, Esq.                      301 Exchange Boulevard  
Rochester, New York 14608

The name of the account is HERITAGE MEADOWS ESCROW ACCOUNT, located in Central Trust Company at 44 Exchange Street, Rochester, New York 14614. This bank is covered by federal bank deposit insurance to a maximum of \$100,000 per account. If an individual makes a down payment in excess of \$100,000 for the purchase of a lot, it is a special risk of this offer that such deposit will not be federally insured in excess of \$100,000.



The account will be an Interest-On-Lawyer's-Account ("IOLA") pursuant to Judiciary Law Section 497. Interest earned will not be the property of the purchaser, Sponsor or escrow agent, but rather will be paid to the New York State IOLA Fund.

All instruments shall be made payable to or endorsed to the order of Spiro P. Janetos, as attorney, as Escrow Agent.

Within ten business days after tender of the deposit submitted with the purchase agreement, the Escrow Agent will notify the purchaser that such funds have been deposited into the escrow account and will provide the account number. If the purchaser does not receive notice of such deposit within fifteen business days after tender of the deposit, the purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety days after tender of the deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the purchaser in conformity with the Attorney General's regulations.

The Escrow Agent shall release such funds to the Sponsor, provided the Escrow Agent has documentation showing that the Letter of Credit, or a renewal or replacement Letter of Credit, has been issued and is in effect. The Escrow Agent shall not release funds from escrow unless 125% of the amount to be released is secured by the Letter of Credit, or if the Escrow Agent receives notice or information warranting the draw-down of the Letter of Credit.

In the event this agreement is terminated for reasons other than Purchaser's default, deposits, with interest if any, will be returned to Purchaser within 15 days of such termination.

YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.

5. BUILDING PERMIT: This Agreement is subject to Seller being able to obtain a building permit.

6. RISK OF LOSS: Risk of loss or damage to the premises until transfer of title shall be assumed by the Seller. If any damage to the premises occurs prior to transfer of title and

Seller determines that it cannot repair or restore such loss or damage, this Agreement shall terminate without any further liability of one party to the other, and Purchaser shall have his deposits returned in accordance with paragraph 4 of this Agreement.

7. SURVEY: Seller shall furnish at Purchaser's expense an instrument survey made by a land surveyor duly licensed by the State of New York, showing the premises above described and the location of all buildings, improvements and other structures affecting the premises.

8. DEED: At closing, Seller shall deliver to Purchaser a deed with covenant against grantor's acts, with lien covenant, conveying insurable title in fee simple.

9. SEARCHES: Seller agrees to provide a guaranteed tax search and a United States District Court Search to the time of transfer, showing insurable title. Seller also shall provide a Preliminary Title Report for the premises issued by Public Abstract Corporation for the amount of the purchase price. The decision to obtain fee title insurance shall be the Purchaser's; the cost of the fee title insurance policy shall be the sole responsibility of Purchaser. The searches will be provided to Purchaser's attorney at least fifteen (15) days prior to transfer.

10. CERTIFICATE OF OCCUPANCY: Seller agrees to deliver to Purchaser, at the time of closing a Certificate of Occupancy.

11. INSPECTION: Prior to closing, Purchaser shall have the right to inspect the premises upon reasonable notice to the Seller.

12. POSSESSION: Purchaser shall have possession and occupancy of the premises from and after the date of delivery of the deed.

13. MORTGAGE LOAN FOR PURCHASER: This Agreement is contingent upon Purchaser obtaining within 30 banking days from date of this Agreement a commitment for a \_\_\_\_\_ first mortgage loan in the amount of \$ \_\_\_\_\_ from a lending institution. If Purchaser cannot obtain such commitment within that period through Purchaser's own efforts, then the Seller will cooperate with the

Purchaser in making the mortgage application. Purchaser agrees to pay total origination fees of \_\_\_\_\_ percent (\_\_\_\_%) of the mortgage amount to the lending institution making the loan in cooperation with the Seller or to the Seller. If Purchaser in cooperation with Seller is unable to obtain a commitment within 60 banking days thereafter, then Purchaser may cancel this Agreement by giving written notice to the Seller. In that event, this Agreement shall be null and void and both parties released from any and all liabilities. Purchaser has the option, however, of continuing with this Agreement and making application for a mortgage loan for an additional 60 banking days by giving written notice to the Seller, prior to the expiration of the 90 day mortgage contingency period, of the Purchaser's election with the understanding that the Purchaser will pay an additional three percent (3%) of the purchase price to the Seller at time of transfer. If Purchaser is unable to remove any and all contingencies within 150 days from date of this Agreement, Seller has the right of cancelling the Agreement and returning the deposit, with interest if any. Deposits, with interest if any, shall be returned to the Purchaser less the full cost of all Extras described in Exhibit A attached which were commenced, at the written request of Purchaser, prior to receipt by Seller of advice of the disapproval of the mortgage. In the event the cost of the Extras commenced by Seller exceeds the amount of the deposits, Purchaser shall promptly remit to Seller the difference.

14. ADJUSTMENTS AT CLOSING: There shall be prorated and adjusted as of the date of transfer of title: water charges, pure water charges, current taxes computed on a fiscal year basis, rents, and Association assessments. Purchaser will accept title subject to, and will pay all assessments and installments of assessments for local improvements which are not payable as of date of delivery of deed and which, if any, appear on the current tax rolls.

15. COSTS: Purchaser shall pay for any fees incurred in recording of the deed and mortgage and for the New York State Mortgage Tax. Seller shall pay the cost of the required Real Estate Transfer Tax Stamps to be affixed to the deed. Purchaser shall pay for the fee and mortgagee title insurance policy, as may be required. Purchaser also shall reimburse to the Seller the \$175.00 initial capital contribution to the Heritage Meadows Homeowners Association, Inc. which Seller advanced. Purchaser agrees to reimburse Seller the sum of \$\_\_\_\_\_ for Purchaser's water meter.

16. CLOSING: This Agreement shall be closed at the Monroe County Clerk's Office 120 days after the removal of the contingencies set forth in paragraphs \_\_\_\_\_, or within fifteen (15) days following completion of the dwelling whichever date shall occur sooner, except that if the dwelling is not ready for occupancy on such date, the closing may be postponed by Seller to a date to be set by Seller upon written notice mailed to Purchaser at his address set forth above. In the event the postponed date is more than 120 days after the above closing date, Purchaser may cancel this Agreement by sending written notice to Seller at the address set forth above within ten (10) days of the date on which the notice of postponement of the closing was mailed. In that event this Agreement shall become null and void and both parties shall be released from any liability, except that Seller shall refund to Purchaser his deposits, with interest if any. Seller shall not be responsible for any delay in completing the dwelling if such delay is caused by the unavailability of materials, labor or transportation or by other causes beyond the control of Seller. The refund to Purchaser of the deposits or portion thereof in accordance with this Agreement, shall discharge and release Seller from any liability arising out of or resulting from such delay. The closing shall not be delayed due to any unfinished exterior work which cannot be completed on account of weather conditions.

If the dwelling is substantially completed and ready for transfer and Purchaser declines to complete transfer of title for whatever reason, then the Purchaser may elect to extend the closing date for a period not to exceed 30 days, provided, however, the cost of postponing the closing, including but not limited to construction interest, taxes, utilities, and all other carrying costs shall be paid by the Purchaser to the Seller at the time of closing.

17. FAILURE TO DELIVER OR REJECTION OF TITLE: Should Seller be unable to or fail to deliver title to the premises in accordance with the provisions of this Agreement, or in the event that Purchaser raises objection to Seller's title or to any improvements, which, if valid, would render the title uninsurable, or render the present or intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction) Seller shall have the right to cancel this Agreement. Seller shall cancel by giving written notice of cancellation to Purchaser and it is agreed that Seller's liability shall be limited to the return of Purchaser's deposits, with interest if any, and upon their return, this Agreement shall become null and void; provided, however, if Seller shall be able within a reasonable length of time to cure the objection or if either party secures a commitment for title insurance at standard rates to insure against

the objection raised or title insurance acceptable to Purchaser, Purchaser shall pay the cost of the title insurance and this Agreement shall continue in full force and effect.

18. PURCHASER'S FAILURE TO TAKE TITLE: Upon the Purchaser's failure to take title or the Purchaser's failure to make prompt and proper application for his mortgage, this Agreement shall become null and void and the deposits, with interest if any, up to a maximum of 10% of the purchase price excluding Extras, shall belong to the Seller, in addition to which the Purchaser shall pay Seller the full cost of all Extras in Exhibit "A" which were commenced prior to the date of closing, and reasonable attorneys' fees and court costs, if incurred to enforce Seller's remedies, all of which shall be liquidated damages.

19. THIS AGREEMENT SUBJECT TO BUILDING LOAN MORTGAGE: Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage on the premises made before or after this Agreement and any advances, payments or expenses already made or incurred or which may be made or incurred, after this Agreement under a building loan mortgage without the execution of any further legal documents by the Purchaser. This subordination applies whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or are accelerated payments by virtue of the lender's right to make advances before they become due in accordance with the schedule of payments. The Seller shall satisfy all such mortgages or obtain a release of the premises from the lien of such mortgages at or prior to closing.

20. ESCROW FOR COMPLETION: In the event that the dwelling or its environs shall not be fully completed at the time set by the Seller for the closing of title, the incompleteness will not constitute an objection to closing provided that the lending institution granting Purchaser's mortgage issues an inspection report and an escrow fund is deposited by the Seller with the lending institution if required under its report, and further provided that Purchaser shall have the right to delay the closing of title until a temporary Certificate of Occupancy has been issued. The escrow fund shall be paid by the lending institution directly to the Seller when the lending institution, in its sole discretion, deems the items for which the escrow is held to be completed. Purchaser shall receive credit at closing, for any funds so held in escrow.

21. REPRESENTATIONS: This Agreement constitutes the entire agreement between Seller and Purchaser and supersedes all prior or other agreements and representations in connection with the sale and purchase. This Agreement cannot be modified except in a writing signed by both parties. All the terms, covenants, provisions, conditions and agreements set forth or provided for shall be binding upon and inure to the benefit of the parties and their assigns.

22. MERGER: Delivery and acceptance of a deed by Purchaser shall be full compliance by the Seller with all the terms of this Agreement and a release by the Purchaser of any and all rights, obligations, claims or causes of action against the Seller. The dwelling shall be regarded as completed in accordance with plans and specifications except for the specific items which Seller agrees, prior to closing, will be completed or repaired.

23. ASSIGNMENT: This Agreement may be assigned by Seller, but may not be assigned by Purchaser without Seller's written consent.

24. LIMITED WARRANTY: THE SELLER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS CONTRACT OR THE HOME AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS PROVIDED IN THE LIMITED WARRANTY ANNEXED TO THIS CONTRACT. THE EXPRESS TERMS OF THE LIMITED WARRANTY ARE HEREBY INCORPORATED IN THIS CONTRACT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE THEREOF.

25. ADDENDA TO THIS CONTRACT: Attached to and made a part of this Agreement are the following:

Exhibit A - Extras, Changes, Additions or Deletions to Seller's Model or to Plans and Specifications.

Exhibit B - Builder's Standards.

Exhibit C -

26. COMMISSIONS: Purchaser represents that no broker has been contacted or engaged in connection with the procurement of this Agreement. Should this representation be contrary to fact, Purchaser shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the acts or inactions of the Purchaser. This representation shall survive the closing and delivery of the deed to Purchaser.

In the event a broker has been contacted or engaged in connection with the procurement of this Agreement, Seller shall not be obligated for the broker's commission if this transaction shall fail to close for any reason whatsoever. In order to confirm his agreement with the terms of this paragraph, the broker executes this Agreement.

27. LIFE OF OFFER: This offer is good until the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, at which time it shall be null and void.

THE PURCHASER ACKNOWLEDGES THAT A WRITTEN COPY OF THE TERMS OF THE LIMITED WARRANTY HAVE BEEN PROVIDED FOR THE PURCHASER'S EXAMINATION PRIOR TO THE TIME OF THE PURCHASER'S EXECUTION OF THIS CONTRACT.

IN WITNESS WHEREOF, the Purchaser has caused this instrument to be duly executed the day and year first above written.

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Purchaser

ACCEPTANCE

Seller hereby accepts this offer and agrees to sell on the terms and conditions set forth.

Dated: \_\_\_\_\_ MARK IV CONSTRUCTION CO., INC.

\_\_\_\_\_  
Witness By: \_\_\_\_\_

The undersigned broker hereby executes this Agreement to acknowledge its consent to the terms herein concerning the brokerage commission.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness Broker



MarkWar/LMD

LIMITED WARRANTY

NAME OF PURCHASER(S):

\_\_\_\_\_

ADDRESS OF PURCHASER(S):

\_\_\_\_\_

\_\_\_\_\_

ADDRESS OF HOME WARRANTED:

\_\_\_\_\_

\_\_\_\_\_

NAME OF BUILDER:

MARK IV CONSTRUCTION CO., INC.

ADDRESS OF BUILDER:

301 Exchange Street, Suite 200

Rochester, New York 14608

WARRANTY DATE:

\_\_\_\_\_

BUILDER'S LIMIT OF  
TOTAL LIABILITY:

\$50,000.00

This Limited Warranty excludes  
all consequential and incidental damages  
except as required by New York State Law.

1. Limited Warranty. This Limited Warranty excludes all other warranties on the construction and sale of the Home and its components, both express and implied. There are no warranties which extend beyond the face hereof.

2. To Whom Given. This Limited Warranty is extended to the Purchaser named on Page One, while the purchaser owns the Home, subject to the Warranty Periods established below in paragraph 5. This Warranty is not transferable to subsequent owners of the Home or other persons.

3. By Whom Made. This Limited Warranty is made exclusively by Builder.

4. Final Inspection. Prior to the transfer of the deed or occupancy by the Purchaser, the Purchaser shall inspect the Home at a time agreeable to both Purchaser and Builder. A representative of the Builder shall be present at the inspection. The purpose of this final inspection is to discover any defects or flaws of a visible or obvious nature. The Builder may indicate other defects known to the Builder which remain uncorrected at the time of inspection.

All defects or flaws found on final inspection of the Home will be itemized on a Final Inspection Sheet, which shall state each item that will be corrected and generally state the manner for correction. The Final Inspection Sheet will be signed by the Purchaser and the Builder before occupancy of the Home or transfer of the deed.

When the Purchaser moves into the Home or accepts the deed, the Builder's responsibility is limited to:

(a) completion of items shown on the Final Inspection Sheet, in the manner provided on the Final Inspection Sheet, and

(b) performance of warranty obligations under the provisions of this Limited Warranty, as listed below.

5. Warranty Coverages and Periods. The Warranty Period for all coverages begins on the Warranty Date shown on Page One. It ends at the expiration of the coverages shown below:

FIRST YEAR BASIC COVERAGE: For one year from the Warranty Date, the Home will be free from latent defects that constitute:

(a) defective workmanship performed by the Builder, an agent of the Builder or subcontractor of the Builder;

(b) defective materials provided by the Builder, an agent of the Builder or subcontractor of the Builder; or

(c) defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Builder.

Workmanship, materials, and design will be considered defective if they fail to meet or exceed the New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

TWO YEAR MAJOR SYSTEM COVERAGE: For two years from the Warranty Date, the plumbing, electrical, heating, cooling and ventilation systems of the Home which have been installed by the Builder are warranted to be free from latent defects that constitute defective installation by the Builder.

The plumbing system means: gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system.

The electrical system means: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

The heating, cooling and ventilation system means: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

All systems are exclusive of appliances, fixtures and items of equipment.

Installation will be considered defective if the Builder's workmanship upon the installation fails to meet or exceed New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

SIX YEAR MAJOR STRUCTURAL DEFECT COVERAGE: For six years from the Warranty date, the Home will be free from latent defects that are major structural defects, as defined below, and that constitute:

(a) defective workmanship performed by the Builder, an agent of the Builder or subcontractor of the Builder;

(b) defective materials provided by the Builder, an agent of the Builder or subcontractor of the Builder; or

(c) defective design, provided by an architect, landscape architect, engineer, surveyor, or other design professional engaged solely by the Builder.

Workmanship, materials, and design will be considered defective if they fail to meet or exceed the New York State Uniform Fire Prevention and Building Code or the Accepted Standards attached to this Limited Warranty. The Builder agrees to correct stated deficiencies as described in the Accepted Standards.

A Major Structural Defect is a defect resulting in actual physical damage to the following load-bearing portions of the Home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the Home becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

6. Exclusions From All Coverages. The following are excluded from the Basic Coverage, Major System Coverage, and Major Structural Defect Coverage:

(a) Loss or damage caused by workmanship performed by any person other than the Builder, an agent of the Builder, or a subcontractor of the Builder.

(b) Loss or damage caused by defective materials supplied by any person other than the Builder, an agent of the Builder, or a subcontractor of the Builder.

(c) Loss or damage caused by defective design provided by any person other than a design professional retained exclusively by the Builder.

(d) Patent defects including defects show on the Final Inspection Sheet and defects which an examination of the Home prior to the transfer of the deed or occupancy of the Home would have revealed.

(e) Defects in outbuildings including but not limited to detached garages and detached carports (excluding outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the Home); site located swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including but not limited to sodding, seeding, shrubs, trees and plantings); off-site improvements or any other improvements not a part of the Home itself.

(f) After the first year Basic Coverage, concrete floors of the basements and concrete floor of attached garages that are built separately from foundation walls or other structural elements of the Home.

(g) Damage to real property which is not part of the Home covered by this Limited Warranty and which is not included in the purchase price of the Home.

(h) Any damage to the extent that it is caused or made worse by:

(i) negligence, improper maintenance, or improper operation by anyone other than the Builder, its employees, agents or subcontractors; or

(ii) failure of the Purchaser or anyone other than the Builder, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment; or

(iii) failure of the Purchaser to give notice to the Builder of any defects or damage within a reasonable time; or

(iv) changes in the grading of the ground by anyone other than the Builder, its employees, agents or subcontractors; or

(v) changes, alterations or additions made to the Home by anyone after the Warranty Date shown on Page One; or

(vi) dampness or condensation due to failure of the Purchaser or occupant to maintain adequate ventilation.

(i) Any condition which does not result in actual physical damage to the Home.

(j) Loss or damage caused by or resulting from accident, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, and not reasonably foreseeable changes in the underground water table.

(k) Loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect.

(l) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.

(m) Any damage which the Purchaser or occupant has not taken timely action to minimize.

(n) Normal wear and tear and normal deterioration.

(o) Insect damage.

(p) Bodily injury or damage to personal property.

(q) Failure of the Builder to complete construction of the Home.

(r) Loss or damage which arises while the Home is being used primarily for nonresidential purposes.

(s) Loss or damage due to abnormal loading on floors by the Purchaser or occupant which exceeds design loads as mandated by the New York State Uniform Fire Prevention and Building Code.

(t) Costs of shelter, transportation, food, moving, storage or other incidental expenses related to relocation during repair.

(u) Consequential damages (except where required by New York State law).

(v) Any claim not filed in a manner set forth below in paragraph 8 entitled "Step By Step Claims Procedures".

7. Warranty. If a defect occurs in an item covered by this Limited Warranty, the Builder will repair, replace or pay the Purchaser the reasonable cost of repairing or replacing the defective item(s) within a reasonable time after the Builder's inspection or testing discloses the problem and in accordance with the Accepted Standards attached to this Limited Warranty. The choice among repair, replacement or payment is solely that of the Builder.

In no event will the Builder's total liability for deficiencies under this Limited Warranty exceed the Builder's Limit of Total Liability set forth on Page One.

Repair, replacement or payment of reasonable cost for any Major Structural Defect is further limited to (a) the repair of damage to the load-bearing portions of the Home themselves which is necessary to restore their load-bearing functions, and (b) the repair of those items of the Home damaged by the Major Structural Defect which made the Home unsafe, unsanitary or otherwise unlivable.

When the Builder finishes repairing or replacing the defect or pays the reasonable cost of doing so, a full release of all legal obligations with respect to the defect must be signed and delivered to the Builder.

8. Step By Step Claims Procedures.

(a) Written notice of any warranty claim must be made on the attached "Notice of Warranty Claim Form" and must be received by the Builder no later than the first business day after the warranty coverage on that item expires. If this Notice of Warranty Claim Form is not properly completed and received by the Builder by the first business day after the warranty coverage on that item expires, the Builder will have no duty to respond to any complaint or demand, and any or all claims may be rejected. NOTICE OF WARRANTY CLAIM IS NECESSARY TO PROTECT RIGHTS TO WARRANTY PERFORMANCE UNDER THIS LIMITED WARRANTY.

(b) No steps taken by the Builder, Purchaser or any other person to inspect, test or correct defects will extend any time period under this Limited Warranty. The Builder's response to any complaint or request, other than a timely and properly completed Notice of Warranty Claim Form, will not impair, prejudice or otherwise affect any right of the Builder.

(c) In response to a Notice of Warranty Claim Form, or any other complaint or request of the Purchaser, the Builder and the Builder's agents will have the right to inspect and test the portion of the Home to which the claim, complaint or request relates. The Purchaser and occupant of the Home must provide reasonable access to the Builder and the Builder's agents during normal business hours to complete inspection, testing and repair or replacement.

(d) The Builder will complete inspection and testing within a reasonable time under the circumstances, not to exceed thirty (30) days after receipt of a timely and properly completed Notice of Warranty Claim Form. Upon completion of inspection and testing, the Builder will determine whether to accept or reject the claim. If the Builder rejects the claim, the Builder will give written notice of that decision to the claimant at the address shown on the Notice of Warranty Claim Form. If the Builder accepts the claim, the Builder will take corrective action within a reasonable time under the circumstances and, upon completion, will give written notice of completion to the claimant at the address shown on the Notice of Warranty Claim Form. The Builder will use good faith efforts to process and handle claims in a timely manner, but all time periods for repair or replacement of defects are subject to weather conditions, Acts of God, availability of materials and other events beyond the Builder's control.

9. Legal Actions.

(a) No claim or cause of action under this Limited Warranty may be commenced or asserted in any suit, action, or other legal proceeding against the Builder in any Court or forum unless notice of the claim or cause of action has been received by the Builder in a timely and properly completed Notice of Warranty Claim Form as provided above in paragraph 8.

(b) No suit, action and proceeding against the Builder under this Limited Warranty may be commenced in any Court or forum after the later of: (i) the date of expiration of the applicable warranty coverage under paragraph 5 of this Limited Warranty, or (ii) sixty (60) calendar days after the Builder has given written notice of rejection of claim or completion of corrective action as provided above in paragraph 8(d).

10. General Provisions.

(a) This Limited Warranty may not be changed or amended in any way.

(b) This Limited Warranty is binding upon the Builder and the Purchaser, their heirs, executives, administrators, successors and assigns.

(c) Should any provision of the Limited Warranty be deemed unenforceable by a court of competent jurisdiction, the determination will not affect the enforceability of the remaining provisions.

(d) Use of one gender in this Limited Warranty includes all other genders, and use of the plural includes the singular, as may be appropriate.

(e) This Limited Warranty is to be governed in accordance with the law of New York State.



NOTICE OF WARRANTY CLAIM FORM

Dear Home Owner:

To ask the Builder to correct a defect in your Home that you think is covered by the Builder's Limited Warranty, you must complete this form and deliver it to the Builder. This is necessary to protect your rights to warranty performance under the Limited Warranty. Even if you believe that the Builder is aware of the problem, fill out this form and deliver it to the Builder.

The information you will need to fill out the form will be on Page One of the Limited Warranty. However, if you do not know the answers to any questions, write "Not Known". Please do not leave any item blank.

Name: \_\_\_\_\_

Address of Home  
Warranted: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work or Day Phone: \_\_\_\_\_

Warranty Date: \_\_\_\_\_

Describe the defect(s) which you think are covered by the Limited Warranty. Be sure to include when each defect first occurred or when you first noticed it. Use additional sheets, as necessary, to fully describe the problem:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# ACCEPTED STANDARDS Conventional Wood Frame Construction

## PERFORMANCE STANDARDS — TOPIC INDEX

The Performance Standards list specific items (defects) within each separate area of coverage. The first section covers Workmanship and Materials; the second section covers Systems. The standards are expressed in terms of performance criteria. For easy comprehension, the format is designed as follows:

1. Possible Deficiency - a brief statement, in simple terms of problems that may be encountered.
2. Performance Standard - a performance standard relating to a specific deficiency.
3. Responsibility - a statement of the corrective action required of the Builder to repair the deficiency or a statement of the Home Owner's maintenance responsibilities.

### Workmanship and Materials, First Year Only

1. Site Work
2. Concrete
3. Masonry
4. Wood and Plastic
5. Thermal and Moisture Protection
6. Doors and Windows
7. Finishes
8. Specialties
9. Equipment
10. Plumbing
11. Heating and Cooling
12. Ventilation
13. Electrical
14. Sidings
15. Asphalt Driveways
16. Native Trees

### Systems, First and Second Year

17. Plumbing System
18. Ventilation System
19. Electrical System

## 1. SITE WORK

### COVERAGE: 1st Year Only

#### A. SITE GRADING

##### (1) Possible Deficiency

##### Performance Standard

##### Responsibility

Setting of grades and foundation, utility trenches, and areas.

Settling of foundation walls, utility walls, utility shall not be away from the Home.

If the Builder has provided final grading; upon request by the Homeowner, Builder shall settle areas affecting proper drainage, on time only, during the first year of the limited warranty period. Homeowner shall be responsible for removal and replacement of shrubs or other landscaping affected by placement of such fill.

#### B. SITE DRAINAGE

##### (1) Possible Deficiency

##### Performance Standard

##### Responsibility

Improper drainage of the site. The necessary grades and swales shall have been established by the Builder to ensure proper drainage away from the Home. Standing or ponding water shall not remain for extended periods in the immediate area after a rain (generally no more than 24 hours), except that in swales which drain other areas, or in areas where sump pumps discharge, a longer period can be anticipated (generally no more than 48 hours). No grading determination shall be made while there is frost or snow on the ground, or while the ground is saturated. The Builder is responsible only for initially establishing the proper grades and swales. The Home Owner is responsible for maintaining such grades and swales once they have been properly established.

## C. EROSION

### (1) Possible Deficiency

#### Performance Standard

Erosion on the lot in general and specifically in swales.

The Builder may be required by contract to provide a finish dozer grading and/or hand raking. As defined in A. and E above, water will be drained away from the structure and off the lot. The running water is often collected or concentrated in depressions called swales, quite frequently constructed on or near side and rear lot lines. Heavy rains and snow melt before lawns have matured can cause erosion or deterioration of the grade surface in general, but particularly in swale areas. Hillside lots with steep slopes are more at risk.

The Builder is not responsible. It is the Home Owner's responsibility to protect the slopes and swales provided by the Builder. The Home Owner can minimize erosion damage by using techniques such as straw bales, straw mulch, soaker, burlap, hydroseed with a mulch additive or staked sod.

### 2. CONCRETE COVERAGE: 1st Year Only

#### AREA: Workmanship & Materials

#### EXPANSION AND CONTRACTION JOINTS

##### (1) Possible Deficiency

#### Performance Standard

##### Responsibility

Separation or movement of concrete slabs within the structure at expansion and contraction joints.

Concrete slabs within the structure are designed to move at expansion and contraction joints.

#### CONCRETE

##### (1) Possible Deficiency

#### Performance Standard

##### Responsibility

Basement or foundation wall cracks. Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width shall be repaired.

Builder will repair cracks in excess of 1/8 inch wide. Builder will not be responsible for color variation between existing & new patching material.

##### (2) Possible Deficiency

#### Performance Standard

##### Responsibility

Cracking of basement floor. Minor cracks in concrete basement floors are normal. Cracks exceeding 3/16 inch width or 1/8 inch in vertical displacement shall be repaired.

Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required. Builder will not be responsible for color variation between existing & new patching material.

##### (3) Possible Deficiency

#### Performance Standard

##### Responsibility

Cracking of slab in attached garage porches or stoops.

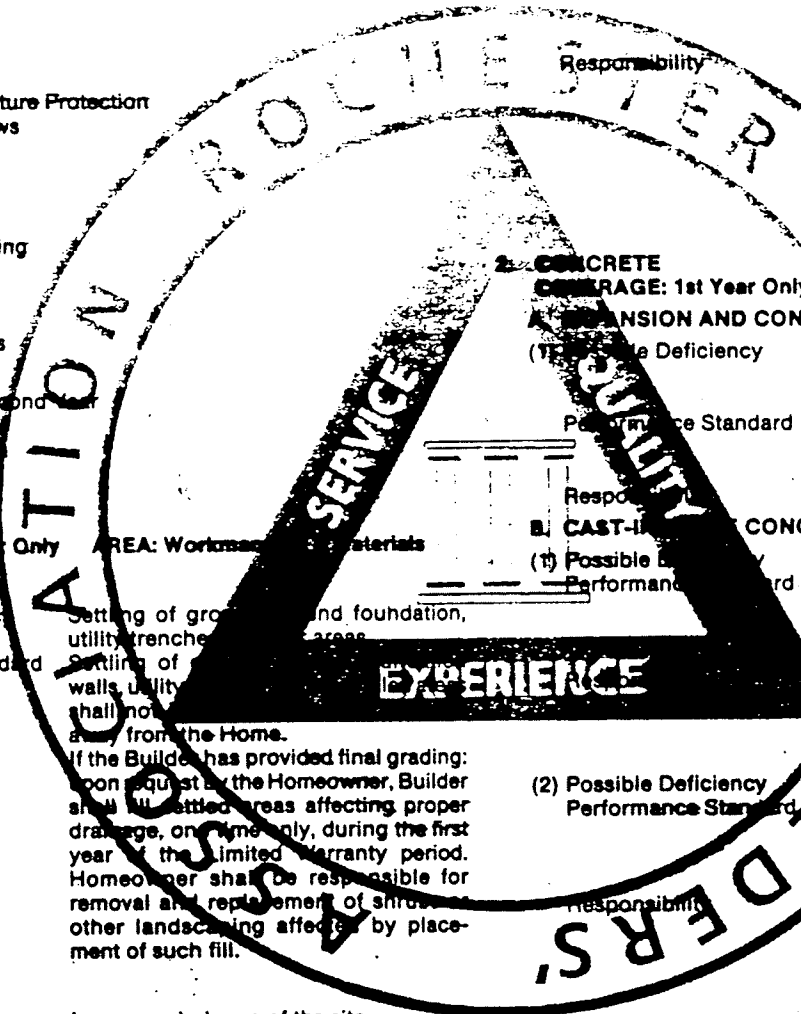
Cracks in garage slabs, porches, stoops, in excess of 1/4 inch in width or 1/4 inch in vertical displacement shall be repaired.

Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required. Builder will not be responsible for color variation between existing & new patching material.

##### 1.4 (4) Possible Deficiency

#### Performance Standard

Uneven concrete floors/slabs. Except for basement floors or where floor or portion of floor has been designed for specific drainage purposes concrete floors in rooms originally designed for habitability shall not have depressions, or areas of unevenness.



- Responsibility Builder will correct or repair to meet the Performance Standard. Builder will not be responsible for color variation between existing & new patching material.
- (5) Possible Deficiency Cracks in concrete slab-on-grade floors with finish flooring.
- Performance Standard Cracks which rupture the finish flooring material shall be repaired.
- Responsibility Builder will repair cracks, as necessary, so as not to be readily apparent when the finish flooring material is in place. (See also Performance Standard 7., "Finishes.")
- (6) Possible Deficiency Pitting, scaling or spalling of concrete work covered by this Limited Warranty.
- Performance Standard Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use.
- Responsibility Builder will take whatever corrective action necessary to repair defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control. Builder will not be responsible for color variation between existing & new patching material.
- (7) Possible Deficiency Settling, heaving or separating of stoops, steps or garage floors.
- Performance Standard Stoops, steps or garage floors shall not settle, heave or separate in excess of 1/4 inch from the house structures.
- Responsibility Builder will take whatever corrective action is required to meet the Performance Standard.
- (8) Possible Deficiency Standing water on stoops and steps.
- Performance Standard Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops and steps for a short period after rain can be anticipated.
- Responsibility Builder shall take corrective action to assure drainage of steps and stoops.

**3. MASONRY**  
**COVERAGE: 1st Year Only**    **AREA: Workmanship & Materials**

- A. UNIT MASONRY**
- (1) Possible Deficiency Basement or foundation wall cracks.
- Performance Standard Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls. Cracks greater than 1/8 inch in width shall be repaired.
- Responsibility Builder will repair cracks in excess of 1/8 inch by pointing or patching. These deficiencies shall be reported and repairs made during the first year of the Limited Warranty period. Builder will not be responsible for color variation between existing & new patching material.
- (2) Possible Deficiency Cracks in masonry wall or veneer.
- Performance Standard Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 1/4 inch in width are considered excessive.
- Responsibility Builder will repair cracks in excess of Performance Standard by pointing or patching. These repairs shall be made during the first year of the Limited Warranty period. Builder will not be responsible for color variation between existing and new repair material.

**4. WOOD AND PLASTIC**  
**COVERAGE: 1st Year Only**    **AREA: Workmanship & Materials - 144**

- A. ROUGH CARPENTRY**
- (1) Possible Deficiency Floors squeak or subfloor loose.
- Performance Standard Floor squeaks and loose subfloors are often temporary conditions common to new construction, and a squeak-proof floor cannot be guaranteed.

- Responsibility Builder will correct the problem caused by an underlying construction defect.
- (2) Possible Deficiency Uneven wood floors.
- Performance Standard Floors shall not have more than 1/4 inch ridge or depression within any 32 inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code.
- Responsibility Builder will correct or repair to meet Performance Standard.
- (3) Possible Deficiency **Bowed Walls.**
- Performance Standard All interior and exterior walls have slight variances on their finished surface. Walls should not bow more than 1/4 inch out of line within any 32 inch horizontal or vertical measurement.
- Responsibility Builder will repair to meet Performance Standard.
- (4) Possible Deficiency **Out-of-plumb walls.**
- Performance Standard Walls should not be more than 1/4 inch out of plumb for any 32 inch vertical measurement.
- Responsibility Builder will repair to meet the Performance Standard.

**B. FINISH CARPENTRY (INTERIOR)**

- (1) Possible Deficiency Poor quality of interior trim workmanship.
- Performance Standard Joints in moldings or joint between moldings and adjacent surface shall result in open joints exceeding 1/8 inch in width.
- Responsibility Builder will repair defective joints, as defined. Caulking is acceptable.

**C. FINISH CARPENTRY (EXTERIOR)**

- (1) Possible Deficiency Poor quality of exterior trim workmanship.
- Performance Standard Joints between exterior trim elements including siding and masonry, shall result in open joints in excess of 3/8 inch. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements.
- Responsibility Builder will repair open joints, as defined. Caulking is acceptable.

**5. THERMAL AND MOISTURE**  
**COVERAGE: 1st Year Only**    **AREA: Workmanship & Materials**

**A. WATERPROOFING**

- (1) Possible Deficiency Leaks in Basement
- Performance Standard Leaks resulting in actual trickling water shall be repaired. Leaks caused by improper landscaping or failure to maintain proper grades are not covered by this Limited Warranty. Dampness of walls or floors may occur in new construction and is not considered a deficiency.
- Responsibility Builder will take such action as necessary to correct basement leaks except where the cause is determined to result from Homeowner action or negligence.

**B. INSULATION**

- (1) Possible Deficiency Insufficient insulation.
- Performance Standard Insulation shall be installed in accordance with applicable energy and building code requirements.
- Responsibility Builder will install insulation in sufficient amounts to meet Performance Standard.

**C. LOUVERS AND VENTS**

- (1) Possible Deficiency Leaks due to snow or rain driven attic through louvers or vents.
- Performance Standard Attic Vents and/or louvers must be provided for proper ventilation of the space of the structure.
- Responsibility None.

**D. ROOFING AND SIDING**

- (1) Possible Deficiency Ice build-up on roof.

Performance Standard	During prolonged cold spells, ice build-up is likely to occur at the eaves of a roof. This condition occurs when snow and ice accumulate and gutters and downspouts freeze up.		and outside surfaces. However, they shall not warp to the extent that they become inoperable or cease to be weather resistant or exceed the appropriate
Responsibility	Prevention of ice build-up on the roof is a Home Owner maintenance item.	Responsibility	Builder will correct or replace and re-finish defective doors, during the first year of the Limited Warranty.
(2) Possible Deficiency	<b>Roof or Flashing Leaks</b>	(2) Possible Deficiency	Warping of interior passage and closet doors.
Performance Standard	Roofs or flashing shall not leak under normally anticipated conditions except where cause is determined to result from ice build-up or Home Owner action or negligence.	Performance Standard	Interior doors (full openings) shall not warp in excess of National Manufacturers Standards (1/4 inch measured diagonally from corner to corner).
Responsibility	Builder will repair any verified roof or flashing leaks not caused by ice build-up or Home Owner action or negligence.	Responsibility	Builder will correct or replace and re-finish defective doors to match existing doors as nearly as possible, during the first year of the Limited Warranty period.
(3) Possible Deficiency	<b>Standing water on flat roof.</b>	(3) Possible Deficiency	Shrinkage of insert panels shows raw wood edges.
Performance Standard	Water shall drain from flat roof except for minor ponding immediately following rainfall or when the roof is specifically designed for water retention.	Performance Standard	Panels will shrink and expand and may expose unpainted surfaces.
Responsibility	Builder will take corrective action to assure proper drainage of roof.	Responsibility	None.
(4) Possible Deficiency	<b>Delamination or joint separation of veneer or wood siding.</b>	(4) Possible Deficiency	Split in door panel.
Performance Standard	All veneer or wood siding shall be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations shall be repaired or replaced.	Performance Standard	Split panels shall not allow light to be visible through the door.
Responsibility	Builder will repair or replace veneer or wood siding as needed unless caused by Homeowner's neglect to maintain siding property. Repaired area may not match in color and/or texture. For surfaces requiring paint, Builder will paint only the new materials. The Home Owner can expect that the newly painted surface may not match original surface in color.	Responsibility	Builder will, if light is visible, fill split and match paint or stain as closely as possible, one time in first year of the Limited Warranty period.
<b>E. SHEET METAL</b>		<b>B. GLASS</b>	
(1) Possible Deficiency	<b>Gutters and/or downspouts leak.</b>	(1) Possible Deficiency	Broken Glass.
Performance Standard	Gutters and downspouts shall not leak but gutters may overflow during heavy rain.	Performance Standard	None.
Responsibility	Builder will repair leaks. It is a Homeowner responsibility to keep gutters and downspouts free of leaves and debris which could cause overflow.	Responsibility	Broken glass not reported to Builder prior to closing is the Home Owner's responsibility.
(2) Possible Deficiency	<b>Water standing in gutters.</b>	(2) Possible Deficiency	Stress cracks and/or insulated glass seal failure.
Performance Standard	When gutter is unobstructed by debris, the water level shall not exceed one (1) inch in depth. Industry practice is to install gutters approximately level. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutter immediately after a rain.	Performance Standard	There should not be stress cracks and/or insulated glass seal failure.
Responsibility	Builder will correct to meet Performance Standard.	Responsibility	Builder shall replace the glass and/or sash. Builder is not responsible for painting or staining of new sash.
<b>F. SEALANTS</b>		<b>C. GARAGE DOORS ON ATTACHED GARAGES</b>	
(1) Possible Deficiency	<b>Leaks in exterior wall due to inadequate caulking.</b>	(1) Possible Deficiency	Garage doors fail to operate properly, under normal use.
Performance Standard	Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water.	Performance Standard	Garage doors shall operate properly.
Responsibility	Builder will repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies once, during the first year of the Limited Warranty period. Even properly installed caulking will shrink and must be maintained during the life of the Home.	Responsibility	Builder will correct or adjust garage doors as required, except where the cause is determined to result from Homeowner action or negligence.
<b>G. DOORS AND WINDOWS</b>		(2) Possible Deficiency	Garage doors allow entrance of snow or water.
<b>COVERAGE: 1st Year Only</b>		Performance Standard	Garage doors shall be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions.
<b>AREA: Workmanship &amp; Materials</b>		Responsibility	Builder will adjust or correct garage doors to meet manufacturer's recommendations.
<b>A. WOOD, PLASTIC &amp; METAL DOORS</b>		<b>D. WOOD, PLASTIC AND METAL WINDOWS</b>	
(1) Possible Deficiency	Warping of exterior doors.	(1) Possible Deficiency	Malfunction of windows.
Performance Standard	Exterior doors will warp to some degree due to temperature differential on inside	Performance Standard	Windows shall operate with reasonable ease, as designed.
		Responsibility	Builder will correct or repair as required
		(2) Possible Deficiency	Condensation and/or frost on windows
		Performance Standard	Windows will collect condensation on interior surfaces when extreme temperature differences and/or high humidity levels are present. Condensation is usually the result of climatic or humidity conditions, beyond the control of the Builder.
		Responsibility	Unless directly attributed to faulty installation, window condensation is a result of conditions beyond the Builder's control. No corrective action required.
		<b>E. WEATHERSTRIPPING AND SEALS</b>	

(1) Possible Deficiency	Air infiltration around doors and windows.
Performance Standard	Some infiltration is normally noticeable around doors and windows, especially during high winds. It may be necessary for the Home Owner to have storm doors and windows installed to provide satisfactory solutions in high wind areas.
Responsibility	Builder will adjust or correct improperly fitted doors, windows and weatherstripping according to manufacturers' specifications.

**7. FINISHES**

**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. LATH AND PLASTER**

(1) Possible Deficiency	Cracks in interior walls and ceiling surfaces.
Performance Standard	Hairline cracks are not unusual in interior walls and ceiling surfaces. cracks greater than 1/8 inch in width shall be repaired.
Responsibility	Builder will repair cracks exceeding 1/8 inch in width as required, one time only, during the first year of the Limited Warranty period. (See also Performance Standard 7.F, "Painting.")

**B. GYPSUM WALLBOARD**

(1) Possible Deficiency	Defects which appear during first year of the Limited Warranty such as nail pops, blisters in tape, or other blemishes.
Performance Standard	Slight "imperfections" such as nail pops, seam lines and cracks not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.
Responsibility	Builder will repair those cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period. (See also Performance Standard 7.F, "Painting.")

**C. CERAMIC TILE**

(1) Possible Deficiency	Ceramic tile cracks or becomes loose.
Performance Standard	Ceramic tile shall not crack or become loose.
Responsibility	Builder will replace cracked tiles and resecure loose tiles unless the defects were caused by the Homeowner's action or negligence. Builder will not be responsible for discontinued patterns or color variations in ceramic tile.
(2) Possible Deficiency	Cracks appear in grouting ceramic tile joints or at junctions with other materials such as a bathtub.
Performance Standard	Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions.
Responsibility	Builder will repair grouting if necessary one time only, during the first year of the Limited Warranty period. Builder will not be responsible for color variations or discontinued colored grout. Additional regrouting of these cracks is a maintenance responsibility of the Homeowner within the life of the Home.

**D. FINISHED (HARD) WOOD FLOORING**

(1) Possible Deficiency	Cracks developing in or between floor boards.
Performance Standard	Cracks in excess of 1/8 inch in width shall be corrected.
Responsibility	Builder will repair cracks in excess of 1/8 inch within the first year of the Limited Warranty period, by filling or replacing, at Builder's option.
(2) Possible Deficiency	Dents or depressions can result from sharp objects such as high heels or furniture legs.
Performance Standard	Home Owner shall be responsible to protect the floor against dents or depressions.

Responsibility None.

**E. RESILIENT FLOORING**

(1) Possible Deficiency	Nail pops appear on the surface of resilient flooring.
Performance Standard	Nail pops shall not be readily apparent.
Responsibility	Builder will correct readily apparent nail pops which have broken the surface. Builder will repair or replace, at Builder's sole option, resilient floor covering in affected area with similar material. Builder will not be responsible for discontinued patterns or color variations in floor covering.
(2) Possible Deficiency	Depressions or ridges appear in resilient flooring due to subfloor irregularities.
Performance Standard	Readily apparent depressions or ridges exceeding 1/8 inch shall be repaired. The ridge or depression measured as the gap created at one end of a six-inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.
Responsibility	Builder will take corrective action as necessary, to bring the defect to an acceptable tolerance so that the area is not readily visible. Builder will be responsible for discontinued patterns or color variations in floor covering.
(3) Possible Deficiency	Resilient flooring loses adhesion.
Performance Standard	Resilient flooring shall not lift, but become unglued.
Responsibility	Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or variation of floor covering, or for blemishes caused by Home Owner neglect or abuse.
(4) Possible Deficiency	Seams or shrinkage gaps show in resilient flooring joints.
Performance Standard	Gaps shall not exceed 1/16 inch in resilient floor covering joints dissimilar materials abut, a gap exceed 1/8 inch is permissible.
Responsibility	Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or variation of floor covering, or for blemishes caused by Home Owner neglect or abuse.
(5) Possible Deficiency	Dents or depressions can result from sharp objects such as high heel furniture legs.
Performance Standard	Home Owner shall be responsible to protect the floor against dents or depressions.
Responsibility	None.

**F. PAINTING**

(1) Possible Deficiency	Exterior paint or stain peels, deteriorates or fades.
Performance Standard	Exterior paints or stains should not be required during the first year of the Limited Warranty period. However, fading is permitted and the degree is dependent on conditions.
Responsibility	If paint or stain is judged to be defective by the manufacturer or his agent, Builder will properly prepare and refinish affected areas, matching colors as closely as possible. Where finish defect affects majority of the wall or ceiling, whole area will be refinished.
(2) Possible Deficiency	Painting required as corollary repairs of other work.
Performance Standard	Repairs required under this Limited Warranty shall be finished to match surrounding areas as closely as practical.

Responsibility Builder will finish repair areas as indicated.

(3) Possible Deficiency Deterioration of varnish or lacquer.  
Performance Standard Natural finishes on interior woodwork shall not deteriorate during the first year of the Limited Warranty period. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the Limited Warranty.

Responsibility Builder will retouch affected areas of natural finish interior woodwork, matching the color as closely as possible.

(4) Possible Deficiency Mildew or fungus on painted and stained surfaces.  
Performance Standard Mildew or fungus will form on a painted and stained surface if the structure is subject to abnormal exposures (e.g., high humidity, rainfall, ocean, lake or river front.)  
Responsibility Mildew or fungus formation is a condition the Builder cannot control and is a Home Owner maintenance item unless it is a result of noncompliance with other sections of the Performance Standard.

**G. WALL COVERING**

(1) Possible Deficiency Peeling of wall covering.  
Performance Standard Peeling of wall covering shall not occur.  
Responsibility Builder will repair or replace defective wall covering applications.

(2) Possible Deficiency Edge mismatching in pattern of wall covering.  
Performance Standard None.  
Responsibility None.

**H. CARPETING**

(1) Possible Deficiency Open carpet seams.  
Performance Standard Carpet seams will show. However, no visible gap is acceptable.  
Responsibility Builder will correct.

(2) Possible Deficiency Carpeting becomes loose, seams separate or stretching occurs.  
Performance Standard Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose, or separate from its point of attachment.  
Responsibility Builder will re-stretch or resecure carpeting as needed, if original installation was performed by Builder.

(3) Possible Deficiency Spots on carpet, minor fading.  
Performance Standard Exposure to light may cause spots on carpet and/or minor fading.  
Responsibility None.

**I. SPECIAL COATINGS**

(1) Possible Deficiency Cracks in exterior stucco wall surfaces.  
Performance Standard Cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width shall be repaired.  
Responsibility Builder will repair cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period.

**J. ROOFING**

(1) Possible Deficiency Shading or color variation.  
Performance Standard Shading or color variation in mineral surface roofing can be expected.  
Responsibility None.

(2) Possible Deficiency Buckling of shingles.  
Performance Standard Buckling of shingles should not occur.  
Responsibility Builder will repair affected shingles. Builder will not be responsible for color variation between existing and new material.

(3) Possible Deficiency Curling of shingles.  
Performance Standard Some curling of roof shingles is to be expected at the edges.  
Responsibility None.

**8. SPECIALTIES**

**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. LOUVERS AND VENTS**

(1) Possible Deficiency Inadequate ventilation of attics and crawl spaces.  
Performance Standard Attic and crawl spaces shall be ventilated as required by the approved building code.  
Responsibility The Builder shall provide for ventilation as originally designed. Builder will not be responsible for alterations to the original system.

**B. FIREPLACES**

(1) Possible Deficiency Fireplace or chimney does not draw properly.  
Performance Standard Fireplaces shall be designed and constructed in accordance with local Building Codes, or in the absence of a local Building Code, the National Fire Protection Association Standards (NFPA). It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. Some homes may need to have a window opened slightly to create an effective draft, if they have been insulated and weatherproofed to meet high energy conservation criteria.  
Responsibility Builder will determine the cause of malfunction and correct, if the problem is one of improper design or construction of the fireplace.

(2) Possible Deficiency Chimney separation from structure to which it is attached.  
Performance Standard Newly built fireplaces will often incur slight amounts of separation. Separation shall not exceed 1/2 inch from the main structure in any 10 foot vertical measurement.  
Responsibility Builder will determine the cause of separation and correct, if Performance Standard is not met.

(3) Possible Deficiency Firebox finish changed by fire.  
Performance Standard None.  
Responsibility None. Heat from fires will alter finish.

(4) Possible Deficiency Cracked firebrick and mortar joints.  
Performance Standard Cracks in excess of 1/8 inch in width shall be repaired.  
Responsibility Builder will repair cracks exceeding 1/8 inch in width, one time only, during the 1st year of the Limited Warranty period. Builder will not be responsible for color variation between existing & new patching material.

(5) Possible Deficiency Cold air in and around fireplace.  
Performance Standard The NYS Energy Code requires the use of outside air for combustion, which may result in a temperature differential between firebox air and room air. Prefabricated and circulating fireplace may reverse cycle during cold weather, creating a cold draft.  
Responsibility None.

**9. EQUIPMENT**

**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. RESIDENTIAL EQUIPMENT**

(1) Possible Deficiency Surface cracks, joint delaminations and chips in high pressure laminates on vanity and kitchen cabinet countertops.  
Performance Standard Countertops fabricated with high pressure laminate coverings shall not delaminate.  
Responsibility Builder will replace delaminated coverings to meet specified criteria. Builder will not be responsible for chips and cracks noted following first occupancy. The Builder will not be responsible for damage caused by hot objects, excessive liquids lying on or near joint edge banding or cut outs.

- (2) Possible Deficiency Gaps between countertop backsplash and walls.
- Performance Standard Gaps may occur between countertop backsplash and walls.
- Responsibility Builder will caulk, one time only, during the first year of Limited Warranty. Builder will not be responsible for color variation between existing & new patching material.
- (3) Possible Deficiency Kitchen cabinet door and drawer warpage.
- Performance Standard Warpage not to exceed 1/4 inch as measured from face frame to point of furthest warpage with door or drawer front closed position.
- Responsibility Builder will correct or replace doors or drawer fronts.
- (4) Possible Deficiency Gaps between cabinets, ceiling or walls.
- Performance Standard Acceptable tolerance is 1/4 inch in width.
- Responsibility Builder will correct to meet Performance Standard. Caulking is acceptable.

**10. PLUMBING**  
**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. WATER SUPPLY SYSTEM**

- (1) Possible Deficiency Plumbing pipes freeze and burst.
- Performance Standard Drain, waste and vent, and water pipes shall be adequately protected, as required by applicable code, during normally anticipated cold weather, and as defined in accordance with ASHREA design temperatures, to prevent freezing.
- Responsibility Builder will correct situations not meeting the code. It is the Home Owner's responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures. Home Owner's responsibility to maintain a minimum temperature of 55° throughout the house. All exterior hoses must be disconnected during the freezing season.

**B. PLUMBING SYSTEM**

- (1) Possible Deficiency Faucet or valve leak.
- Performance Standard No valve or faucet shall leak due to defects in workmanship and materials.
- Responsibility Builder will repair or replace the leaking faucet or valve.
- (2) Possible Deficiency Defective plumbing fixtures, appliances or trim fittings.
- Performance Standard Fixtures, appliances or fittings shall comply with their manufacturer's standards.
- Responsibility Builder will replace any defective fixture or fitting which does not meet acceptable standards, as defined by manufacturer.
- (3) Possible Deficiency Moisture dripping off of water closet and cold water lines.
- Performance Standard Condensation on water closets and cold water lines is normal.
- Responsibility None.
- (4) Possible Deficiency Noisy water pipes.
- Performance Standard There will be some noise emitting from the water pipe system, due to the flow of water. However, water hammer shall be eliminated.
- Responsibility Builder cannot remove all noises due to water flow and pipe expansion. Builder will correct to eliminate "water hammer."
- (5) Possible Deficiency Cracking or chipping of porcelain or fiberglass surfaces.
- Performance Standard Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when surface is hit with sharp or heavy objects.
- Responsibility Builder will not be responsible for repairs unless damage has been reported to Builder prior to first occupancy.

**11. HEATING AND COOLING**  
**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. HEATING**

- (1) Possible Deficiency Inadequate heating
- Performance Standard Heating system shall be capable of producing an inside temperature of 70° measured in the center of each room at a height of 5 feet above the floor, at local outdoor winter design conditions as specified in ASHREA handbook. Federal, state or local energy codes supersede this standard where such codes have been locally adopted. Builder will correct heating system to provide the required temperatures. However, the Homeowner shall be responsible for balancing dampers, registers and other minor adjustments.
- Responsibility

**B. REFRIGERATION**

- (1) Possible Deficiency Inadequate cooling.
- Performance Standard Where air-conditioning is provided, cooling system shall be capable of maintaining a temperature of 78° F, as measured in the center of each room at a height of 5 feet above the floor, at local outdoor summer design conditions as specified in ASHREA handbook. In case of outside temperatures exceeding 95° F, a differential of 15° F from outside temperature will be maintained. Federal, state or local energy codes supersede this standard where such codes have been locally adopted. Builder will correct cooling system to meet temperature conditions, in accordance with specifications.
- Responsibility

**C. CONDENSATION LINES**

- (1) Possible Deficiency Condensation lines clog up.
- Performance Standard None.
- Responsibility Condensation lines will clog under normal use. This is a Homeowner maintenance item. Builder shall provide unobstructed condensation lines at first occupancy.

**D. EVAPORATIVE COOLING**

- (1) Possible Deficiency Improper mechanical operation.
- Performance Standard Equipment shall function properly at temperature standard set.
- Responsibility Builder will correct and adjust blower and water system operation as designed.

**12. VENTILATION**  
**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. AIR DISTRIBUTION**

- (1) Possible Deficiency Noisy ductwork.
- Performance Standard When metal is heated it expands and when cooled it contracts. The resulting "ticking" or "cracking" which is normally to be expected.
- Responsibility None.
- (2) Possible Deficiency Oilcanning.
- Performance Standard The stiffening of the ductwork at the gauge of the metal used shall be such that ducts do not "oilcan." The noise caused by "oilcanning" shall be acceptable.
- Responsibility Builder will correct to eliminate sound.

**13. ELECTRICAL**  
**COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. ELECTRICAL CONDUCTORS, FUSES & CIRCUIT BREAKERS**

- (1) Possible Deficiency Fuses blow or circuit breakers trip.
- Performance Standard Fuses and circuit breakers shall activate under normal usage.
- Responsibility Builder will check wiring circuitry for conformity with local, state or municipal electrical code requirements. Provide correct circuitry not conforming to specifications. Home Owner responsible for

sibility to understand the capabilities of different kinds of circuits in the house and not to overload them.

**B. OUTLETS, SWITCHES AND FIXTURES**

- (1) Possible Deficiency Drafts from electrical outlets.  
Performance Standard Electrical junction boxes on exterior wall may produce air flow whereby the cold air can be drawn through the outlet into a room. This condition is not unusual.  
Responsibility None.
- (2) Possible Deficiency Malfunction of electrical outlets, switches or fixtures.  
Performance Standard All switches, fixtures and outlets shall operate as intended.  
Responsibility Builder will repair or replace defective switches, fixtures and outlets.

**C. SERVICE AND DISTRIBUTION**

- (1) Possible Deficiency Ground fault interrupter trips frequently.  
Performance Standard Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily.  
Responsibility Builder shall install ground fault interrupter in accordance with approval electrical code. Tripping is to be expected and is not covered, unless due to a construction defect. Home Owner responsibility to understand the capabilities of different kinds of circuits in the house and not to overload them.

**14. SIDING  
COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. SIDING (VINYL & ALUMINUM)**

- (1) Possible Deficiency Siding becomes unlocked.  
Performance Standard Siding should not become unlocked.  
Responsibility Builder will resecure siding.
- (2) Possible Deficiency Siding is buckling.  
Performance Standard Siding should not buckle.  
Responsibility Builder will replace siding that is buckling. Builder will not be responsible for color variation between existing and new siding.
- (3) Possible Deficiency Variation in color, texture or sheen.  
Performance Standard Some difference in color, texture or sheen can be expected and anticipated in vinyl sidings.  
Responsibility None.
- (4) Possible Deficiency Noise.  
Performance Standard Noise from siding can be expected.  
Responsibility None.
- (5) Possible Deficiency Rippling of vinyl or aluminum trim.  
Performance Standard By virtue of the way it has to be installed, some rippling can be expected due to face nailing or the nature of the material.  
Responsibility Builder is responsible for installing according to locally accepted standards.

**B. SIDING (WOOD)**

- (1) Possible Deficiency Joint separations.  
Performance Standard All siding shall be installed according to the manufacturer's and industry's accepted standards. Wood sidings can expand or contract with a change in the moisture content of the wood. This is a natural characteristic of wood.  
Responsibility None.
- (2) Possible Deficiency Loose knots, raised grain, checking (splitting) in siding.  
Performance Standard Loose knots, raised grain, checking (splitting) of wood sidings are all characteristics that are allowed in varying degrees depending on the grade.  
Responsibility If these defect characteristics fall below the allowable limits for the grade it was sold as, as established by the appropriate grading association, Builder will repair or replace siding as needed. Repaired

area may not match in color and/or texture. For surfaces requiring paint, builder will paint only the new materials. The Home Owner can expect that the newly painted surface may not match original surface in color or texture. Caulking is acceptable.

**15. ASPHALT DRIVEWAYS  
COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. ASPHALT DRIVEWAYS**

- (1) Possible Deficiency Settlement of asphalt.  
Performance Standard Standing water in excess of 1/2 inch in depth should not remain on asphalt driveway more than 24 hours after a rain.  
Responsibility Builder will fill settled area by surface patching to meet Performance Standard. Builder is not responsible for matching the patch in color and/or texture to adjoining asphalt. Builder is not responsible for depressions left by tires.

**16. NATIVE TREES  
COVERAGE: 1st Year Only AREA: Workmanship & Materials**

**A. NATIVE TREES**

- (1) Possible Deficiency Native trees are damaged or die.  
Performance Standard The health of native trees can be affected by changes in water table, ground level and density of soil around the root system as well as damage to bark from heavy equipment.  
Responsibility There is no way to completely ensure the continued growth of native trees after construction of a home on a wooded site. The Home Owner can minimize the impact of construction by requesting that stands of native trees be left completely untouched by site development. Since construction requires the use of heavy equipment, some damage can be expected when building on wooded sites. The Builder will cut back the bark on damaged trees and try to "well" or "mound" to leave trees as close to original grade as possible. The Builder cannot be responsible for the life or health of native trees and removal of damaged or dead trees will be a Home Owner responsibility.

**17. PLUMBING SYSTEM  
COVERAGE: 1st and 2nd Year AREA: Systems**

**A. WATER SUPPLY**

- (1) Possible Deficiency Water supply system fails to deliver water.  
Performance Standard All on-site service connections to municipal water main and private water supply shall be the Builder's responsibility. Private systems shall be designed and installed in accordance with all approved building, plumbing and health codes.  
Responsibility Builder will repair if failure is the result of defective workmanship or materials. I conditions beyond Builder's control disrupt or eliminate the sources of the supply, the Builder has no responsibility.

**B. SEPTIC TANK SYSTEM**

- (1) Possible Deficiency Septic system fails to operate properly.  
Performance Standard Septic system shall function adequately during all seasons, under climatic conditions normal or reasonably anticipate (based on local records) for the location of the home. Septic system shall be designed and installed to comply with applicable code requirements.  
Responsibility Builder will repair, or otherwise correct a malfunctioning or non-operating system, if failure is caused by inadequate design, faulty installation, or other cause relating to actions of the builder or contractor.



tors or subcontractors under the builder's control. Builder will not be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance, or other causes attributable to actions of the owner or owner's contractors, not under the control of the builder, including, but not necessarily limited to, the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing system served by the septic system, and damage, or changes, to the septic system installation or surrounding soil conditions critical to the system's functioning.

**C. PIPING**

- |   |   |
|---|---|
| (1) Possible Deficiency<br>Performance Standard | Leakage from any pipe.<br>No leaks of any kind shall exist in any soil, waste, vent, or water pipe. Condensation on piping does not constitute leakage, and is not covered.   |
| Responsibility                                  | Builder will make repairs to eliminate leakage.   |
| (2) Possible Deficiency<br>Performance Standard | Stopped up sewers, fixtures and drains. Sewers, fixtures and drains shall operate properly.   |
| Responsibility                                  | Builder will not be responsible for sewers, fixtures and drains which are clogged through the Home Owner negligence. If a problem occurs, the Home Owner should consult Builder for a proper course of action. Where defective construction is shown to be the cause, |

Builder will assume the cost of the repair; where Home Owner negligence is shown to be the cause, the Home Owner shall assume all repair cost.

**18. VENTILATION SYSTEM**

**COVERAGE: 1st & 2nd Year    AREA: Systems**

**A. AIR DISTRIBUTION**

- |                         |  |
|-------------------------|--|
| (1) Possible Deficiency | Ductwork separates or becomes unattached.                                  |
| Performance Standard    | Ductwork shall remain intact and securely fastened.                        |
| Responsibility          | Builder will re-attach and re-secure all separated or unattached ductwork. |

**B. PIPING**

- |                         |  |
|-------------------------|--|
| (1) Possible Deficiency | Refrigerant lines leak.  |
| Performance Standard    | Refrigerant lines shall not develop leaks during normal operation.   |
| Responsibility          | Builder will repair leaking refrigerant lines and recharge unit, unless damage was caused by the Home Owner. |

**19. ELECTRICAL SYSTEMS**

**COVERAGE: 1st & 2nd Years    AREA: Systems**

**A. WIRING**

- |                         |  |
|-------------------------|--|
| (1) Possible Deficiency | Failure of wiring to carry its designed load.  |
| Performance Standard    | Wiring should be capable of carrying the designed load for normal residential use.   |
| Responsibility          | Builder will check wiring for conformity with local, state, or approved national electrical code requirements. Builder will repair wiring not conforming to code specifications. |

EXHIBIT "H"

SPONSOR'S CERTIFICATION

STATE OF NEW YORK )  
COUNTY OF MONROE ) SS:

The undersigned, being duly sworn, depose and say as follows:

1. We are the Sponsor and the principals of the Sponsor of the Heritage Meadows Homeowners Association, Inc. Offering Plan.

2. We understand that we have primary responsibility for compliance with provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 22, and such other laws and regulations as may be applicable.

3. We have read the entire Offering Plan. We have investigated the facts set forth in the Offering Plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the Offering Plan for the Heritage Meadows Homeowners Association, Inc. does, and that documents submitted hereafter by us which amend or supplement the Offering Plan for the Heritage Meadows Homeowners Association, Inc. will:

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

(iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any representation or statement which is false, where we: (a) know the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statements made.

4. We certify that the sewers and water lines, when constructed, will be in accordance with local government specifications. If the construction of the above public improvements have not been completed prior to conveyance to the Town of Henrietta or the Association, a bond or letter of credit will be posted with the Village or Association, or other adequate security will be provided in an amount to be determined by an engineer licensed to practice as a professional engineer in the jurisdiction where the Association is located, which amount shall not be less than the amount required to complete such construction to required specifications.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: February 18, 1992.

MARK IV CONSTRUCTION CO., INC.

By: /s/ Anthony M. DiMarzo, Pres.  
Anthony M. DiMarzo, President

/s/ Anthony M. DiMarzo  
Anthony M. DiMarzo

/s/ Patsy DiMarzo  
Patsy DiMarzo

Sworn to before me this  
18 day of February, 1992.

/s/ Louis M. D'Amato  
Notary Public, State of New York  
Monroe County, Comm. Exp. Aug. 7, 1993



**D. J. PARRONE & ASSOCIATES, P. C.**  
CONSULTING ENGINEERS, LAND SURVEYORS AND PLANNERS

DOMINIC J. PARRONE, P.E. & L.S.  
EDWARD G. PARRONE, P.E.  
ROBERT P. BRINGLEY, P.E.

EXHIBIT "I"

ENGINEER'S CERTIFICATION

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

The undersigned, being duly sworn, depose and say as follows:

1. Mark IV Construction Co., Inc., the Sponsor of Heritage Meadows Homeowners Association, Inc., has retained the undersigned to prepare a report describing the common areas when constructed, hereinafter referred to as the "Report." I reviewed the building plans and specifications for the improvements within the common areas, and am fully familiar with their contents. I prepared the Report dated April 14, 1992, a copy of which is attached hereto and is incorporated into the Offering Plan so that prospective purchasers may rely on the Report.
2. I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to the Report.
3. I have read the entire Report and investigated the facts set forth in the Report, and the facts underlying it with due diligence, in order to form a basis for the certification. I certify the Report does:
  - (i) set forth in narrative form the condition of the entire common property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;


400 WHITNEY ROAD • P.O. BOX C, PEEPLEFIELD, NEW YORK 14626 • TELEPHONE 716-666-0200 • FAX NO. 716-666-6752

- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where I: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations of statement made.

4. I further certify that I am not owned or controlled by, and have no beneficial interest in, the Sponsor; that my compensation for preparing the Report is not contingent on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

This certification is made under penalty of perjury for the benefit of all persons to whom the Sponsor makes an offer. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: May 14, 1992

  
 Edward G. Parrone, P.E.  
 Registered Engineer  
 Lic. No. 051921

<sup>affirmed</sup>  
 Sworn to before me this  
14<sup>th</sup> day of May, 1992  
Margaret A Tremblay

MARGARET A. TREMBLAY  
 NOTARY PUBLIC, State of N.Y., Monroe Co.  
 Reg. No. # 4505386  
 My Commission Expires April 30, 1993



# ROCKHURST CORPORATION

500 Helendale Road □ Rochester, New York 14609-3109 □ 716-288-9540 □ Fax 716-288-4383



## CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK )  
COUNTY OF MONROE )       SS:

The undersigned, being duly sworn, deposes and says as follows:

Mark IV Construction Co., Inc., the Sponsor of **Heritage Meadows Homeowners Association, Inc.** has retained our firm to review the Projected Schedules of Receipts and Expenses for Heritage Meadows Townhomes for the first year of operation. Our experience in this field is as set forth on Schedule A attached hereto.

Our firm is currently managing agent for forty-three community associations. These organizations range in size from eleven to eight hundred units. We have been in the community association management business for ten years.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to Schedule A.

We have reviewed the Schedule and investigated facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential property.

We certify that the projections in Schedule A appear reasonable and adequate under existing circumstances, and the projected revenue will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

We certify that the projection:

- 1) sets forth in detail the terms of the transaction as it relates to the projections and is complete, current, and accurate;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a

homeowners association;

- 3) does not omit any material fact;
- 4) does not contain any untrue statement of a material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) does not contain any representation or statement which is false, where I (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

We further certify that our firm is not owned or controlled by the sponsor. I understand that it is intended that a copy of this certification will be incorporated into the offering plan.

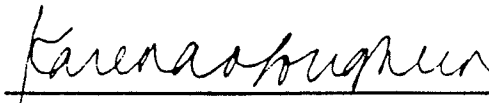
This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 23 January 1992



William G. Tomlinson, PCAM®, President  
ROCKHURST MANAGEMENT CORPORATION

Sworn to before me this  
23rd day of January 1992



KAREN ALBRIGHT O'LOUGHLIN  
NOTARY PUBLIC State of N.Y., Ontario Co.  
My Commission Expires Aug. 31, 1993

f:\wp\rh\certs\heritage\cert\_1

ROCKHURST CORPORATION CLIENTS  
23 January 1992

Barker Estates Homeowners Association, Inc.  
Bay Breeze Estates Phase Ii Homeowners Association, Inc.  
Bay Breeze Iii Homeowners Association, Inc.  
The Beechwoods Property Owners Association, Inc.  
Broadway Commons Homeowners Association, Inc.  
Cross Creek Homeowners Association, Inc.  
Devonshire Homeowners Association, Inc.  
Eagle Vale Homeowners Association, Inc.  
Umbrella Eagle Vale Homeowners Association, Inc.  
Essex Place Homeowners Association, Inc.  
Fifteen Hundred East Avenue, Inc.  
French Court West Condominium  
Gailmark Homeowners Association, Inc.  
Georgetown East Condominium  
Gregory Park Condominium  
Grosvenor East Townhouse Condominium  
The Hedges Homeowners Association, Inc.  
Inglewood Town Homes Homeowners Association, Inc.  
Kimberly Condominium Estates  
Lac De Ville Village Homeowners Association, Inc.  
Leisurewood Campgrounds, Inc.  
Linden East Condominium Regime  
The Lindsay House Condominium  
Mayflower Village Homeowners Association, Inc.  
The Meadows Of Highland Association, Inc.  
Monticello At Honeoye Falls  
Nottingham Village Homeowners Association, Inc.  
Parkview Court Homeowners Association, Inc.  
Quaker Meadow Condominium  
Rebecca Park Association, Inc.  
Ridgeplex Unitowners Association  
The Roundtree Homeowners Association, Inc.  
Scarborough House Condominium  
Shadow Pines Homeowners Association, Inc.  
Somerset Townhomes  
Southfield Homeowners Association, Inc.  
Stonebridge Manor Homeowners Association, Inc.  
Susan B. Anthony Cooperative  
Swc Associates  
Thomas Creek Homeowners Association, Inc.  
Union Hill Townhomes Association, Inc.  
Willow Point Homeowners Association, Inc.  
Wood Run Homeowners Association, Inc.  
Woodridge Park Homeowners Association, Ltd.

Total Clients: 44

--156A --



Central Trust Company  
44 Exchange Street  
P.O. Box 22900  
Rochester, NY 14692  
(716) 546-4500

EXHIBIT "K"

# Central Trust

## A MIDLANTIC BANK

IRREVOCABLE LETTER OF CREDIT NO. 1992-03 NOT EXCEEDING \$15,000.00,  
UNITED STATES CURRENCY, EXPIRES FEBRUARY 1, 1993

Spiro Janetos, Esq.  
301 Exchange Blvd.  
Rochester, NY 14608

January 28, 1992

Gentlemen:

You are herewith authorized to draw on us for the account of Mark IV Construction Co., Inc., up to an aggregate amount of Fifteen Thousand Dollars, United States Currency (\$15,000.00) available by your drafts at sight to secure the deposits of purchasers of Heritage Meadows Townhomes, Town of Henrietta, Monroe County, New York. Drafts shall be accompanied by a signed certification from Spiro Janetos, Esq., that Mark IV Construction Co., Inc. has failed to fund deposit monies in accordance with the terms of the Purchase Agreement between the parties.

In the event this Letter of Credit is not renewed one (1) year from the date hereof, Spiro Janetos is authorized to draw on us for such amount to secure the deposits of purchasers of lots of Heritage Meadows Townhomes, up to the unused portion of this Letter of Credit.

Drafts must be drawn and negotiated on or before February 1, 1993.

Drafts drawn under this Credit must bear upon their face the clause: "Drawn under Irrevocable Letter of Credit No. 1992-03 dated January 28, 1992. Advice of each draft must be sent to us.

~~The amount of any draft drawn under this Credit must, concurrently with negotiation, be endorsed on the reverse thereof and the presentment of any such draft shall be a warranty by you that such endorsement has been made. This Credit must accompany any draft which exhausts the Credit and must be surrendered concurrently with the payment of such draft.~~

We hereby agree with the drawers, endorsers, and bonafide holders of drafts drawn and negotiated under and in compliance with the terms

Spiro Janetos, Esq.  
January 28, 1992  
Page 2 of 2

of this Credit that they shall be duly honored on due presentment to us.

This Credit is subject to the Uniform Customs and Practice for Documentary Credits (1984 Revisions), International Chamber of Commerce, Brochure No. 400.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frank W. Richards", with a large, stylized flourish at the end.

Frank W. Richards  
Vice President

FWR/kan

EXHIBIT L

ATTORNEY GENERAL  
OF THE STATE OF NEW YORK  
MODEL FORM  
FOR ESCROW AGREEMENT  
ADOPTED BY SPONSOR AND ESCROW AGENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 1992, between MARK IV CONSTRUCTION CO., INC. ("SPONSOR") as Sponsor of the offering plan and Spiro P. Janetos, as attorney, as escrow agent, ("ESCROW AGENT").

WHEREAS, Sponsor is the sponsor of an offering plan involving the premises located at \_\_\_\_\_, which premises are known as \_\_\_\_\_; and

WHEREAS, Escrow Agent is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-e(2-b) and the Attorney General's regulations promulgated thereunder; and

WHEREAS, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers, pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW ACCOUNT.

1.1 SPONSOR and ESCROW AGENT hereby establish an escrow account with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers or subscribers. The escrow account has been opened with

\_\_\_\_\_ at  
its branch located at \_\_\_\_\_.

The account number is \_\_\_\_\_.

1.2 The name of the account is \_\_\_\_\_ Escrow Account.

- 1.3 ESCROW AGENT is the sole signatory on the account.
- 1.4 The escrow account shall be an IOLA interest-bearing account as disclosed in the offering plan.
- 1.5 The escrow account is an IOLA Account established pursuant to Judicial Law Section 497.

2. DEPOSITS INTO THE ESCROW ACCOUNT.

- 2.1 All funds received from prospective purchasers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be deposited in the escrow account. All instruments to be deposited into the escrow account shall be made payable to, or endorsed by the purchaser to the order of

\_\_\_\_\_, as attorney, as escrow agent for \_\_\_\_\_ Homeowners Association, Inc. offering plan. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such escrow account, shall be returned to the prospective purchaser promptly, but in no event more than five business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT to the terms of this Agreement.

- 2.2 Within ten (10) business days after tender of the deposit submitted with the purchase agreement, ESCROW AGENT shall notify the purchaser of the deposit of such funds in the bank indicated in the Offering Plan, provide the account number, and disclose the account as an IOLA Account. If the purchaser does not receive notification of such deposit within fifteen (15) business days after tender of the deposit, the purchaser may cancel the purchase agreement and rescind within ninety (90) days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

3. RELEASE OF FUNDS IF NO LETTER OF CREDIT IS PROVIDED.
- 3.1 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser until after consummation of the plan as defined in the Attorney General's regulations. Consummation of the plan shall not relieve SPONSOR of its fiduciary obligations pursuant to GBL Section 352-h.
- 3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in (a) a writing signed by both Sponsor and purchaser or (b) a determination of the Attorney General or (c) a judgment or order of a court of competent jurisdiction or until releases pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.
- 3.3 SPONSOR shall not object to the release of the escrowed funds to (a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan or (b) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.
- 3.4 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT has given the purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the Department of Law pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.
4. RELEASE OF FUNDS IF LETTER OF CREDIT IS PROVIDED.
- 4.1 The Escrow Agent shall release such funds to the Sponsor, provided the Escrow Agent has documentation showing that the Letter of Credit, or a renewal or replacement Letter of Credit, has been issued and is in effect. The Escrow Agent shall not release funds from escrow, if the Escrow Agent receives notice or information warranting the draw-down of the Letter of Credit.

- 4.2 The Escrow Agent as the beneficiary of the Letter of Credit, acting as a fiduciary for the benefit of purchasers under the plan whose funds were released from escrow, shall have the duty and the right to draw upon and collect the proceeds of the Letter of Credit, ten (10) business days after notice to the Sponsor and Sponsor's failure or refusal to restore such funds to the Escrow Agent, without the consent or despite the objection of the Sponsor or the provider of the credit, upon the following events or circumstances:
1. Timely rescission of a purchase agreement by a purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;
  2. Acceptance for filing by the Department of Law of an amendment abandoning the plan;
  3. Determination by the Attorney General mandating that rescission or the return of funds is required;
  4. Failure by the Sponsor to obtain a renewal or replacement Letter of Credit no later than sixty (60) days prior to the expiration of the existing Letter of Credit;
  5. Direction by the Sponsor upon request of the purchaser;
  6. Notice of impending cancellation of the Letter of Credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a federal or state authority, and no proper replacement of the Letter of Credit has been furnished.
- 4.3 In the event of a dispute, the Sponsor shall apply, and the purchaser, the Escrow Agent or the bank issuing the Letter of Credit may apply, to the Attorney General for a determination on the disposition of funds secured by the Letter of Credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. The party making such application shall contemporaneously send to the other three parties a copy of such application.

- 4.4 Pending the determination of the Attorney General to grant or deny the application, the Sponsor, the purchaser, the Escrow Agent and the bank shall abide by an interim directive issued by the Attorney General.
- 4.5 If the application permitting release of funds is granted, such funds secured by the Letter of Credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.
- 4.6 The Attorney General shall act upon the application within thirty (30) days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.
- 4.7 In no event shall the disputed funds secured by the Letter of Credit be paid to the purchaser nor shall the Letter of Credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

5. RECORD KEEPING.

- 5.1 ESCROW AGENT shall maintain all records concerning the deposits for seven years after release of the funds.
- 5.2 Upon the dissolution of a law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer.
- 5.3 ESCROW AGENT shall make available to the Attorney General, upon his request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

6. GENERAL OBLIGATIONS OF ESCROW AGENT.

- 6.1 ESCROW AGENT shall maintain the accounts called for in this Agreement under the direct supervision and control of ESCROW AGENT.

6.2 A fiduciary relationship shall exist between ESCROW AGENT and purchasers, and ESCROW AGENT acknowledges its fiduciary obligations.

7. RESPONSIBILITIES OF SPONSOR.

7.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT.

7.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT'S performance of its fiduciary duties and compliance with the Attorney General's regulations.

8. TERMINATION OF AGREEMENT.

8.1 This Agreement shall remain in effect unless and until it is canceled, by either:

(a) Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; or

(b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; or

(c) All shares or units offered pursuant to the plan have been sold and all sales transactions have been consummated.

8.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1 above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any and all contracts or documents maintained by ESCROW AGENT to the new escrow agent.

9. SUCCESSORS AND ASSIGNS.

9.1 This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.



10. GOVERNING LAW.

10.1 This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

11. ESCROW AGENT'S COMPENSATION.

11.1 SPONSOR agrees that ESCROW AGENT'S compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by any financial institution under any circumstance.

12. SEVERABILITY.

12.1 If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

13. ENTIRE AGREEMENT.

13.1 This Agreement, read together with GBL Section 352-e(2-b) and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

SPONSOR

Mark IV Construction Co., Inc.

By: \_\_\_\_\_  
Anthony M. DiMarzo, Sponsor

ESCROW AGENT

\_\_\_\_\_  
Spiro P. Janetos

APPLICATION TO THE ATTORNEY GENERAL  
FOR A DETERMINATION ON THE  
DISPOSITION OF DOWNPAYMENTS

(Send this application to the reviewing attorney assigned to the subject plan.)

Re: \_\_\_\_\_  
HOMEOWNERS ASSOCIATION, INC.

File Number: \_\_\_\_\_

Application is made to the Attorney General to consider and determine the disposition of down payments held pursuant to GBL Sections 352-e(2-b) and 352-h. The following information is submitted in support of this application:

1. Name \_\_\_\_\_  
of Applicant
2. Address \_\_\_\_\_  
of Applicant
3. Name, Address, and Telephone Number of Applicant's  
Attorney (if any) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. This is an application for  
 return of downpayment.  
 forfeiture of downpayment.  
 other: \_\_\_\_\_  
\_\_\_\_\_
5. The project is  
 newly constructed.  
 vacant (as is).

6. The project is structured as an homeowners association.

7. Name and Address of Sponsor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Name and Address of Escrow Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. If downpayments are maintained in an escrow account:

(a) Name of account: \_\_\_\_\_ ESCROW ACCOUNT

(b) Name and address of bank: \_\_\_\_\_  
\_\_\_\_\_

(c) Account number (if known) \_\_\_\_\_

(d) Initial interest rate (if known). Not applicable.  
IOLA Account.

10. If downpayments have been secured by bonds:

(a) Name and address of bond issuer or surety: \_\_\_\_\_  
\_\_\_\_\_

(b) Copy of bond included in this application. (DO NOT  
SEND ORIGINAL BOND.) If not included, explain:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. If downpayments have been secured by a Letter of Credit:

(a) Name and address of bank which issued the letter of  
credit: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Date of expiration of the Letter of Credit, if known: \_\_\_\_\_

12. Plan information:

(a) Date of filing of plan: \_\_\_\_\_

(b) Plan  
[ ] has been declared effective. Approximate date: \_\_\_\_\_

[ ] has not been declared effective.

(c) If effective, the plan

[ ] has closed or the first unit has closed. Approximate date: \_\_\_\_\_

[ ] has not closed.

[ ] don't know.

(d) Downpayments are secured by

[ ] escrow account.

[ ] bonds.

[ ] letter of credit.

13. Contract information:

(a) Copy of contract and of all riders of modification letters are attached. (DO NOT SEND ORIGINALS.)

(b) Date on which purchase agreement was signed: \_\_\_\_\_

(c) Date(s) of downpayment(s): \_\_\_\_\_

(d) Total amount of downpayment(s): \_\_\_\_\_

(e) Names and addresses of purchasers affected by this application:

\_\_\_\_\_  
\_\_\_\_\_

14. State the basis for your claim. Please be as specific as possible. You may add additional sheets. Attach copies of any relevant documents.

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15. I am contemporaneously sending a copy of this application to the following persons:

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Note: You are required to mail a copy of this Application to all other affected parties.

In filing this application, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities I may contact a private attorney. The above application is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

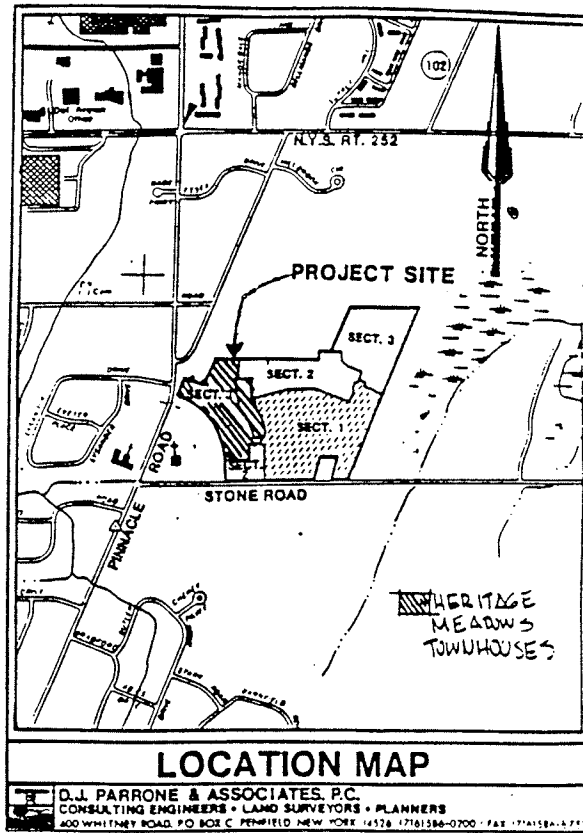
Signature: \_\_\_\_\_ Date: \_\_\_\_\_


Name  
(Printed): \_\_\_\_\_

Telephone: (Home) \_\_\_\_\_ (Business) \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

EXHIBIT M  
 OVERALL SUBDIVISION PLAN



		
D.J. PARRONE & ASSOCIATES, P.C. CIVIL ENGINEERS, LAND SURVEYORS & PLANNERS 400 WHITNEY RD., P.O. BOX C, PENFIELD, NY 14526		
PRELIMINARY PLAN FOR <b>HERITAGE MEADOWS</b>		
SITUATE IN TOWN OF HENRETТА MONROE COUNTY NEW YORK		
DATE SEPT. 22, 1988	SCALE 1" = 100'	JOB NO. 4365

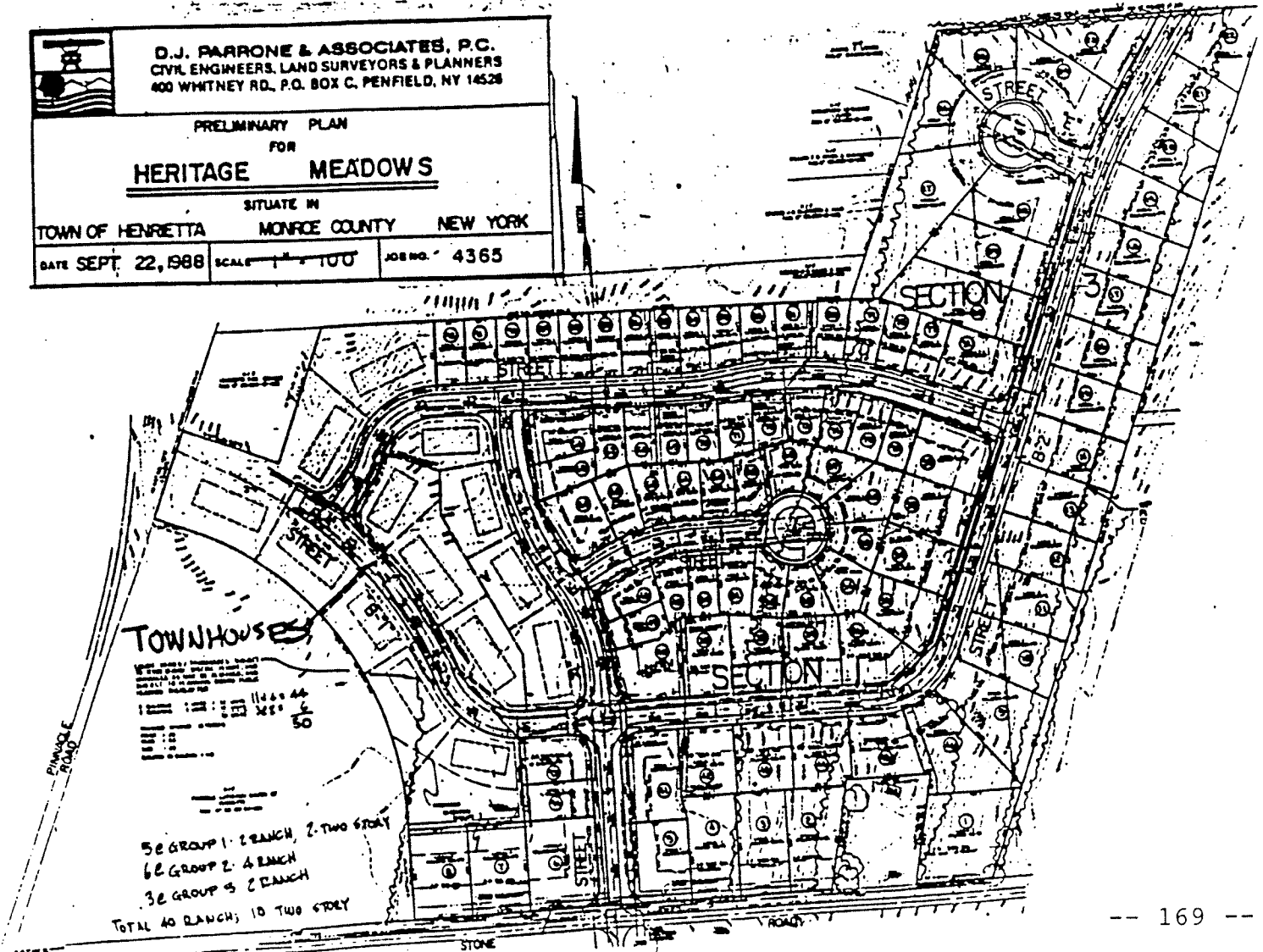
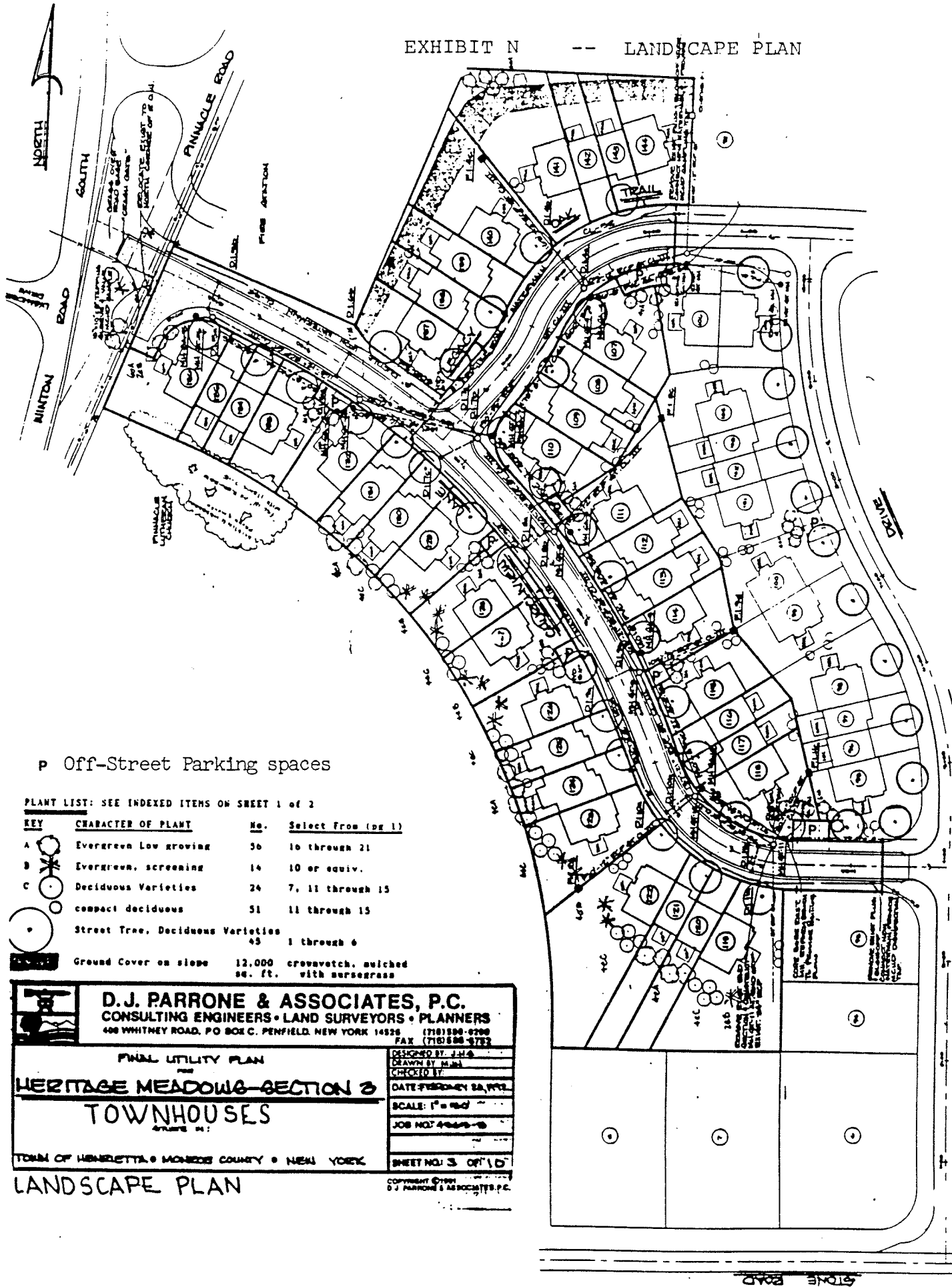


EXHIBIT N -- LANDSCAPE PLAN



p Off-Street Parking spaces

PLANT LIST: SEE INDEXED ITEMS ON SHEET 1 of 2

KEY	CHARACTER OF PLANT	No.	Select From (pg 1)
A	Evergreen Low growing	36	16 through 21
B	Evergreen, screening	14	10 or equiv.
C	Deciduous Varieties	24	7, 11 through 15
	compact deciduous	51	11 through 15
	Street Tree, Deciduous Varieties	45	1 through 6
	Ground Cover on slope	12,000	crowvetch, mulched sq. ft. with bermgrass

**D.J. PARRONE & ASSOCIATES, P.C.**  
 CONSULTING ENGINEERS • LAND SURVEYORS • PLANNERS  
 408 WHITNEY ROAD, P.O. BOX C, PENFIELD, NEW YORK 14526 (716) 898-6200  
 FAX (716) 898-3783

DESIGNED BY: J.H.G.  
 DRAWN BY: M.J.H.  
 CHECKED BY:  
 DATE: FEBRUARY 24, 1992  
 SCALE: 1" = 160'  
 JOB NO: 4000-10  
 SHEET NO: 3 OF 10

FINAL UTILITY PLAN  
 FOR  
**HERITAGE MEADOWS SECTION 3**  
**TOWNHOUSES**  
GRADE 11:

TOWN OF HENRIETTA • MONROE COUNTY • NEW YORK

LANDSCAPE PLAN

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 D.J. PARRONE & ASSOCIATES, P.C.



STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, NY 10271

ROBERT ABRAMS  
Attorney General

GARY R. CONNOR  
Assistant Attorney General in Charge  
Real Estate Financing Bureau

(212) 416-8148

Mark IV Construction Co., Inc.  
c/o Woods, Oviatt, Gilman, et al.  
Attn: Louis M. D'Amato  
44 Exchange Street  
Rochester, NY 14614

RE: Heritage Meadows Homeowners

File Number: H920009

Amendment No: 1

Date Amendment Filed: 09/08/93

Filing Fee: \$ 150.00

Receipt Number: 798419403

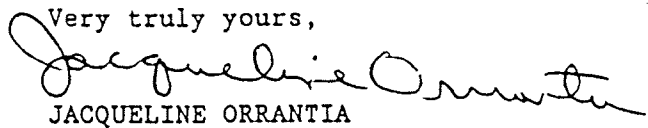
Dear Sponsor:

The referenced amendment to the offering plan for the subject premises is hereby accepted and filed. This filing is effective for the greater of six months from the date of filing this amendment or twelve months from the acceptance of the original offering literature. However, any material change of fact or circumstance affecting the property or offering requires an immediate amendment, including amending the plan to disclose the most recent certified financial statement and budget, which should be done as soon as either of these documents is available.

Any misstatement or concealment of material fact in the material submitted as part of this amendment renders this filing void ab initio. This office has relied on the truth of the certifications of sponsor, sponsor's principals, and sponsor's experts, as well as the transmittal letter of sponsor's attorney.

Filing this amendment shall not be construed as approval of the contents or terms thereof by the Attorney General of the State of New York, or any waiver of or limitation on the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable law. The issuance of this letter is conditioned upon the collection of all fees imposed by law. This letter is your receipt for the filing fee.

Very truly yours,



JACQUELINE ORRANTIA

ASSISTANT ATTORNEY GENERAL y.h.



HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

HERITAGE MEADOWS TOWNHOMES

HERITAGE MEADOWS SUBDIVISION  
HENRIETTA, MONROE COUNTY, NEW YORK

AMENDMENT NO. 1 TO THE OFFERING PLAN

The amount of this offering is  
\$50,000.00 (value of common areas and amenities  
included in the price of Lots)

This Amendment is made to:

1. Extend the Offering Plan for an additional six (6) month period;
2. Amend the Purchase Agreement;
3. Disclose that a private right-of-way will be accepted in dedication by the Town of Henrietta;
4. Disclose that the name of the Managing Agent has changed.
5. Disclose updated and recertified common charges.

Offering Plan Extension

The Sponsor hereby extends the Offering Plan for an additional six (6) month period.

As represented by this Amendment, Mark IV Construction Co., Inc. ("Sponsor") is presently developing Heritage Meadows Townhomes. Of the 50 Lots in Heritage Meadows Townhomes, 12 Lots have been or are being improved. As of June 15, 1993, five (5) Lots have been transferred and four (4) Lots are under contract to be sold.

The first Lot was transferred on December 29, 1992, and the Declaration was recorded in the Monroe County Clerk's Office in Liber 8291 of Deeds, at page 286.

In accordance with the Offering Plan, as amended, the Sponsor has appointed the initial three (3) members of the Board of Directors, and therefore, controls the Board. The Board is composed of Anthony M. DiMarzo, Patsy DiMarzo and Donald Riley, all of whom are principals of the Sponsor or an employee of the Sponsor.

The Board of Directors is operating pursuant to the Estimate of Operating Expenses and Reserves for the Association for the first year of operation of Heritage Meadows Townhomes as originally set forth in the Offering Plan.

The financial statement of the Association dated as of December 31, 1992 is attached to this Amendment as Exhibit 1A-1. The financial statement disclosed a \$1,500.00 deduction from the Working Capital Account. The deduction was made in error and the sum has been redeposited by the Sponsor.

#### Purchase Agreement Amendment

The Sponsor hereby amends the form of Purchase Agreement to read as set forth in Exhibit 1A-2.

#### Right-of-Way Dedication

The Town of Henrietta has agreed to accept a dedication deed for the private right-of-way at the northerly terminus of Churchview Lane. Accordingly, this right-of-way will be part of Churchview Lane and will be conveyed to and maintained by the Town of Henrietta. A revised Site Plan is attached as Exhibit 1A-5. A revised Engineer's Report is attached as Exhibit 1A-6.

## Managing Agent

For internal accounting purposes, the Sponsor has transferred its property management functions to a wholly owned subsidiary known as Monroe Management. The principals and shareholders of the Sponsor are the same as the principals and shareholders of Monroe Management. The office address, phone numbers and employees remain the same.

## Updated and Recertified Common Charges

The Association's monthly common charges as of October 1, 1993, will be as set forth of Exhibit 1A-3. The Recertification of the Association's budget is set forth as Exhibit 1A-4.

## Financial Disclosure

The Sponsor hereby represents that there has been no material change in the financial position of the Sponsor with respect to this offering. Specifically, the sponsor represents the following:

1. Five (5) Lots have been transferred; the Sponsor owns the remaining Lots in the subdivision.
2. The monthly maintenance or common charge is as set forth in the Offering Plan.
3. No lots are being rented by the Sponsor.
4. The Sponsor has no financial obligation to the Association other than to fund an operating deficit. Pursuant to §5.04 of the Declaration, the Sponsor shall be obligated for the difference between actual Association expenses including reserves for completed improvements and the Association charges levied on owners who have closed title to their lots. For the calendar year ending 1992, common charges levied on owners exceeded expenses, including reserves for completed improvements, and therefore, Sponsor paid no common charges.
5. The unsold lots of the subdivision are subject to a mortgage held by M&T Bank, 44 Exchange Street,

Rochester, New York, in the amount of \$268,635.00. Interest only payments are due monthly in the approximate amount of \$1,600.00.

6. The financial obligations of the Sponsor will be funded from income from projected sales, and from general operating revenues of the Sponsor.
7. The Sponsor is current on all financial obligations under the offering plan, including but not limited to maintenance or common charges, reserve or working capital fund payments, assessments, and payments for repairs or improvements required by the Offering Plan. Additionally, the Sponsor is current on payments of underlying mortgages and loans. Additionally, the Sponsor was current on all such obligations during the year prior to filing this amendment.
8. The Sponsor is presently actively involved in the following offerings:

Woodsvie Homeowners Association, Inc.,  
Canalside Homeowners Association, Inc.,  
Hillsboro Cove Homeowners Association, Inc.,  
Genesee Riverview Homeowners Association, Inc.,  
Huntington Park Homeowners Association, Inc.

Offering plans for these homeowners associations are on file with the New York State Department of Law, and are available for public inspection.
9. The Sponsor is current in its financial obligations with respect to the homeowners associations listed in Item 8 above.
10. The Sponsor remains in control of the Board of Directors of the Association. As defined in the Declaration, the Sponsor and all lot owners shall automatically be members. All owners, with the exception of the Sponsor, shall be Class A members. The Sponsor shall be a Class B member. Until five (5) years after the transfer of the first lot, or until all lots are transferred, whichever shall first occur, the Class B membership shall be the only class of membership entitled to vote. Thereafter, the Sponsor's Class B membership shall be converted into a Class A membership, and all members shall vote equally, that is, one member one vote.

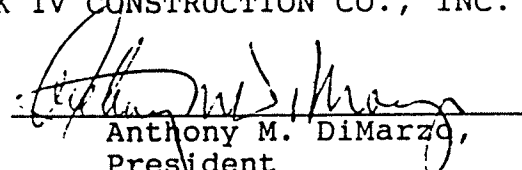
No Further Changes

As of the date of this Amendment, there are no further changes to the documentation provided in the Offering Plan, as amended, known to the Sponsor.

Dated: June 15, 1993

MARK IV CONSTRUCTION CO., INC.

By:

  
\_\_\_\_\_  
Anthony M. DiMarzo,  
President

1A-1

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HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

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ROCHESTER, NEW YORK

FINANCIAL STATEMENT  
DECEMBER 31, 1992

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**CLB**  
**&CO**

Cortland L. Brovitz & Co., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

CORTLAND L. BROVITZ & CO., P.C.  
CERTIFIED PUBLIC ACCOUNTANTS

1235 MIDTOWN TOWER  
ROCHESTER, NEW YORK 14604  
716-454-6996  
FAX 716-454-4024

MANAGERS

MICHAEL F. PRACEL, C  
PAMELA L. MERRICK, C.  
DAVID A. GRANZA, CPA  
MICHAEL J. DINAN, CPA  
NICHOLAS R. BOTTINI, C

PRINCIPALS

CORTLAND L. BROVITZ, CPA  
MELVYN J. POPLACK, CPA  
DAVID H. ZUGEHOER, CPA  
STEVEN G. SCHWARTZ, CPA  
RICHARD M. KASPERSKI, CPA  
JEFFREY D. WILLIAMS, CPA  
RICHARD N. GRAY, CPA  
MIRIAM KACHIOFF, CPA  
MICHAEL C. SMITH, CPA  
BLISS E. OWEN, CPA

MEMBER

The M<sup>o</sup>GLADREY Network  
Internationally DRM

INDEPENDENT AUDITORS' REPORT

To the Members of  
Heritage Meadows Homeowners Association, Inc.:

We have audited the accompanying balance sheet of Heritage Meadows Homeowners Association, Inc. as of December 31, 1992, and the related statement of revenues, expenditures and changes in fund balances, and revenues, expenditures and changes in operating fund balances from the date of inception December 30, 1992 to December 31, 1992. The financial statements are the responsibility of the Association management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Heritage Meadows Homeowners Association, Inc. as of December 31, 1992, and the results of operations and changes in fund balances from the date of inception December 30, 1992 to December 31, 1992, in conformity with generally accepted accounting principles.

Respectfully Submitted,



Cortland L. Brovitz & Co., P.C.  
Certified Public Accountants

March 24, 1993

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC..  
ROCHESTER, NEW YORK

BALANCE SHEET  
DECEMBER 31, 1992

Assets

<u>Current Assets</u>	\$ 7
Accounts Receivable	<u>9,119</u>
Due From Sponsor	9,126
Total Current Assets	<u>-</u>
<u>Other Assets</u>	
Total Assets	\$ <u>9,126</u>

Liabilities and Fund Balances

<u>Current Liabilities</u>	\$ 1,500
Accounts Payable	<u>374</u>
Accrued Income Taxes	1,874
Total Current Liabilities	<u>-</u>
<u>Other Liabilities</u>	
Total Liabilities	<u>1,874</u>
<u>Fund Balances</u>	2
Restricted Fund	<u>7,250</u>
Operating Fund	<u>7,252</u>
Total Fund Balances	<u>9,126</u>
Total Liabilities and Fund Balances	\$ <u>9,126</u>

See Notes to Financial Statements.



HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
FROM THE DATE OF INCEPTION DECEMBER 30, 1992 TO DECEMBER 31, 1992

	<u>Restricted Fund</u>	<u>Operating Fund</u>	<u>Total Restricted and Operating Funds</u>
Fund Balances - December 30, 1992	\$ -	\$ -	\$ -
Working Capital Advances Made by Sponsor to the Association (Note 3)	-	8,750	8,750
Revenues from Assessments For The Year Ended December 31, 1992	2	374	376
Expenditures For The Year Ended December 31, 1992	<u>-</u>	<u>(1,874)</u>	<u>(1,874)</u>
Fund Balances - December 31, 1992	\$ <u>2</u>	\$ <u>7,250</u>	\$ <u>7,252</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN OPERATING FUND BALANCE  
FROM THE DATE OF INCEPTION DECEMBER 30, 1992 TO DECEMBER 31, 1992

<u>Revenues</u>	
Assessments	\$ 5
Sponsor Assessment (Note 4)	369
Interest Income	<u>-</u>
Total Revenues	\$ <u>374</u>
<u>Expenditures</u>	
Grounds Maintenance:	
Lawn	-
Repairs and Maintenance	-
Snowplowing	-
Operating Expenses:	
Insurance - Fire and Casualty	-
Trash Removal	-
Administrative Expenses:	
Legal and Accounting	-
Management Fee	-
Miscellaneous Expense	-
Office Supplies	-
Income Taxes (Note 2)	<u>374</u>
Total Expenditures	<u>374</u>
Excess (Deficiency) of Revenues Over Expenditures	-
Fund Balance - Beginning	-
Initial Working Capital Advance Made by Sponsor to the Association (Note 3)	8,750
Start Up Expenses (Note 5)	<u>(1,500)</u>
Fund Balance - Ending	\$ <u>7,250</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1992

Note 1 Summary of Significant Accounting Policies

Basis of Reporting

The Association's financial statements are prepared on the accrual basis. Revenues from assessments are recognized as income when they become due. Prepaid assessments (advance payments) are deferred until the month due. Expenses are recognized as incurred, not when paid.

Restricted Fund

A portion of the revenue from homeowner assessments is designated by the Association for specific purposes and is credited to a restricted fund. All charges against the restricted fund are recorded as incurred. Any interest earned on the restricted fund is included in restricted fund revenues for the period.

Tax Status

The Association has been incorporated under the New York State Not-For-Profit Corporation Law. As such the corporation qualifies under Section 528 of the Internal Revenue Code. Federal tax and state tax will not be payable on profit due to assessment fees charged members. Tax will be payable on non-exempt function income, including interest.

Note 2 Income Taxes  
Income Taxes consisted of the following at December 31, 1992:

Taxes Currently Payable:

Federal	\$ -
State	<u>374</u>
	\$ <u>374</u>

Note 3 Working Capital Advance Due Sponsor

The Sponsor, Mark IV Construction Co., Inc., is required to advance \$175.00 per lot (50 lots) as initial working capital for the Association. The initial purchaser of each lot reimburses the sponsor at closing.

Note 4 Sponsor Assessment

Sponsor paid an assessment to cover the operating deficit of \$369.

Note 5 Start Up Expenses

A management fee in the amount of \$1,500 is considered a start up expense.

EXHIBIT 1A-2  
PURCHASE AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_  
by and between MARK IV CONSTRUCTION CO., INC. having an office at  
301 Exchange Blvd., Rochester, New York ("Seller") and  
\_\_\_\_\_ residing at \_\_\_\_\_  
("Purchaser").

W I T N E S S E T H :

In consideration of the mutual promises herein made, Seller agrees to sell and Purchaser agrees to purchase the premises described below for the price and upon the terms and conditions set forth below.

1. PREMISES: Those certain premises located in the Town of Henrietta, County of Monroe and State of New York, known and designated as Lot No. \_\_\_\_ of the Heritage Meadows Subdivision, on a map filed in the Monroe County Clerk's Office.

The premises are sold together with all rights of Seller in and to any and all streets, roads, highways, alleys, driveways, easements and rights of way appurtenant thereto.

The premises are sold subject to restrictive covenants of record provided they have not been violated, unless enforcement of the covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; utility easements of record, easements common to the tract or subdivision, easements and rights of way shown on the subdivision map, and easements and party wall agreements recorded in the Monroe County Clerk's Office, and also subject to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, and the By-Laws for the Heritage Meadows Homeowners Association, Inc. both of which are included in the Offering Plan for the Heritage Meadows Homeowners Association, Inc. Purchaser acknowledges receipt of the Offering Plan at least three (3) business days prior to the date of this Agreement and the Offering Plan is incorporated in this Agreement by reference and made a part of this Agreement with the same force and effect as if set forth in full. Purchaser agrees to be bound by the Declaration, By-Laws and any Rules and Regulations of the Association as they may be amended from time to time. Purchaser acknowledges that he is purchasing an interest in the Association, and that except as stated in this Agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any representations or other statements of any kind or nature made by Seller or otherwise.

2. PRICE: Purchaser shall pay to Seller for the premises the sum of \$ \_\_\_\_\_ payable as follows:

Upon signing this Agreement:	\$ _____
Upon completion of the foundation:	\$ _____
Upon Purchaser's receipt of a mortgage commitment:	\$ _____
Upon completion of rough framing:	\$ _____
Upon completion of drywall:	\$ _____
Upon _____:	\$ _____
Upon delivery of the deed:	\$ _____
TOTAL	\$ _____

3. DWELLING: Seller agrees to sell and Purchaser agrees to purchase the \_\_\_\_\_, now on the premises or to be constructed on the premises in accordance with plans and specifications on file in the office of Mark IV Construction Co., Inc. including the Extras requested by Purchaser, in accordance with Exhibit "A" attached. The purchase price shall include any modifications or extras which are listed on Exhibit "A" attached to and made a part of this Agreement and the Exhibit shall state the listed modifications or extras are included in the purchase price. Seller reserves the right to make such changes and/or substitutions in the construction of the dwelling as may be required, authorized, and/or appointed by the lending institution granting Purchaser's mortgage loan or by any governmental agency having jurisdiction, provided any such changes are of comparable value. Seller also shall have the right to determine the grading, elevation and design (including reversal of the building layout) of the lot and dwelling to fit into the general pattern of the development. Purchaser understands that he may make changes and alterations in the plans provided that such changes are made prior to the start of construction and are listed on a change authorization form signed by Purchaser and Seller. The cost of the changes and alterations shall be paid for at the time the Purchaser executes and submits to the Seller the work authorization form.

4. DEPOSITS: Purchaser is advised that to assure the return of his payments ("deposits") before delivery of the deed in the event this Agreement is terminated for reasons other than Purchaser's default:

The Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

The Sponsor has obtained an irrevocable Letter of Credit from Central Trust Company, n/k/a Manufacturers and Traders Trust Company, successor by merger to Central Trust Company, a banking corporation with an office at 44 Exchange Street, Rochester, New York in the amount of Fifteen Thousand Dollars (\$15,000.00) to secure the return of purchasers' deposits in the event the Sponsor defaults in its obligation to deliver the Lot as required in the Purchase Agreement. The Letter of Credit amount is 125% of the aggregate of all down payments or payments expected to be received from purchasers and not retained in escrow during such period of time as the Letter of Credit will be needed. If circumstances warrant, the amount of the Letter of Credit will be reduced or increased pursuant to a filed amendment to the Offering Plan. The letter is issued to Spiro P. Janetos, Esq., as attorney, the Escrow Agent, and provides that payment will be made upon presentation of the Letter of Credit together with a signed certification from Spiro P. Janetos, Esq., "that MARK IV CONSTRUCTION CO., INC. has failed to refund deposit monies to purchasers ... in accordance with the terms of the Purchase Agreement." A copy of the Letter of Credit is set forth as an Exhibit and is available on written request of the purchasers or prospective purchasers to Spiro P. Janetos, Esq., 301 Exchange Blvd., Rochester, New York 14608. The Sponsor anticipates obtaining additional letters or a renewal of existing letters during development of Heritage Meadows Townhomes. In the event that a renewal of such Letter of Credit is not obtainable with respect to any purchaser's deposit, Spiro P. Janetos, Esq. will draw upon such Letter of Credit in an amount to fully cover all down payments secured by such Letter of Credit.

All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, will be placed, within five business days after the agreement is signed by all necessary parties and a deposit check has been delivered by purchaser, in a segregated special escrow account of Spiro P. Janetos, as attorney, the Escrow Agent, whose address is 301 Exchange Boulevard, Rochester, New York 14608, and whose telephone number is (716) 232-1760. The signatory on this account authorized to withdraw funds is:

Spiro P. Janetos, Esq.

301 Exchange Boulevard  
Rochester, New York 14608

The name of the account is HERITAGE MEADOWS ESCROW ACCOUNT, located in Manufacturers and Traders Trust Company, successor by merger to Central Trust Company, at 44 Exchange Street, Rochester, New York 14614. This bank is covered by federal bank deposit insurance to a maximum of \$100,000 per account. If an individual makes a down payment in excess of \$100,000 for the purchase of a lot, it is a special risk of this offer that such deposit will not be federally insured in excess of \$100,000.

The account will be an Interest-On-Lawyer's-Account ("IOLA") pursuant to Judiciary Law Section 497. Interest earned will not be the property of the purchaser, Sponsor or escrow agent, but rather will be paid to the New York State IOLA Fund.

All instruments shall be made payable to or endorsed to the order of Spiro P. Janetos, as attorney, as Escrow Agent.

Within ten business days after tender of the deposit submitted with the purchase agreement, the Escrow Agent will notify the purchaser that such funds have been deposited into the escrow account and will provide the account number. If the purchaser does not receive notice of such deposit within fifteen business days after tender of the deposit, the purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety days after tender of the deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the purchaser in conformity with the Attorney General's regulations.

The Escrow Agent shall release such funds to the Sponsor, provided the Escrow Agent has documentation showing that the Letter of Credit, or a renewal or replacement Letter of Credit, has been issued and is in effect. The Escrow Agent shall not release funds from escrow unless 125% of the amount to be released is secured by the Letter of Credit, or if the Escrow Agent receives notice or information warranting the draw-down of the Letter of Credit.

In the event this agreement is terminated for reasons other than Purchaser's default, deposits, with interest if any, will be returned to Purchaser within 15 days of such termination.

YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.

5. BUILDING PERMIT: This Agreement is subject to Seller being able to obtain a building permit. In the event construction does not commence within 120 days from the date of execution of this Agreement, Seller reserves the right to cancel this Agreement without penalty.

6. RISK OF LOSS: Risk of loss or damage to the premises until transfer of title shall be assumed by the Seller. If any damage to the premises occurs prior to transfer of title and Seller determines that it cannot repair or restore such loss or damage, this Agreement shall terminate without any further liability of one party to the other, and Purchaser shall have his deposits returned in accordance with paragraph 4 of this Agreement.

7. SURVEY: Seller shall furnish at Purchaser's expense an instrument survey made by a land surveyor duly licensed by the State of New York, showing the premises above described and the location of all buildings, improvements and other structures affecting the premises.

8. DEED: At closing, Seller shall deliver to Purchaser a warranty deed, with lien covenant, conveying marketable title in fee simple, free and clear of all liens and encumbrances except as provided in this Agreement.

9. SEARCHES: Seller agrees to provide a guaranteed title and tax search and a United States District Court search to the time of transfer, showing marketable title. The searches will be provided to Purchaser's attorney at least fifteen (15) days prior to transfer.

10. CERTIFICATE OF OCCUPANCY: Seller agrees to deliver to Purchaser, at the time of closing a Certificate of Occupancy.

11. INSPECTION: Prior to closing, Purchaser shall have the right to inspect the premises upon reasonable notice to the Seller.

12. POSSESSION: Purchaser shall have possession and occupancy of the premises from and after the date of delivery of the deed.



13. MORTGAGE LOAN FOR PURCHASER: This Agreement is contingent upon Purchaser obtaining within 30 banking days from date of this Agreement a commitment for a \_\_\_\_\_ first mortgage loan in the amount of \$ \_\_\_\_\_ from a lending institution. If Purchaser cannot obtain such commitment within that period through Purchaser's own efforts, then the Seller will cooperate with the Purchaser in making the mortgage application. Purchaser agrees to pay total origination fees of \_\_\_\_\_ percent (\_\_\_\_%) of the mortgage amount to the lending institution making the loan in cooperation with the Seller or to the Seller. If Purchaser in cooperation with Seller is unable to obtain a commitment within 30 banking days thereafter, then Purchaser may cancel this Agreement by giving written notice to the Seller. In that event, this Agreement shall be null and void and both parties released from any and all liabilities. Purchaser has the option, however, of continuing with this Agreement and making application for a mortgage loan for an additional 60 banking days by giving written notice to the Seller, prior to the expiration of the 60 day mortgage contingency period, of the Purchaser's election with the understanding that the Purchaser will pay an additional three percent (3%) of the purchase price to the Seller at time of transfer. If Purchaser is unable to satisfy or remove any and all contingencies within 120 days from date of this Agreement, Seller has the right of canceling the Agreement and returning the deposit, with interest if any. Deposits, with interest if any, shall be returned to the Purchaser less the full cost of all Extras described in Exhibit A attached which were commenced, at the written request of Purchaser, prior to receipt by Seller of advice of the disapproval of the mortgage. In the event the cost of the Extras commenced by Seller exceeds the amount of the deposits, Purchaser shall promptly remit to Seller the difference.

14. ADJUSTMENTS AT CLOSING: There shall be prorated and adjusted as of the date of transfer of title: water charges, pure water charges, sewer rental and unit charges, current taxes computed on a fiscal year basis, rents, Association assessments, and any special district assessment charges. Purchaser will accept title subject to, and will pay all assessments and installments of assessments for local improvements which are not payable as of date of delivery of deed and which, if any, appear on the current tax rolls.

15. COSTS: Purchaser shall pay for any fees incurred in recording of the deed and mortgage and for the New York State Mortgage Tax. Purchaser shall reimburse Seller the cost of the required Real Estate Transfer Tax Stamps to be affixed to the deed. Purchaser shall pay for the fee and mortgagee title insurance policy, as may be required, and for all

costs in connection with the mortgage. Purchaser also shall reimburse to the Seller the \$175.00 initial capital contribution to the Heritage Meadows Homeowners Association, Inc. which Seller advanced. Purchaser agrees to reimburse Seller the sum of \$125.00 for Purchaser's water meter, and to reimburse Seller the sum of \$300.00 for the Town Park and Recreation Fee. In addition, Purchaser agrees to reimburse Seller in an amount not to exceed \$500.00 for all fees expended by Seller in connection with obtaining a building permit and certificate of occupancy for the premises.

16. CLOSING: This Agreement shall be closed at the Monroe County Clerk's Office 120 days after the removal of the contingencies set forth in paragraphs \_\_\_\_\_, or within fifteen (15) days following completion of the dwelling whichever date shall occur sooner, except that if the dwelling is not ready for occupancy on such date, the closing may be postponed by Seller to a date to be set by Seller upon written notice mailed to Purchaser at his address set forth above. In the event the postponed date is more than 120 days after the above closing date, Purchaser may cancel this Agreement by sending written notice to Seller at the address set forth above within ten (10) days of the date on which the notice of postponement of the closing was mailed. In that event this Agreement shall become null and void and both parties shall be released from any liability, except that Seller shall refund to Purchaser his deposits, with interest if any. Seller shall not be responsible for any delay in completing the dwelling if such delay is caused by the unavailability of materials, labor or transportation or by other causes beyond the control of Seller. The refund to Purchaser of the deposits or portion thereof in accordance with this Agreement, shall discharge and release Seller from any liability arising out of or resulting from such delay. The closing shall not be delayed due to any unfinished exterior work which cannot be completed on account of weather conditions.

If the dwelling is substantially completed and ready for transfer and Purchaser declines to complete transfer of title for whatever reason, then the Purchaser may elect to extend the closing date for a period not to exceed 30 days, provided, however, the cost of postponing the closing, including but not limited to construction interest, taxes, utilities, and all other carrying costs shall be paid by the Purchaser to the Seller at the time of closing.

17. FAILURE TO DELIVER OR REJECTION OF TITLE: Should Seller be unable to or fail to deliver title to the premises in accordance with the provisions of this Agreement, or in the event that Purchaser raises objection to Seller's title or

to any improvements, which, if valid, would render the title unmarketable, or render the present or intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction) Seller shall have the right to cancel this Agreement. Seller shall cancel by giving written notice of cancellation to Purchaser and it is agreed that Seller's liability shall be limited to the return of Purchaser's deposits, with interest if any, and upon their return, this Agreement shall become null and void; provided, however, if Seller shall be able within a reasonable length of time to cure the objection or if either party secures a commitment for title insurance at standard rates to insure against the objection raised or title insurance acceptable to Purchaser, Purchaser shall pay the cost of the title insurance and this Agreement shall continue in full force and effect.

18. PURCHASER'S FAILURE TO TAKE TITLE: Upon the Purchaser's failure to take title or the Purchaser's failure to make prompt and proper application for his mortgage, this Agreement shall become null and void and the deposits, with interest if any, up to a maximum of 10% of the purchase price excluding Extras, shall belong to the Seller, in addition to which the Purchaser shall pay Seller the full cost of all Extras in Exhibit "A" which were commenced prior to the date of closing, and reasonable attorneys' fees and court costs, if incurred to enforce Seller's remedies, all of which shall be liquidated damages.

19. THIS AGREEMENT SUBJECT TO BUILDING LOAN MORTGAGE: Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage on the premises made before or after this Agreement and any advances, payments or expenses already made or incurred or which may be made or incurred, after this Agreement under a building loan mortgage without the execution of any further legal documents by the Purchaser. This subordination applies whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or are accelerated payments by virtue of the lender's right to make advances before they become due in accordance with the schedule of payments. The Seller shall satisfy all such mortgages or obtain a release of the premises from the lien of such mortgages at or prior to closing.

20. ESCROW FOR COMPLETION: In the event that the dwelling or its environs shall not be fully completed at the time set by the Seller for the closing of title, the incomplete work will not constitute an objection to closing provided that the lending institution granting Purchaser's mortgage issues an

inspection report and an escrow fund is deposited by the Seller with the lending institution if required under its report, and further provided that Purchaser shall have the right to delay the closing of title until a temporary Certificate of Occupancy has been issued. The escrow fund shall be paid by the lending institution directly to the Seller when the lending institution, in its sole discretion, deems the items for which the escrow is held to be completed. Purchaser shall receive credit at closing, for any funds so held in escrow.

21. REPRESENTATIONS: This Agreement constitutes the entire agreement between Seller and Purchaser and supersedes all prior or other agreements and representations in connection with the sale and purchase. This Agreement cannot be modified except in a writing signed by both parties. All the terms, covenants, provisions, conditions and agreements set forth or provided for shall be binding upon and inure to the benefit of the parties and their assigns.

22. MERGER: Delivery and acceptance of a deed by Purchaser shall be full compliance by the Seller with all the terms of this Agreement and a release by the Purchaser of any and all rights, obligations, claims or causes of action against the Seller. The dwelling shall be regarded as completed in accordance with plans and specifications except for the specific items which Seller agrees, prior to closing, will be completed or repaired.

23. ASSIGNMENT: This Agreement may be assigned by Seller, but may not be assigned by Purchaser without Seller's written consent.

24. LIMITED WARRANTY: THE SELLER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS CONTRACT OR THE HOME AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS PROVIDED IN THE LIMITED WARRANTY ANNEXED TO THIS CONTRACT. THE EXPRESS TERMS OF THE LIMITED WARRANTY ARE HEREBY INCORPORATED IN THIS CONTRACT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE THEREOF.

25. ADDENDA TO THIS CONTRACT: Attached to and made a part of this Agreement are the following:

- Exhibit A - Builder's Standards/Initial Contract  
Extras and Additions.
- Exhibit B -
- Exhibit C -

26. COMMISSIONS: Purchaser represents that no broker has been contacted or engaged in connection with the procurement of this Agreement, except \_\_\_\_\_ . Should this representation be contrary to fact, Purchaser shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the acts or inactions of the Purchaser. This representation shall survive the closing and delivery of the deed to Purchaser. In the event a broker has been contacted or engaged in connection with the procurement of this Agreement, Seller shall not be obligated for the broker's commission if this transaction shall fail to close for any reason whatsoever. In order to confirm his agreement with the terms of this paragraph, the broker executes this Agreement.

27. LIFE OF OFFER: This offer is good until the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, at which time it shall be null and void.

THE PURCHASER ACKNOWLEDGES THAT A WRITTEN COPY OF THE TERMS OF THE LIMITED WARRANTY HAVE BEEN PROVIDED FOR THE PURCHASER'S EXAMINATION PRIOR TO THE TIME OF THE PURCHASER'S EXECUTION OF THIS CONTRACT.

IN WITNESS WHEREOF, the Purchaser has caused this instrument to be duly executed the day and year first above written.

_____	_____	_____
Witness	Date	Purchaser
_____	_____	_____
Witness	Date	Purchaser

ACCEPTANCE

Seller hereby accepts this offer and agrees to sell on the terms and conditions set forth.

Dated: \_\_\_\_\_ MARK IV CONSTRUCTION CO., INC.  
 \_\_\_\_\_  
 By: \_\_\_\_\_  
 \_\_\_\_\_  
 Witness

The undersigned broker hereby executes this Agreement to acknowledge its consent to the terms herein concerning the brokerage commission.

Dated: \_\_\_\_\_  
 \_\_\_\_\_  
 Witness Broker

Exhibit 1A-3

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ESTIMATE OF OPERATING EXPENSES AND RESERVES  
FOR THE YEAR OF OPERATION COMMENCING  
OCTOBER 1, 1993

This estimate of operating expenses and reserves has been made by the Sponsor and is based upon quotations obtained by Sponsor. This estimate cannot be construed as an assurance of actual expenses and is based merely upon information available to the Sponsor at the time of preparation.

A nominal provision has been made for real estate taxes on the Association Property; the Sponsor has been advised by the tax assessor that the value of the Association Property will be reflected in the assessments of the Lots. Should there be an assessment of the Association Property, nominal or otherwise, the Maintenance Assessments will necessarily be increased to fund the resulting taxes.

These operating expenses are based upon the cost of operating the entire project with 50 Lots transferred to third party purchasers. Each Lot transferred by Sponsor is assessed 1/50th of the total costs of operations. Based upon the following estimate, the yearly assessment per Lot is \$1,323.04, and the monthly assessment per Lot is \$110.25. The Sponsor's obligation for assessments shall be as set forth in Article V of the Declaration.

Assessments will be assessed yearly and payable monthly. Assessments will commence on the first day of the month immediately following the sale of the first Lot, or at such other time as the Sponsor shall determine. Yearly assessments will be prorated and adjusted in the year of sale.

If the projected commencement date of the budget year for the projected schedule of receipts and expenses differs by six (6) months or more from the anticipated date of closing of the first home or Lot, this Offering Plan will be amended to include a revised budget disclosing current projections. The amendment will be completed prior to closing the first home or Lot. If the amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for a reasonable period of time, to rescind their offer to purchase and to have their deposits refunded with interest, if any. The Sponsor's guarantee of the budget in this Offering Plan will not avoid an offer of rescission.

Projected Schedule of Receipts  
and Expenses for First Year  
of Operation Commencing October 1, 1993

Projected Income

I. Maintenance Charges:	\$1,323.04 per Lot per year, payable monthly at \$110.25, based on 50 Lots	\$66,152.00
II. Estimated Receipts from other sources		-0-
Total annual receipts		\$66,152.00

Projected Expenses

		-0-
1. Water		8,400.00
2. Management		5,500.00
3. Repairs and Maintenance		2,155.00
4. Drives/Parking		8,000.00
5. Landscape Maintenance		500.00
6. Offices Supplies		5,000.00
7. Snow Plowing		6,415.80
8. Refuse Removal		6,950.00
9. Insurance		825.00
10. Accounting		500.00
11. Legal		474.00
12. Taxes		20,633.00
13. Reserves		300.00
14. Contingencies/Petty Cash		500.00
15. Recording Secretary		500.00
Total annual expenses		\$66,152.00

## Comments

(Numbered comments refer back to the numerical items of the Projected Expenses listed above.)

1. Water service is required for watering Townhouse lawns during the June through September watering season, as may be required. Each Lot Owner will furnish water required for his lawn from his external hosebib. Personnel providing the watering service will endeavor to draw water equally from each Lot Owner's hosebib, as averaged over a sustained time period; however, no assurances can be given that the amount of water drawn from each Lot Owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the lawns of other Townhouse Lots.

2. Management includes financial management, writing specifications and obtaining bids, negotiation of contracts, supervision and inspection of the work of contractors and labor and office services, as more fully set forth in the Management Agreement. The charges for a project of this type, taking into account the size of the project and also the value of the homes, is estimated by the Sponsor to run \$14.00 per Lot per month, for a total of \$8,400.00 per annum. As set forth in the Offering Plan, the Sponsor will serve as Managing Agent. See the Section of this Offering Plan titled "Management Agreement."

3. Repairs and Maintenance to the exterior of the Townhouse includes the siding and trim of the homes, fences, decks and railings and stairs, roofing and flashing (including skylights) and gutters and downspouts and cleanouts, project sign, drainage inlets and grates. Repairs which are specifically excluded from this category include fenestration, including fixed and operable windows, sky lights, sash, screens, doors and frames, storm doors, and lights, vents, air supply ducts, parts that connect to electric, gas, or HVAC equipment, which may be mounted on the exterior of homes, and any mechanical equipment servicing any home. Where such elements require periodic painting, that is included Item 12, Reserves. These services will be provided by skilled mechanics in the respective trades, on an "as-needed" basis. It can be expected that certain categories of repairs may increase substantially over time. The sum of \$5,500.00 has been estimated by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, NY 14608, who, in a letter to the Sponsor has stated that the estimate is based on first hand experience with the construction, operation, and management of similar townhouse projects for the Sponsor over the past ten years.



4. Asphalt driveways and parking areas require sealing and spot patching every three years. Tobey Asphalt Co. has provided a bid for this work for \$2,754.00; the annual reserve is \$918.00. The bid also provides for repaving with 3/4" asphaltic concrete top course every twenty years, including levelling and patching for \$24,750.00; the annual reserve is \$1,237.50. This estimate is provided by Richard L. Rosen, Architect, 301 Exchange Boulevard, Rochester, New York 14608.

5. The total lawn area within the townhouse lots and the area of streets up to the actual pavement measures approximately 4.0 acres. In addition, planting beds are located around foundations, and trees and shrubs are located throughout the project, and as perimeter buffering in certain locations. The services to be provided include mowing for a 25 week season, edge trimming lawns twice yearly, application of fertilizer and weed killer twice yearly and grub killer annually, cultivating plant beds and weeding twice yearly, pruning trees and shrubs annually, and weeding and feeding evergreen plant materials twice yearly. The amount budgeted annually to provide such service is estimated at \$8,000, including sales tax. The Sponsor has agreed to provide the service for the stated amount, which amount is believed to be the going market rate.

As shrubs and trees mature, costs of pruning will increase, and also replacement landscape maintenance materials will be required (for example, mulch fabric and bark chips) so that this estimate can be expected to increase. Other factors in the care of the landscape cannot be completely anticipated. For example, the suggested spraying program would not be adequate for an unusual infestation (such as by gypsy moths) or if soil tests, after lawns have been established indicates a need to adjust the Ph. Responding to these factors would be an added expense.

6. Office supplies, printing, postage, copying, and bookkeeping materials. This amount has been estimated by Sponsor, and confirmed by the Rockhurst Corporation in its Certification of Adequacy of the Budget.

7. The driveways and parking spaces require snow plowing. The Sponsor estimates 20 services per year will be required. Snow will be plowed from the paved surfaces and stored on lawn areas adjacent, including the lawn area of public right of way adjacent to paved surfaces. The contract for

snow plowing shall specify that snow in excess of three inches shall be plowed. The Sponsor shall perform the service for \$5,000, including sales tax, which amount is believed to be the going market price.

8. Specifications for refuse disposal shall include once weekly pickup of refuse from in front of the garage door, in accordance with mandated requirements for recycling, in containers specified by the contractor. Pickup of bulk items shall be performed upon demand, but at the expense of the individual townhouse owner, and in accordance with requirements of approved sanitary landfill sites. A Contract Proposal has been received from Herberle Disposal Service, Inc. 269 Alvanar Road, Rochester, New York 14606 for \$6,415.80, including sales tax.

9. Insurance of the individual Townhouses will be by a single master policy which includes fire, extended coverage, vandalism, and all risk, with a \$1,000.00 deductible. The limit of the policy will be \$4,450,000.00, the agreed amount replacement cost. Liability insurance for the Association Property and its officers, employees and agents, including cross liability and contractual liability will be provided. Personal injury and property damage liability shall be \$1,000,000.00 for each occurrence, \$1,000,000.00 aggregate. Medical payment insurance shall be \$5,000.00 each person, \$25,000.00 each accident. Directors and officers liability for wrongful acts shall be \$1,000,000.00 for each occurrence. Depositors forgery coverage shall be \$10,000.00. The cost of this coverage is based upon the estimate provided by Paris-Budlong-Esse, 1040 University Avenue, Rochester, New York, 14607, to the Sponsor. This item is budgeted at \$6,950.00.

10. Annual certified audited financial statement and federal tax returns. The cost is based upon the estimate provided by Cortland L. Brovitz & Co., P.C., 1235 Midtown Tower, Rochester, New York, 14604, to the Sponsor.

11. Legal counsel for ongoing operations. The estimate of services is provided by Woods, Oviatt, Gilman, Sturman & Clarke, 44 Exchange Street, Rochester, New York, 14614, to the Sponsor.

12. Franchise tax to be levied at the New York State minimum amount. Nominal property tax on Association Property per letter from Town Assessor estimated at \$100.00

13. Reserves and Replacement Fund:

- A. Roofing, asphalt 235 lb. or fiberglass 215 lb. shingles with 20 year useful life. Replacement with re-roofing over existing every 20 years. Current market rate is \$120,000.00, annual reserve - \$6,000.
- B. Vinyl siding and Vinyl Clad Windows: useful life greater than 30 years, no reserve.
- C. Insulated Steel Doors and Steel garage doors: provided they are painted every 5 years as scheduled maintenance, the useful life is over 30 years, no reserve.
- D. Aluminum baked enamel or anodized finish gutters and downspouts, soffit systems, ventilation louvers, have a useful life of 30 years or longer and no reserve.
- E. Masonry: Useful life 40 years or greater, no reserve.
- F. Painting: Red Cedar shingles, wood trim, window bays, unclad wood window and door framing, door faces, brackets, soffits, fascia, to be painted every 3 years. Going market rate is \$650.00 per unit, annual reserve is \$10,833.
- G. Water lateral: type k cooper; sanitary sewer laterals which are 4" PVC schedule 40 or SDR schedule 30. Useful life is 100 years, however breakage due to subsidence of the subsoil is budgeted as a contingency at \$200.00 per year.
- H. Replacement of diseased or blighted trees is budgeted as a contingency, and the specification for replacement plant material will be nursery stock of size considered standard for new construction. Provided that the Plant Material Schedule is designed for maximum diversity, to assure against risk or loss due to blight, the item is budgeted at \$500 per year.

- I. Concrete pavers, brick and stone paving have a useful life 30 years or greater, with no reserve.
- J. Application of hard wood mulch to plant beds every three years. Current market rate is \$1,800.00, requiring an annual reserve of \$600.00.

A total annual budget of \$20,633.00 for reserves and replacement fund has been established by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, New York 14608, in a letter to the Sponsor.

14. Miscellaneous cash expenses.

15. Services of a recording secretary for 12 meetings per year at \$35.00 per meeting plus 20% miscellaneous payroll costs. These services are set forth in the Management Agreement discussed within the Plan and set forth as Exhibit D.

# ROCKHURST CORPORATION

500 Helendale Road □ Rochester, New York 14609-3109 □ 716-288-9540 □ Fax 716-288-4383



## CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK )  
COUNTY OF MONROE )           SS:

The undersigned, being duly sworn, deposes and says as follows:

Mark IV Construction Co., Inc., the Sponsor of Heritage Meadows Homeowners Association, Inc. has retained our firm to review the Projected Schedules of Receipts and Expenses for Heritage Meadows Townhomes for the first year of operation.

Our firm is currently managing agent for forty-one community associations. These organizations range in size from eleven to eight hundred units. We have been in the community association management business for twelve years.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to Schedule A.

We have reviewed the Schedule and investigated facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential property.

We certify that the projections in Schedule A appear reasonable and adequate under existing circumstances, and the projected revenue will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

We certify that the projection:

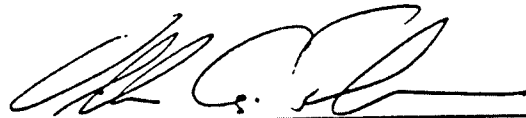
- 1) sets forth in detail the terms of the transaction as it relates to the projections and is complete, current, and accurate;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;

- 3) does not omit any material fact;
- 4) does not contain any untrue statement of a material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) does not contain any representation or statement which is false, where I (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

We further certify that our firm is not owned or controlled by the sponsor. I understand that it is intended that a copy of this certification will be incorporated into the offering plan.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 17 August 1993



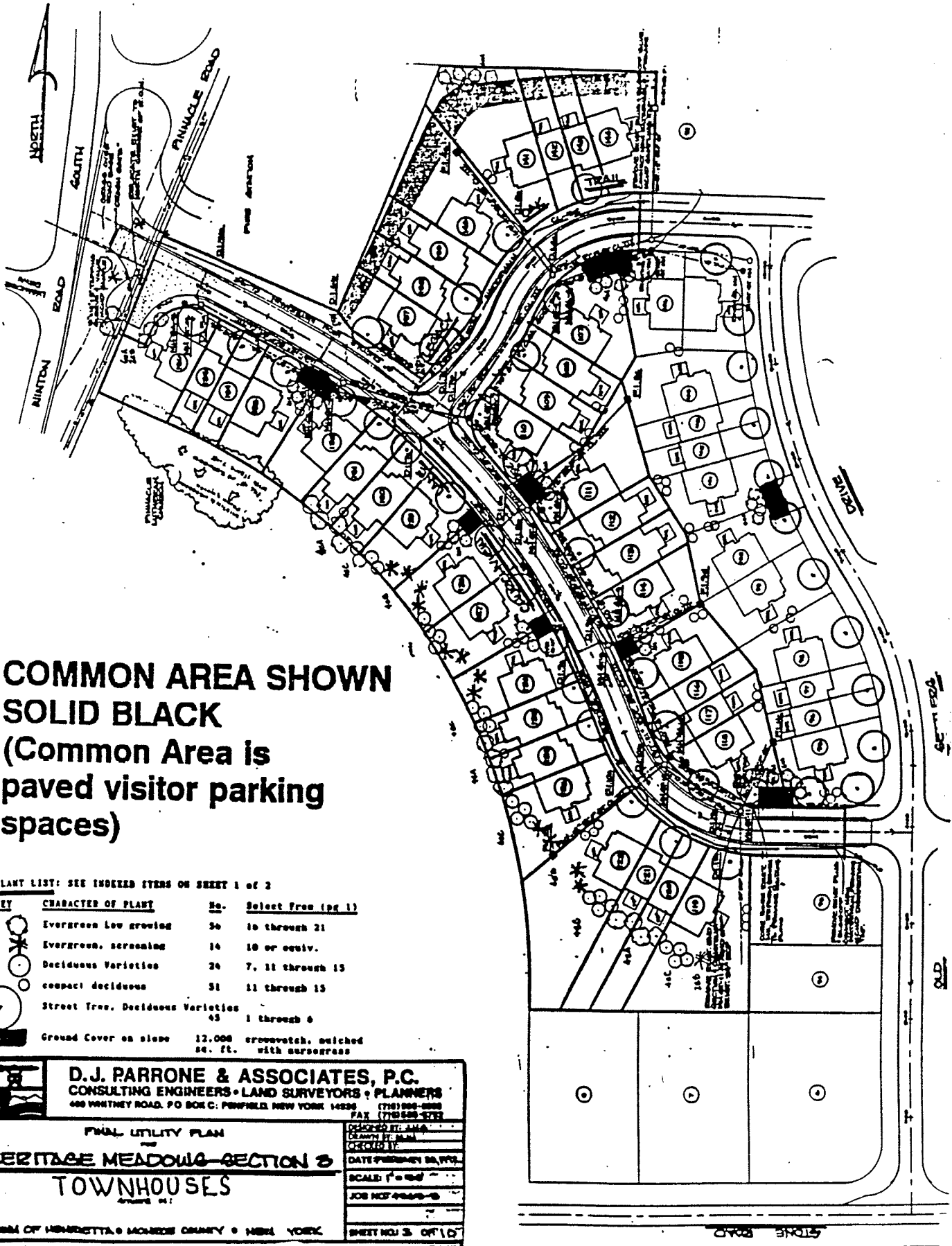
William G. Tomlinson, PCAM®, President  
ROCKHURST MANAGEMENT CORPORATION

Sworn to before me this  
17th day of August 1993



KAREN ALBRIGHT O'LOUGHLIN  
NOTARY PUBLIC, State of N.Y., Ontario Co.  
My Commission Expires Aug. 31, 1993

i:\wp\rh\certs\heritage\cert\_2



**COMMON AREA SHOWN  
SOLID BLACK  
(Common Area is  
paved visitor parking  
spaces)**

PLANT LIST: SEE INDEXED ITEMS ON SHEET 1 OF 2

KEY	CHARACTER OF PLANT	No.	Select From (pg 1)
A	Evergreen low growing	56	10 through 21
B	Evergreen screening	14	10 or equiv.
C	Deciduous Varieties	26	7, 11 through 13
	compact deciduous	31	11 through 13
	Street Tree, Deciduous Varieties	45	1 through 6
	Ground Cover on slope	12,000 sq. ft.	crowfootch, mached with succrass

<p><b>D.J. PARRONE &amp; ASSOCIATES, P.C.</b> CONSULTING ENGINEERS • LAND SURVEYORS • PLANNERS 400 WORTHNEY ROAD, P.O. BOX C, PINNACLES, NEW YORK 14850 (716) 866-2828 FAX (716) 866-5781</p>	
<p>FINAL UTILITY PLAN FOR <b>HERITAGE MEADOWS SECTION 2</b> <b>TOWNHOUSES</b></p>	
<p>DESIGNED BY: J.M.A. CHECKED BY: J.M.A. DATE: FEBRUARY 24, 1993 SCALE: 1" = 40' JOB NO: 93-00-03</p>	<p>SHEET NO. 3 OF 10</p>
<p>TOWN OF HERKENTTA • MONROE COUNTY • NEW YORK</p>	
<p>LANDSCAPE PLAN</p>	



## ENGINEERS REPORT

Common areas of Heritage Meadows Townhouses, Henrietta, New York  
Revised report, August 1993 to reflect actual conditions in  
connection with Amendment No. 1 to the Offering Plan:

- A. Other than Common Area: 50 townhouse dwelling units, each on an individual lot to be sold in fee simple, arranged in groups of 2 and 4 units in 14 separate buildings. Each dwelling unit has an attached two-car garage. Each lot is improved with a paved two-car wide driveway leading to the concrete gutter at the edge of the dedicated street, and the specification for that pavement is 2" of driveway topping asphalt concrete placed on a 4" to 6" crushed stone base. The driveway is not owned in common but is maintained by the Homeowners' Association. Each lot is also improved with a precast paver entry walk, front porch or deck, and raised wood deck at the side or rear of each townhouse dwelling. Each lot is to be fully landscaped with grass, and also shrubs and trees.
- B. Common Area: 26 off-street parking spaces adjacent to the street right-of-way with a paved connection to the concrete gutter at the edge of the paved street. These are arranged in 8 separate bays, each having from 2 to 5 parking spaces. These areas are to be separately deeded to the Heritage Meadows Homeowners' Association, Inc. These parking spaces are to be improved with a 1 1/2" to 2" asphaltic concrete pavement over a 4" to 6" compacted crushed stone base.
- C. Other Elements Owned in Common Located on Private Lots:
  1. Project sign.
  2. Those portions of sewer and water laterals servicing one or more townhouse units and not maintained by a utility company, authority or municipality. The specifications for such lateral materials are as follows:
    - a. Sanitary and storm laterals: PVC SDR-21, 4" sanitary and 6" storm
    - b. Water laterals: Type K copper



- D. Storm Water: storm water will be conveyed from the aluminum gutters through aluminum conductors to storm water laterals which drain to the highway storm sewer system. The gutters and conductors are not owned in common, but are maintained by the Homeowners' Association. The storm drainage inlets located on the private lots will be piped with reinforced concrete pipe connecting to the storm drainage system to be constructed in the streets and dedicated to the Town of Henrietta.
- E. Risk of Flood: the portion of lots for construction of homes, driveways, decks, walks and the Common Area parking areas all lie outside areas susceptible to flooding, as indicated on FEMA Community Panel No. 3604190010 D, last revised February 5, 1993 for the Town of Henrietta, and lowest elevation of architectural openings shall be located above the elevations susceptible to flooding from storm water detention facilities.
- F. Approvals: All sections of Heritage Meadows Townhouses have received all required public approvals. A letter of credit for all public and private infrastructure has been posted with appropriate agencies, and the maps are all filed in the office of the Clerk of the County of Monroe.

I am a registered Professional Engineer in the State of New York, and I was responsible for the preparation of the construction plans for Heritage Meadows Townhouses.

Very truly yours,



Edward G. Parrone, P.E.  
D.J. PARRONE & ASSOCIATES, P.C.

EGP:kb



STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, N.Y. 10271

G. OLIVER KOPPELL  
Attorney General

GARY R. CONNOR  
Assistant Attorney General in Charge  
Real Estate Financing Bureau

(212) 416-8148

Mark IV Construction Co., Inc.  
c/o Woods, Oviatt, Gilman, et al.  
Attn: Louis M. D'Amato  
44 Exchange Street  
Rochester, NY 14614

RE: Heritage Meadows Homeowners  
File Number: H920009  
Date Amendment Filed: 04/15/94  
Receipt Number: 984314464

Amendment No: 2  
Filing Fee: \$ 150.00

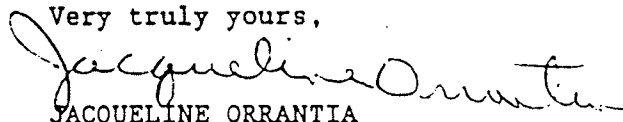
Dear Sponsor:

The referenced amendment to the offering plan for the subject premises is hereby accepted and filed. Since this amendment is submitted after the post closing amendment has been filed, this filing is effective for twelve months from the date of filing of this amendment. However, any material change of fact or circumstance affecting the property or offering requires an immediate amendment, including amending the plan to disclose the most recent certified financial statement and budget, which should be done as soon as either of these documents is available.

Any misstatement or concealment of material fact in the material submitted as part of this amendment renders this filing void ab initio. This office has relied on the truth of the certifications of sponsor, sponsor's principals, and sponsor's experts, as well as the transmittal letter of sponsor's attorney.

Filing this amendment shall not be construed as approval of the contents or terms thereof by the Attorney General of the State of New York, or any waiver of or limitation on the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable law. The issuance of this letter is conditioned upon the collection of all fees imposed by law. This letter is your receipt for the filing fee.

Very truly yours,

  
JACQUELINE ORRANTIA  
ASSISTANT ATTORNEY GENERAL y.H.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

HERITAGE MEADOWS TOWNHOMES

HERITAGE MEADOWS SUBDIVISION  
HENRIETTA, MONROE COUNTY, NEW YORK

AMENDMENT NO. 2 TO THE OFFERING PLAN

The amount of this offering is  
\$50,000.00 (value of common areas and amenities  
included in the price of Lots)

This Amendment is made to extend the Offering Plan for an  
additional twelve (12) month period.

Offering Plan Extension

The Sponsor hereby extends the Offering Plan for an  
additional twelve (12) month period.

As represented by this Amendment, Mark IV Construction Co.,  
Inc. ("Sponsor") is presently developing Heritage Meadows  
Townhomes. Of the 50 Lots in Heritage Meadows Townhomes, 50 Lots  
have been or are being improved. As of January 31, 1994,  
fourteen (14) Lots have been transferred and nine (9) Lots are  
under contract to be sold.

The first Lot was transferred on December 29, 1992, and the  
Declaration was recorded in the Monroe County Clerk's Office in  
Liber 8291 of Deeds, at page 286.

In accordance with the Offering Plan, as amended, the  
Sponsor has appointed the initial three (3) members of the Board  
of Directors, and therefore, controls the Board. The Board is  
composed of Anthony M. DiMarzo, Patsy DiMarzo and Donald Riley,  
all of whom are principals of the Sponsor or an employee of the  
Sponsor.

The Board of Directors is operating pursuant to the Estimate of Operating Expenses and Reserves for the Association as originally set forth in Amendment No. 1 as Exhibit 1A-3. The Estimate of Operating Expenses and Reserves is reprinted here for convenience as Exhibit 2A-1.

The Financial Statement of the Association dated as of December 31, 1993 is attached to this Amendment as Exhibit 2A-2.

The Working Capital Funds for the 50 Lots in the total amount of \$8,750.00 (that is \$175.00 per Lot) have been deposited into a segregated account in the name of the Association at Manufacturers and Traders Trust Company, 44 Exchange Street, Rochester, New York. This fund is shown in the Association's Financial Statement dated December 31, 1993.

The Association paid New York State Franchise Tax in calendar year 1993 in the amount of \$374.00.

The Association paid the annual premium for the Master Insurance Policy for the Association in the amount of \$1,885.71 for the period ending December 5, 1994.

#### Financial Disclosure

The Sponsor hereby represents that there has been no material change in the financial position of the Sponsor with respect to this offering. Specifically, the sponsor represents the following:

1. Fourteen (14) Lots have been transferred; the Sponsor owns the remaining Lots in the subdivision.
2. The monthly maintenance or common charge is as set forth in the Estimate of Operating Expenses and Reserves as Exhibit 2A-1.
3. No lots are being rented by the Sponsor.
4. The Sponsor has no financial obligation to the Association other than to fund an operating deficit. Pursuant to \$5.04 of the Declaration, the Sponsor shall be obligated for the difference between actual Association expenses including reserves for completed improvements and the Association charges levied on owners who have closed title to their lots. For the calendar year ending 1993, common charges levied on owners exceeded expenses, including reserves for

completed improvements, and therefore, Sponsor paid no common charges.

5. The unsold lots of the subdivision are subject to a mortgage held by M&T Bank, 44 Exchange Street, Rochester, New York, in the amount of \$1,381,657.00. Interest only payments are due monthly in the approximate amount of \$7,772.00.
6. The financial obligations of the Sponsor will be funded from income from projected sales, and from general operating revenues of the Sponsor.
7. The Sponsor is current on all financial obligations under the offering plan, including but not limited to maintenance or common charges, reserve or working capital fund payments, assessments, and payments for repairs or improvements required by the Offering Plan. Additionally, the Sponsor is current on payments of underlying mortgages and loans. Additionally, the Sponsor was current on all such obligations during the year prior to filing this amendment.
8. The Sponsor is presently actively involved in the following offerings:  
  
Woodsvew Homeowners Association, Inc.,  
Canalside Homeowners Association, Inc.,  
Hillsboro Cove Homeowners Association, Inc.,  
Genesee Riverview Homeowners Association, Inc.,  
  
Offering plans for these homeowners associations are on file with the New York State Department of Law, and are available for public inspection.
9. The Sponsor is current in its financial obligations with respect to the homeowners associations listed above in Item 8.
10. The Sponsor remains in control of the Board of Directors of the Association. As defined in the Declaration, the Sponsor and all lot owners shall automatically be members. All owners, with the exception of the Sponsor, shall be Class A members. The Sponsor shall be a Class B member. Until five (5) years after the transfer of the first lot, or until all lots are transferred, whichever shall first occur, the Class B membership shall be the only class of membership entitled to vote. Thereafter, the Sponsor's Class B membership shall be converted into a Class A

membership, and all members shall vote equally,  
that is, one member one vote.

No Further Changes

As of the date of this Amendment, there are no further  
changes to the documentation provided in the Offering Plan, as  
amended, known to the Sponsor.

Dated: February 28, 1994

MARK IV CONSTRUCTION CO., INC.

By:

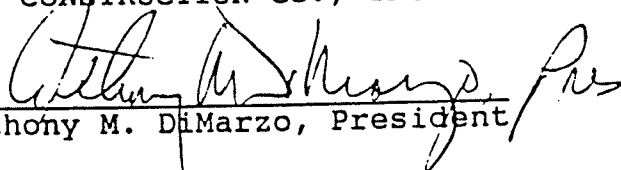
  
Anthony M. DiMarzo, President

Exhibit 2A-1

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ESTIMATE OF OPERATING EXPENSES AND RESERVES  
FOR THE YEAR OF OPERATION COMMENCING  
OCTOBER 1, 1993

This estimate of operating expenses and reserves has been made by the Sponsor and is based upon quotations obtained by Sponsor. This estimate cannot be construed as an assurance of actual expenses and is based merely upon information available to the Sponsor at the time of preparation.

A nominal provision has been made for real estate taxes on the Association Property; the Sponsor has been advised by the tax assessor that the value of the Association Property will be reflected in the assessments of the Lots. Should there be an assessment of the Association Property, nominal or otherwise, the Maintenance Assessments will necessarily be increased to fund the resulting taxes.

These operating expenses are based upon the cost of operating the entire project with 50 Lots transferred to third party purchasers. Each Lot transferred by Sponsor is assessed 1/50th of the total costs of operations. Based upon the following estimate, the yearly assessment per Lot is \$1,323.04, and the monthly assessment per Lot is \$110.25. The Sponsor's obligation for assessments shall be as set forth in Article V of the Declaration.

Assessments will be assessed yearly and payable monthly. Assessments will commence on the first day of the month immediately following the sale of the first Lot, or at such other time as the Sponsor shall determine. Yearly assessments will be prorated and adjusted in the year of sale.

If the projected commencement date of the budget year for the projected schedule of receipts and expenses differs by six (6) months or more from the anticipated date of closing of the first home or Lot, this Offering Plan will be amended to include a revised budget disclosing current projections. The amendment will be completed prior to closing the first home or Lot. If the amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for a reasonable period of time, to rescind their offer to purchase and to have their deposits refunded with interest, if any. The Sponsor's guarantee of the budget in this Offering Plan will not avoid an offer of rescission.

Projected Schedule of Receipts  
and Expenses for First Year  
of Operation Commencing October 1, 1993

Projected Income

I.	Maintenance Charges: \$1,323.04 per Lot per year, payable monthly at \$110.25, based on 50 Lots	\$66,152.00
II.	Estimated Receipts from other sources	-0-
	Total annual receipts	<u>\$66,152.00</u>

Projected Expenses

		-0-
1.	Water	8,400.00
2.	Management	5,500.00
3.	Repairs and Maintenance	2,155.00
4.	Drives/Parking	8,000.00
5.	Landscape Maintenance	500.00
6.	Offices Supplies	5,000.00
7.	Snow Plowing	6,415.80
8.	Refuse Removal	6,950.00
9.	Insurance	825.00
10.	Accounting	500.00
11.	Legal	474.00
12.	Taxes	20,633.00
13.	Reserves	300.00
14.	Contingencies/Petty Cash	500.00
15.	Recording Secretary	<u>500.00</u>
	Total annual expenses	<u>\$66,152.00</u>



## Comments

(Numbered comments refer back to the numerical items of the Projected Expenses listed above.)

1. Water service is required for watering Townhouse lawns during the June through September watering season, as may be required. Each Lot Owner will furnish water required for his lawn from his external hosebib. Personnel providing the watering service will endeavor to draw water equally from each Lot Owner's hosebib, as averaged over a sustained time period; however, no assurances can be given that the amount of water drawn from each Lot Owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the lawns of other Townhouse Lots.

2. Management includes financial management, writing specifications and obtaining bids, negotiation of contracts, supervision and inspection of the work of contractors and labor and office services, as more fully set forth in the Management Agreement. The charges for a project of this type, taking into account the size of the project and also the value of the homes, is estimated by the Sponsor to run \$14.00 per Lot per month, for a total of \$8,400.00 per annum. As set forth in the Offering Plan, the Sponsor will serve as Managing Agent. See the Section of this Offering Plan titled "Management Agreement."

3. Repairs and Maintenance to the exterior of the Townhouse includes the siding and trim of the homes, fences, decks and railings and stairs, roofing and flashing (including skylights) and gutters and downspouts and cleanouts, project sign, drainage inlets and grates. Repairs which are specifically excluded from this category include fenestration, including fixed and operable windows, sky lights, sash, screens, doors and frames, storm doors, and lights, vents, air supply ducts, parts that connect to electric, gas, or HVAC equipment, which may be mounted on the exterior of homes, and any mechanical equipment servicing any home. Where such elements require periodic painting, that is included Item 12, Reserves. These services will be provided by skilled mechanics in the respective trades, on an "as-needed" basis. It can be expected that certain categories of repairs may increase substantially over time. The sum of \$5,500.00 has been estimated by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, NY 14608, who, in a letter to the Sponsor has stated that the estimate is based on first hand experience with the construction, operation, and management of similar townhouse projects for the Sponsor over the past ten years.

4. Asphalt driveways and parking areas require sealing and spot patching every three years. Tobey Asphalt Co. has provided a bid for this work for \$2,754.00; the annual reserve is \$918.00. The bid also provides for repaving with 3/4" asphaltic concrete top course every twenty years, including levelling and patching for \$24,750.00; the annual reserve is \$1,237.50. This estimate is provided by Richard L. Rosen, Architect, 301 Exchange Boulevard, Rochester, New York 14608.

5. The total lawn area within the townhouse lots and the area of streets up to the actual pavement measures approximately 4.0 acres. In addition, planting beds are located around foundations, and trees and shrubs are located throughout the project, and as perimeter buffering in certain locations. The services to be provided include mowing for a 25 week season, edge trimming lawns twice yearly, application of fertilizer and weed killer twice yearly and grub killer annually, cultivating plant beds and weeding twice yearly, pruning trees and shrubs annually, and weeding and feeding evergreen plant materials twice yearly. The amount budgeted annually to provide such service is estimated at \$8,000, including sales tax. The Sponsor has agreed to provide the service for the stated amount, which amount is believed to be the going market rate.

As shrubs and trees mature, costs of pruning will increase, and also replacement landscape maintenance materials will be required (for example, mulch fabric and bark chips) so that this estimate can be expected to increase. Other factors in the care of the landscape cannot be completely anticipated. For example, the suggested spraying program would not be adequate for an unusual infestation (such as by gypsy moths) or if soil tests, after lawns have been established indicates a need to adjust the Ph. Responding to these factors would be an added expense.

6. Office supplies, printing, postage, copying, and bookkeeping materials. This amount has been estimated by Sponsor, and confirmed by the Rockhurst Corporation in its Certification of Adequacy of the Budget.

7. The driveways and parking spaces require snow plowing. The Sponsor estimates 20 services per year will be required. Snow will be plowed from the paved surfaces and stored on lawn areas adjacent, including the lawn area of public right of way adjacent to paved surfaces. The contract for snow plowing shall specify that snow in excess of three inches shall be plowed. The Sponsor shall perform the service for \$5,000, including sales tax, which amount is believed to be the going market price.

8. Specifications for refuse disposal shall include once weekly pickup of refuse from in front of the garage door, in accordance with mandated requirements for recycling, in containers specified by the contractor. Pickup of bulk items shall be performed upon demand, but at the expense of the individual townhouse owner, and in accordance with requirements of approved sanitary landfill sites. A Contract Proposal has been received from Herberle Disposal Service, Inc. 269 Alvanar Road, Rochester, New York 14606 for \$6,415.80, including sales tax.

9. Insurance of the individual Townhouses will be by a single master policy which includes fire, extended coverage, vandalism, and all risk, with a \$1,000.00 deductible. The limit of the policy will be \$4,450,000.00, the agreed amount replacement cost. Liability insurance for the Association Property and its officers, employees and agents, including cross liability and contractual liability will be provided. Personal injury and property damage liability shall be \$1,000,000.00 for each occurrence, \$1,000,000.00 aggregate. Medical payment insurance shall be \$5,000.00 each person, \$25,000.00 each accident. Directors and officers liability for wrongful acts shall be \$1,000,000.00 for each occurrence. Depositors forgery coverage shall be \$10,000.00. The cost of this coverage is based upon the estimate provided by Paris-Budlong-Esse, 1040 University Avenue, Rochester, New York, 14607, to the Sponsor. This item is budgeted at \$6,950.00.

10. Annual certified audited financial statement and federal tax returns. The cost is based upon the estimate provided by Cortland L. Brovitz & Co., P.C., 1235 Midtown Tower, Rochester, New York, 14604, to the Sponsor.

11. Legal counsel for ongoing operations. The estimate of services is provided by Woods, Oviatt, Gilman, Sturman & Clarke, 44 Exchange Street, Rochester, New York, 14614, to the Sponsor.

12. Franchise tax to be levied at the New York State minimum amount. Nominal property tax on Association Property per letter from Town Assessor estimated at \$100.00

13. Reserves and Replacement Fund:

A. Roofing, asphalt 235 lb. or fiberglass 215 lb. shingles with 20 year useful life. Replacement with re-roofing over existing every 20 years. Current market rate is \$120,000.00, annual reserve - \$6,000.

B. Vinyl siding and Vinyl Clad Windows: useful life greater than 30 years, no reserve.

- C. Insulated Steel Doors and Steel garage doors: provided they are painted every 5 years as scheduled maintenance, the useful life is over 30 years, no reserve.
- D. Aluminum baked enamel or anodized finish gutters and downspouts, soffit systems, ventilation louvers, have a useful life of 30 years or longer and no reserve.
- E. Masonry: Useful life 40 years or greater, no reserve.
- F. Painting: Red Cedar shingles, wood trim, window bays, unclad wood window and door framing, door faces, brackets, soffits, fascia, to be painted every 3 years. Going market rate is \$650.00 per unit, annual reserve is \$10,833.
- G. Water lateral: type k cooper; sanitary sewer laterals which are 4" PVC schedule 40 or SDR schedule 30. Useful life is 100 years, however breakage due to subsidence of the subsoil is budgeted as a contingency at \$200.00 per year.
- H. Replacement of diseased or blighted trees is budgeted as a contingency, and the specification for replacement plant material will be nursery stock of size considered standard for new construction. Provided that the Plant Material Schedule is designed for maximum diversity, to assure against risk or loss due to blight, the item is budgeted at \$500 per year.
- I. Concrete pavers, brick and stone paving have a useful life 30 years or greater, with no reserve.
- J. Application of hard wood mulch to plant beds every three years. Current market rate is \$1,800.00, requiring an annual reserve of \$600.00.

A total annual budget of \$20,633.00 for reserves and replacement fund has been established by Richard L. Rosen, Architect, Suite 200, 301 Exchange Boulevard, Rochester, New York 14608, in a letter to the Sponsor.

14. Miscellaneous cash expenses.

15. Services of a recording secretary for 12 meetings per year at \$35.00 per meeting plus 20% miscellaneous payroll costs. These services are set forth in the Management Agreement discussed within the Plan and set forth as Exhibit D.

EXHIBIT 2A-2

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HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.

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ROCHESTER, NEW YORK

FINANCIAL STATEMENT  
DECEMBER 31, 1993

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**CLB**  
**&CO**

Cortland L. Brovitz & Co., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

CORTLAND L. BROVITZ & CO., P.C.  
CERTIFIED PUBLIC ACCOUNTANTS

1235 MIDTOWN TOWER  
ROCHESTER, NEW YORK 14604  
716-454-6996  
FAX 716-454-4024

MANAGER\*

PRINCIPALS

CORTLAND L. BROVITZ, CPA  
MELVYN J. POPLOCK, CPA  
DAVID H. ZUCEHOER, CPA  
STEVEN G. SCHWARTZ, CPA  
RICHARD M. KASPERSKI, CPA  
JEFFREY D. WILLIAMS, CPA  
RICHARD N. GRAY, CPA  
MIRIAM KACHIOFF, CPA  
MICHAEL C. SMITH, CPA  
BLISS E. OWEN, CPA

MICHAEL F. PRACEL, CP  
PAMELA L. MERRICK, CPA  
DAVID A. GRAMZA, CPA  
MICHAEL J. DINAN, CP  
NICHOLAS R. BOTTINI, CP

MEMBER  
The McGLADREY Netwo  
Internationally DRM

INDEPENDENT AUDITORS' REPORT

To the Members of  
Heritage Meadows Homeowners Association, Inc.:

We have audited the accompanying balance sheet of Heritage Meadows Homeowners Association, Inc. as of December 31, 1993 and 1992, and the related statements of revenues, expenditures and changes in fund balances, revenues, expenditures and changes in operating fund balances and cash flow for the year ended December 31, 1993 and from the date of inception December 30, 1992 to December 31, 1992. The financial statements are the responsibility of the Association management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The Association's financial statements do not disclose certain unaudited supplementary information about future major repairs and replacements. Disclosure of this information is required by generally accepted accounting principles.

In our opinion, except for the omission of information discussed in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Heritage Meadows Homeowners Association, Inc. as of December 31, 1993 and 1992, and the results of operations and changes in fund balances for the year ended December 31, 1993 and from the date of inception December 30, 1992 to December 31, 1992, in conformity with generally accepted accounting principles.

Respectfully Submitted,



Cortland L. Brovitz & Co., P.C.  
Certified Public Accountants

January 28, 1994

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

BALANCE SHEETS  
DECEMBER 31, 1993 AND 1992

Assets

	<u>1993</u>	<u>1992</u>
<u>Current Assets</u>		
Cash - Operating Fund	\$ 1,575	\$ -
Cash - Restricted Fund	2,406	-
Cash - Working Capital	8,750	-
Accounts Receivable	-	7
Due From Sponsor	-	9,119
Prepaid Expenses	<u>966</u>	<u>-</u>
Total Current Assets	\$ <u>13,697</u>	\$ <u>9,126</u>

Liabilities and Fund Balances

<u>Current Liabilities</u>		
Accounts Payable	\$ 1,308	\$ 1,500
Advance Assessments	441	-
Accrued Income Taxes	<u>374</u>	<u>374</u>
Total Current Liabilities	2,123	1,874
<u>Other Liabilities</u>	<u>-</u>	<u>-</u>
Total Liabilities	<u>2,123</u>	<u>1,874</u>
<u>Fund Balances</u>		
Working Capital Fund	8,750	8,750
Reserve Fund	2,406	2
Operating Fund	<u>418</u>	<u>(1,500)</u>
Total Fund Balances	<u>11,574</u>	<u>7,252</u>
Total Liabilities and Fund Balances	\$ <u>13,697</u>	\$ <u>9,126</u>

See Notes to Financial Statements.



HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
FOR THE YEAR ENDED DECEMBER 31, 1993 AND  
FROM THE DATE OF INCEPTION DECEMBER 30, 1992 TO DECEMBER 31, 1992

	<u>Working Capital Fund</u>	<u>Reserve Fund</u>	<u>Operating Fund</u>	<u>Total Working Capital, Reserve and Operating Funds</u>
Fund Balances - January 1, 1992	\$ -	\$ -	\$ -	\$ -
Working Capital Advances Made by Sponsor to the Association (Note 4)	8,750	-	-	8,750
Revenues from Assessments For The Year Ended December 31, 1992	-	2	374	376
Expenditures For The Year Ended December 31, 1992	<u>-</u>	<u>-</u>	<u>(1,874)</u>	<u>(1,874)</u>
Fund Balances - December 31, 1992	8,750	2	(1,500)	7,252
Funding of 1992 Start-Up Costs by Sponsor (Note 4)	-	-	1,500	1,500
Revenues from Assessments For The Year Ended December 31, 1993	-	2,398	5,150	7,548
Interest Income For The Year Ended December 31, 1993	-	14	134	148
Expenditures For The Year Ended December 31, 1993	<u>-</u>	<u>(8)</u>	<u>(4,866)</u>	<u>(4,874)</u>
Fund Balances - December 31, 1993	\$ <u>8,750</u>	\$ <u>2,406</u>	\$ <u>418</u>	\$ <u>11,574</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF REVENUES, EXPENDITURES AND CHANGES IN OPERATING FUND BALANCE  
FOR THE YEAR ENDED DECEMBER 31, 1993 AND  
FROM THE DATE OF INCEPTION DECEMBER 30, 1992 TO DECEMBER 31, 1992

	<u>1993</u>	<u>1992</u>
<b>Revenues</b>		
Assessments	\$ 5,150	\$ 5
Sponsor Assessment (Note 5)	-	369
Interest Income	<u>134</u>	<u>-</u>
<b>Total Revenues</b>	<u>5,284</u>	<u>374</u>
<b>Expenditures</b>		
Grounds Maintenance:		
Lawn	915	-
Repairs and Maintenance	-	-
Snowplowing	566	-
Operating Expenses:		
Insurance - Fire and Casualty	667	-
Trash Removal	623	-
Administrative Expenses:		
Legal and Accounting	300	-
Management Fee	984	-
Miscellaneous Expense	204	-
Office Supplies	168	-
Real Estate Taxes	65	-
Income Taxes (Note 2)	<u>374</u>	<u>374</u>
<b>Total Expenditures</b>	<u>4,866</u>	<u>374</u>
<b>Excess (Deficiency) of Revenues Over Expenditures</b>	418	-
<b>Fund Balance - Beginning</b>	(1,500)	-
<b>Funding of 1992 Start-Up Costs</b>	1,500	-
<b>Start Up Expenses (Note 6)</b>	<u>-</u>	<u>(1,500)</u>
<b>Fund Balance - Ending</b>	\$ <u>418</u>	\$ <u>(1,500)</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF CASH FLOW  
FOR THE YEAR ENDED DECEMBER 31, 1993 AND  
FROM THE DATE OF INCEPTION DECEMBER 30, 1992 TO DECEMBER 31, 1992

	<u>1993</u>	<u>1992</u>
<u>Cash Flows From Operating Activities</u>		
Excess of Revenues Over Expenditures	\$ 2,822	\$ (1,498)
Adjustments to Reconcile Net Income (Loss) to Net Cash Provided by Operating Activities:		
(Increase) Decrease in Accounts Receivable	7	(7)
(Increase) Decrease in Other Current Assets	8,153	(9,119)
Increase (Decrease) in Accounts Payable	(192)	1,500
Increase (Decrease) in Other Current Liabilities	<u>441</u>	<u>374</u>
Net Cash Provided by (Used in) Operating Activities	<u>11,231</u>	<u>(8,750)</u>
<u>Cash Flows From Investing Activities</u>	<u>-</u>	<u>-</u>
<u>Cash Flows From Financing Activities</u>		
Working Capital Funding	-	8,750
Funding of 1992 Start-Up Costs	<u>1,500</u>	<u>-</u>
Net Cash Provided by Financing Activities	<u>1,500</u>	<u>8,750</u>
Net Increase (Decrease) in Cash	12,731	-
Cash - Beginning	<u>-</u>	<u>-</u>
Cash - Ending	<u>\$ 12,731</u>	<u>\$ -</u>
Supplemental Disclosure of Cash Flow Information		
Cash Paid During the Year For:		
Interest	\$ -	\$ -
Income Taxes	<u>374</u>	<u>-</u>
	<u>\$ 374</u>	<u>\$ -</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1993 AND 1992

- Note 4     Working Capital Advance Due Sponsor  
The Sponsor, Mark IV Construction Co., Inc., is required to advance \$175.00 per lot (50 lots) as initial working capital for the Association. The working capital advances must be kept in a separate fund and not used until the Association is no longer sponsor controlled. Accordingly, the operating fund balances have been restated to properly reflect the working capital fund. The initial purchaser of each lot reimburses the sponsor at closing.
- In 1993 the sponsor contributed \$1,500 that was used to fund start-up expenses in a prior year.
- Note 5     Sponsor Assessment  
Sponsor paid an assessment to cover the operating deficit of \$369 in 1992.
- Note 6     Start Up Expenses  
A management fee in the amount of \$1,500 was considered a start up expense.
- Note 7     Transaction with Sponsor  
The Sponsor or a related Company are paid a management fee and for snowplowing services and grounds maintenance services by the Association.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1993 AND 1992

Note 1 Summary of Significant Accounting Policies

Reporting Entity

The Association is a membership organization organized to oversee the maintenance of common property and enforce its bylaws and regulations.

Basis of Reporting

The Association's financial statements are prepared on the accrual basis. Revenues from assessments are recognized as income when they become due. Prepaid assessments (advance payments) are deferred until the month due. Expenses are recognized as incurred, not when paid.

Reserve Fund

A portion of the revenue from homeowner assessments is designated by the Association for specific purposes and is credited to a reserve fund. All charges against the reserve fund are recorded as incurred. Any interest earned on the reserve fund is included in reserve fund revenues for the period.

Funds are being accumulated in the restricted fund based on estimates of future needs for repairs and replacements of common property components. Actual expenditures may vary from the estimated future expenditures, and the variations may be material. Therefore, amounts accumulated in the major maintenance fund may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

Restatement

To conform with financial statement groupings in 1993, certain items reported in 1992 have been reclassified for comparative purposes. This reclassification has no effect on income or loss in 1992.

Tax Status

The Association has been incorporated under the New York State Not-For-Profit Corporation Law. As such the corporation qualifies under Section 528 of the Internal Revenue Code. Federal tax and state tax will not be payable on profit due to assessment fees charged members. Tax will be payable on non-exempt function income, including interest.

Note 2 Income Taxes

Income Taxes consisted of the following at December 31, 1993 and 1992:

	<u>1993</u>	<u>1992</u>
Taxes Currently Payable:		
Federal	\$ -	\$ -
State	<u>374</u>	<u>374</u>
	\$ <u>374</u>	\$ <u>374</u>

Note 3 Reserve Fund Expenditure

HERITAGE MEADOWS ASSOCIATION. INC.

HERITAGE MEADOWS SUBDIVISION  
HENRIETTA, MONROE COUNTY, NEW YORK

AMENDMENT NO. 3 TO THE OFFERING PLAN

The approximate amount of this offering is

\$50,000.00 (value of common areas and amenities  
included in the Price of Lots )

This amendment is made for the purpose of extending the Offering Plan for an additional twelve month period.

OFFERING PLAN EXTENSION

Mark IV Construction Co., Inc. ("Sponsor") is presently developing Heritage Meadows Townhomes. The Sponsor hereby extends the Offering Plan for an additional twelve (12) month period. Of the 50 Lots in Heritage Meadows Townhomes, 50 Lots have been or are being improved. As of May 1, 1996, 41 Lots have been transferred and 2 Lots are under contract to be sold.

The first Lot was transferred on December 29, 1992, and the Declaration was recorded in the Monroe County Clerk's Office in Liber 8291 of Deeds., page 286.

In accordance with the Offering Plan, as amended, the Sponsor has appointed the initial three (3) members of the Board of Directors, and therefore, controls the Board. The Board is composed of Anthony M. DiMarzo, Patsy DiMarzo, and Donald Riley. all of whom are principles/employees of the Sponsor.

A copy of the Association Certified Financial Statement dated as of December 31, 1995 is attached hereto as Exhibit 3 A- 1.

The Board of Directors is operating pursuant to the Estimate Of Operating Expenses and Reserves for the Association as set forth in this Amendment 3 as Exhibit 3A-2. The Certification as to the Adequacy of the Budget is attached as Exhibit 3A-3. The Working Capital Funds for the 50 Lots in the total amount of \$8,750.00 (that is \$175.00 per Lot) have been deposited into a segregated account in the name of the Association at Manufacturers and Traders Trust Company, 44 Exchange Street, Rochester, New York. This fund is shown in the Association's Financial Statement dated December 31, 1995.

The Association paid NYS Franchise Tax in calendar year 1995 in the amount of \$374.00.

The Association paid the annual premium for the Master Insurance Policy for the Association in the amount of \$4,780.00.

As set forth in the revised Estimate of Common Charges attached as Exhibit 3A-2, assuming all lots in the development are completed for a 12 month period, total reserves will be accumulated in the amount of \$24,000.00.

#### FINANCIAL DISCLOSURE

The Sponsor hereby represents that there has been no material change in the financial position of the Sponsor with respect to this offering. Specifically, the Sponsor represents the following:

1. 41 Lots have been transferred; the Sponsor owns 13 Lots in the subdivision.
2. The monthly maintenance or common charge will be as set forth in this Amendment.
3. No lots are being rented by the Sponsor.
4. The Sponsor has no financial obligation to the Association other than to fund an operating deficit, The Sponsor shall be obligated for the difference between the actual Association expenses, exclusive of reserves applicable to completed improvements, and the Association charges levied on owners who have closed title to their lots. For those Lots owned by the Sponsor upon which a home has been completed, the Sponsor shall pay for reserves from and after the issuance of a Certificate of Occupancy. For the calendar year ending 1995, common charge levied on owners exceed expenses, including reserves for completed improvements, and therefore, Sponsor paid no common charges.
5. The unsold lots of the subdivision are subject to a mortgage held by Norstar Bank, 2 State Street, Rochester, New York, in the amount of \$1,082,834.00. Interest only

payments are due monthly in the approximate amount of \$8,500.00.

6. The financial obligations of the Sponsor will be funded from income from projected sales, and from general operating revenues of the Sponsor.
7. The Sponsor is current on all financial obligations under the Offering Plan, including but not limited to maintenance or common charges, reserve or working capital fund payments, assessments, and payments for repairs or improvements required by the Offering Plan. Additionally, the Sponsor is current on payments of underlying mortgages and loans. Additionally, the Sponsor was current on all such obligations during the year prior to filing this amendment.
8. The Sponsor is involved in the following offerings:  
  
Hillsboro Cove Homeowners Association, Inc., Genesee Riverview Townhomes Association, Inc., Deer Run Homeowners Association, Inc.  
  
Offering plans for these Homeowners Associations are on file with the New York State Department of Law, and are available for public inspection.
9. The Sponsor is current in its financial obligations with respect to the homeowners associations listed in Item 8 above.
10. The Sponsor remains in control of the Board of Directors of the Heritage Meadows Homeowners Association. As defined in the Declaration, the Sponsor and all lot owners shall automatically be deemed to have membership. All owners, with the exception of the Sponsor, shall be Class A members. The Sponsor shall be a Class B member. Until five (5) years after the transfer of the first lot, or until all the Lots are transferred, whichever shall first occur, the Class B membership shall be the only class of membership entitled to vote. Thereafter, the Sponsor Class B membership shall be converted into a Class A membership, and all members shall vote equally, that is, one member one vote.



## LETTER OF CREDIT

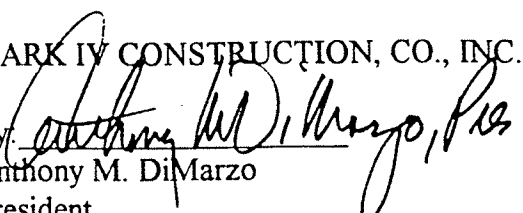
In connection with the escrow and trust fund requirements of General Business Law Sections 352-e (2-b) and 352-h and Attorney General regulations pursuant thereto, the Irrevocable Letter of Credit obtained by the Sponsor from Manufacturers and Traders Trust, a banking corporation with an office at 44 Exchange Street, Rochester, New York, has been increased to Fifty Thousand Dollars (\$50,000.00) to secure the return of purchasers' deposits in the event the sponsor defaults on its obligation to deliver the lot as required in the Purchase Agreement. If circumstances warrant, the amount of the Letter of Credit will be reduced or further increased pursuant to a filed amendment to the Offering Plan. A copy of the increased Letter of Credit is set forth as Exhibit 10 A-4 and is available on written request of the purchasers or prospective purchasers to Spiro P. Janetos, Esq., 301 Exchange Boulevard, Rochester, New York 14608.

## NO FURTHER CHANGES

As of the date of this Amendment, there are no further changes to the documentation provided in the Offering Plan, as amended, known to the Sponsor.

Dated: April 1, 1996

MARK IV CONSTRUCTION, CO., INC.

By:   
Anthony M. DiMarzo  
President

Schedule A  
Projected Schedule of Receipts  
and Expenses for year commencing May, 1996

**Projected Receipts:**

Maintenance Charges:	\$1,323.04 per lot per year, payable monthly at \$110.25, based on 50 lots:	\$66,152.00
Estimated receipts from other sources:		-
<b>TOTAL ANNUAL RECEIPTS</b>		<b>\$66,152.00</b>

**Projected Expenses:**

1. Electricity	0
2. Water	700
3. Management	\$9,000
4. intentionally left blank	
5. intentionally left blank	
6. Repairs and Maintenance to building	\$6,000
7. Landscape Maintenance	\$11,243
8. Snow Plowing	\$5,636
9. Office Supplies	\$1,000
10. Refuse Removal	\$5,832
11. Insurance	\$3,679
12. Accounting	\$825
13. Legal	\$500
14. Taxes	\$557
15. Contingencies, petty cash	\$500
16. Recording Secretary	\$500
17. Reserve Fund:	\$20,180
<b>TOTAL ANNUAL EXPENSE:</b>	<b>\$66,152.00</b>

Exhibit 3A-2

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ESTIMATE OF OPEATING EXPENSES AND RESERVES  
FOR THE YEAR OF OPERATION COMMENCING

May 1, 1996

This estimate of operating expenses and reserves has been made by the Sponsor and is based upon quotations obtained by the Sponsor. This estimate cannot be construed as an assurance of actual expenses and is based merely upon information available to the Sponsor at the time of preparation

These operating expenses are based upon the cost of operating the entire project with 50 Lots transferred to their party purchasers. Each Lot transferred by the Sponsor is assessed 1/50th of the total costs of operations. Based upon the following estimate, the yearly assessment per Lot is \$1,323.04 and the monthly assessment per Lot is \$110.25. The Sponsor's obligation for assessments shall be as set forth in Article V of the Declaration.

Assessments will be assessed yearly and payable monthly. Assessments will commence on the first day of the month immediately following the sale of the first Lot, or at such other time as the Sponsor shall determine. Yearly assessments will be prorated and adjusted on the year of sale.

If the projected commencement date of the budget year for the projected schedule of receipts and expenses differs by six (6) months or more from the anticipated date of closing of the first home or Lot, this Offering Plan will be amended to include a revised budget disclosing current projections. The amendment will be completed prior to closing the first home or Lot. If amended projections exceed the original projections by 25% or more, the Sponsor will offer all purchasers the right, for a reasonable period of time, to rescind their offer to purchase and to have their deposits refunded with interest, if any. The Sponsor's guarantee of the budget in this Offering Plan will not avoid an offer of rescission.

Footnotes to Schedule A  
for Heritage Meadows Homeowners Association

The budget projects monthly maintenance charges (assessments) of \$1,323.04 per townhouse for a full year of operations based on 50 completed townhouse. The estimates and quotes are based on estimates and prices submitted to the Sponsor. The actual costs for a full year of operation may exceed these costs based on market fluctuations.

Operating deficits will be funded by the Sponsor, surpluses will remain within the Association (it should be noted that surpluses may be applied against deficits in subsequent years). For the purpose of determining the obligation of the Sponsor for deficits, the contributions to the Reserve Fund as set forth in the Heritage Meadows Offering Plan, shall be considered as a direct expense by the Sponsor such that reserves shall be paid only on units where a certificate of occupancy has been obtained.

In addition to payment of the monthly maintenance charges, an initial working capita contribution of \$175.00 is to be made by each of the original purchasers of townhouses at closing. This contribution provides working capital for the Association (Operations Fund). Although the budget is balanced and it is anticipated that working capital will not be used to offset expenses, the Board of Directors may treat this working capital as a secondary contingency in the Operations Fund and may be used for any and all start-up expenses.

The Sponsor is not responsible for unanticipated changes in the monthly charges due to changing market conditions, changes in the level of service which the Board of Directors chooses to effectuate, or increased costs due to aging of the buildings, growth of plant material, etc. Although the Sponsor believes the initial contribution to the Reserve Fund provides an excellent start for the Association, it is not represented that such a contribution need only be increased by inflation in order to fund all future major repairs and replacements. Future Boards of Directors should cause studies to be made from time to time in order to anticipate the long-ten-n financial needs of the Association. The Sponsor believes that such planning can help avoid precipitous increases in the monthly assessments or special assessments as the Association matures.

The initial bookkeeping for the Association shall distinguish two funds, Operating and Reserve Fund. Expenses which can be expected to recur annually are budgeted in the Operations Fund; The Reserve Fund is shown as though it is an expense in order to simplify the presentation of this budget, it is expected that in the first years of the operation of the Association there will be considerably less expense than income in this fund; the result of which will be to build the balance available for future major repair. Although the Sponsor believes it is in the interest of the Association to maintain a fund accounting system in the future, the Board of Directors may change the use and even the number of such funds as it deems appropriate.

(Numbered footnotes refer back to the numerical items of the Projected Expenses listed above.)

1. Electricity: There is no budgeted amount for this category as there are no expenses incurred to the Association.
2. Water: water service is required for watering townhouse lawns during the June through September watering season, as may be required. Each Lot owner will furnish water required for his lawn from his external hosebib. Personnel providing the watering service will endeavor to draw water equally from each Lot owner's hosebib, as averaged over a sustained time period, however, no assurances can be given that the amount of water drawn from each Lot owner's hosebib will be equal, and personnel providing watering service may utilize the water from any individual hosebib at any one time to water the lawns of other townhouse lots. \$700
3. Management: Based on complete financial management, negotiation of contracts, supervision and inspection of the work of contractors and laborers, and office services, including billing, collection, reporting, and attending monthly meetings of the Association, for a project of this type and small size would normally run \$15.00/unit per month, for an annual amount of \$9,000.
4. Parking and Drive Maintenance: This category is reflected under the Reserve portion of the footnotes.
5. Intentionally omitted
6. Building Repairs: Repairs to siding and trim, fences, decks, railings and stairs originally installed by the sponsor, roofing and flashing (including skylights), gutters and downspouts, cleanouts, project sign, drainage inlets and grates will be completed on an as-needed basis. (The cost for these repairs are based on the estimate of Richard Rosen, R.A., Exchange Boulevard, Rochester, New York. This estimate is It should be noted that as the property matures, this cost possibly will increase. Annual reserve of \$6,000.00.

7. Landscape: Lawn maintenance is outlined in the Heritage Meadows Offering Plan. A service contract is executed annually. This contract includes the following:
  - a) Mowing for 25 week season.
  - b) Edge trimming lawns twice yearly.
  - c) Application of fertilizer and weed killers twice yearly, and grub proofing annually.
  - d) Cultivating plant beds and weeding twice yearly.
  - e) Trees and shrubs pruning annually.

The estimate for this service is provided by Mark IV Construction Co., Inc. The annual expense for this item is \$11,243.00 which amount is the going market price.

The Sponsor believes that proper care of the landscaped areas of the community are important to the future appreciation of property values. Although the program outlined above should be adequate to maintain the grounds properly, it is likely that as the shrubs and trees mature, the cost for their proper maintenance will increase. Other factors in the care of the landscape cannot be completely anticipated, for example, the suggested spraying program would not be adequate for an unusual infestation (such as was the case a few years ago for gypsy moths) or if soil tests after the lawn has been established indicate a need to alter the pH. Responding to these factors would be an added expense.

8. Snow Removal: Snow will be removed from all asphalt surfaces per the specifications outlined in the Heritage Meadows Offering Plan. The driveways and parking spaces require snow plowing. The streets are maintained by the Town of Henrietta. Snow plowed from driveways and parking areas can be stored in adjacent landscape areas. Snow will be plowed when there is an accumulation of 3" remaining on the paved surfaces. Salting will be done only when deemed necessary by the managing agent. This estimate is based on the average snowfall, between 85 and 110 inches per year as measured at the Monroe County Airport. The charge is estimated at \$5,636. If snowfall exceeds 110 inches, or if it is less than 85 inches, the adjustment to the charge is estimated \$100 per inch.
9. Office Supplies, Postage, and Copies: The estimate for this service is based on prior experience of the Sponsor. This service is necessary for adequate office supplies, bookkeeping supplies, postage, stationary, and communication to the homeowners. The annual cost for these services is estimated at \$1,000.00.
10. A quotation for weekly pickup of refuse from driveways has been obtained from Upstate Disposal Services, Inc., PO Box 182, Henrietta, New York 14586, which has been providing this service at Heritage Meadows Townhomes satisfactorily. The estimate includes monthly bulk pickup from the curb, and recycling, and is \$5,400.00 annually plus tax.

11. Insurance: Based on a quotation from Nationwide Insurance, Agent J. Parisi Associates, Inc. of 1738 East Ridge Road, Rochester, New York 14622, the annual cost of insurance for the Association will be \$3,679.00. The coverage is as follows: Building all risk replacement value of \$3,250,000, agreed amount with no coinsurance. Liability insurance for the Association Property and its officers, employees and agents. Personal injury and property damage liability shall be \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate. Directors and officers liability for wrongful acts shall be \$1,000,000-00 each occurrence.
12. Annual audited financial statement and federal tax returns. The cost of the audit is base upon the estimate provided by Cortland L. Brovitz & Co., P.C., 1235 Midtown Tower, Rochester, New York, 14604, to the Sponsor. \$825 annual amount
13. Legal counsel for ongoing operations, such as interpreting the declaration and assisting the officers and directors of the Association. This estimate does not include enforcement of the declaration or collection of common charges. The cost of services is estimated by Woods, Oviatt, Gilman, Sturman & Clarke, 44 Exchange Street, Rochester, New York 14614. annual amount.
14. Franchise tax to be levied at the New York State minimum: 349.00. The Henrietta Assessor has advised Sponsor that the eight common areas will receive a nominal assessment of \$100 and therefore total tax liability will be \$208 per year. Total \$557.
15. Petty cash and contingency: \$500
16. Recording Secretary: \$500
17. Reserve Fund:
  - a) Roof replacement: based on a 20 year replacement schedule for 215 lb. Glass fiber reinforced or asphalt three tab seal down shingles, including an aluminum rake and drip edging, gutters and downspouts. This item has been budgeted at \$5,250 by Richard L. Rosen, Architect,. 301 Exchange Blvd., Rochester NY. 14608.
  - b) The exterior of the Townhouses will be comprised of a variety of materials with varying replacement and maintenance requirements:
    1. Windows: Vinyl clad, with a scheduled useful life of 30 years. Requiring no maintenance
    2. Garage & Entrance Doors: Paint frame and entrance door and garage door every five years.
    3. Siding: Vinyl clad, with a scheduled useful life of 30 years, no reserve necessary.

4. Wood trim, bays, brackets, soffits and fascia: Painting every five years.
5. Brick: Limited pointing anticipated after 40 years.
6. Block: Pointing and parging anticipated where required after 40 years.
7. Decks: Pressure Treated wood decks have a useful life of 30 to 40 years and therefore replacement reserves are not established. Deck railing systems, the perimeter of the deck, the posts, and the deck surface, require re-staining with a light bodied preservative stain on average every three years. This schedule of maintenance and cost is based upon the professional opinion of Richard L. Rosen, a registered architect of the State of New York. This item is budgeted at \$9,878 per year reserve, based upon a three year schedule or five year schedule, as specified above.
8. Water and sanitary sewer laterals: The replacement schedule, according to Richard L. Rosen Architect is 50 years and therefore, replacement is anticipated only in an unusual case of subsurface disturbance, budgeted at \$550.
9. Sealing of parking areas and driveways: Flower City Site Contractors Inc. which has been providing this service, has provided an estimate of five cents per square foot (5 cents), plus tax, for a total estimate of \$2,970 every three years based on 55,000 square feet of asphalt surface area, or \$990 per year.
10. Every twenty years the driveways and parking areas should be spot leveled and resurfaced with ¾" to 1" asphalt topping. A unit price of \$.75 per square foot has been obtained from Monroe Roadways, Inc., a contractor currently performing similar work in the Rochester area. This price includes spot levelling of areas which deviate from original grade by more than one (1) inch in ten (10) feet. This estimate takes into account the quality of the original roadway specifications which are 8" crushed stone base and 2" top course. This item is budgeted at \$2,062 per year based on a 20 year schedule.
11. Fence replacement or repair as required is included in Note 6.
12. A contingency allowance for removal and replacement or diseased or blighted trees with nursery stock of size considered standard for new construction. This item is budgeted at \$700
13. Additional mulch in planting beds every three (3) years at a cost of \$2,250 or \$750 per year.

TOTAL RESERVES PER YEAR: 20,180



Richard L. Rosen, A. I. A.  
301 Exchange Blvd, Suite 200  
Rochester, New York 14608

April 15, 1996

Anthony M. DiMarzo, President  
Mark IV Construction Co . Inc.  
301 Exchange Blvd  
Rochester, NY 14608

Dear Mr. DiMarzo:

In connection with an Amendment to the Offering Plan for Heritage Meadows Townhouses, I am furnishing you with reliable estimates of probable maintenance and replacement reserve costs for the coming year, as follows:

**1. Building Repairs:**

a. Exterior of the townhouses are constructed as follows:

Vinyl siding nailed to plywood sheathing, with trim of wood or wood products, primed and painted with latex enamel. Small portions of the facade are sided with red cedar shingles, stained. Small areas of the facade include brick veneer with portland cement mortar.

Basements are precast masonry units with Portland cement mortar joints, and with waterproof parging on the exterior. Roofs are asphalt or fiberglass three-tab shingles, with aluminum flashing, and with skylights mounted on curbs with flashing under the roof. Gutters and downspouts are aluminum. Maintenance, repair and upkeep of the windows and doors of the units are the responsibility of the unit owner. Decks are pressure treated wood.

Services budgeted under this section include damage from vandalism, abrasion, mischief or accident. The deductible portion of insurance claims for water damage due to roof leaks is included. After the first decade of service, as trees mature, gutter cleaning may be required.

b. Decks, railing and stairs, privacy fences: These elements are constructed of pressure treated wood with a useful live of 20-40 years. Maintenance scheduled included straightening and refastening twisted or warped members. Carpentry repairs will be on an as-needed basis.

- c. Miscellaneous repairs: Project sign, drainage inlets not dedicated to Henrietta, gratings, brick, stone and concrete pavers installed as walks, and stoops: Services include damage due to vandalism, accident, misalignment, loose items requiring resetting, restoring reasonable flat gradient due to settlement, and replacement of cracked units. Service on an "as-needed" basis. .

THE TOTAL OF THE AMOUNTS ABOVE IN THIS  
SECTION IS: \$6,000

2. Landscape Maintenance: the total lawn area, including the tree lawn in the street right of way, to the gutters, is estimated for mowing for a 25 week average season. Included is edge trimming twice a year on average, and fertilization and weed control by scheduled liquid chemical application on average two times a year. Chemical protection against grub infestation on average once a year. Evergreen plant material weeded and fed on average two times a year. Pruning annually on average in accordance with standard nurseryman's practice. The planting beds around the houses, and tree and shrub beds, will be cleaned, mulched, pruned, fertilized, and chemicals applied in accordance with the standards above.

Leaves will be raked in the fall as required. (Periodic replacement of Mulch included in replacement reserves)

SERVICES IN THIS SECTION ARE ESTIMATED AT \$11,243 PER ANNUM.

### 3. **Snow plowing and removal:**

This estimate includes snow plowing and removal from the driveways, not including the streets, except clearing banks at driveways, as plowing of streets is by the Town. Plowing is to one foot in front of the garage door, and storage on landscaped areas adjacent to drives.

The contract calls for plowing when snow exceeds three inches, In the event of ice conditions, ice melter or sand shall be applied only at the direction of the Managing Agent. The contract price is based on an average of 85 to 110 inches of snow per year as measured at the Monroe County

Airport, which is the long term average found to be reasonable in this region.  
THIS CONTRACT ESTIMATED AT \$5,636 per annum.

#### 4. Reserves for Replacement:

a. Roof replacement over existing shingle roof: Based on a replacement schedule of 20 years, with 215 lb glass fiber 3 tab seal-down shingles, with replacement aluminum rake and drip edge, applied directly over the existing roofing with no tear-off. The total area of roofing in the project is estimated at 150,000 square feet. The going market rate is \$70 per 100 square feet. The total cost at todays rates' calculated after 20 years would be \$105,000.  
Annual Reserve = \$5,250.

b. Windows: these have an estimated life of over 30 years as they are vinyl-clad. (not included in HOA responsibilities)

c. Entrance doors require repainting on average every 5 years

d. Garage doors are prefinished with a high quality enamel over aluminum surface and should require no maintenance for the first decade.

e. siding: vinyl siding customarily requires no maintenance for 30 or 40 years, other than hosing down in locations where wind conditions may deposit soil.

f. Brick and mortar: No maintenance required for at least 40 years

g. Concrete masonry units at foundation: Pointing and parging may be required after 30-40 years.

h. Wood trim, soffits and fascia: Painting required every 3 to 5 years. Paint renewal depends upon a variety of environmental factors and cannot be accurately predicted. The estimate is based on a three year repainting schedule.

i. Decks: Pressure treated wood decks have a useful life of 30 to 40 years and therefore replacement reserves are not established. However, deck railing systems and the perimeter of the deck require re staining with a light-

bodied preservative stain on average every three years. The decking and superstructure are not included in this service.

Subtotal items b-i: \$9,878 per year, based on five year schedule for repainting items c and d; and a three year schedule for items h and i.

j. Sealing of asphalt driveways and visitor parking spaces: The total area is estimated at 55,000 sq ft. Sealing is budgeted at three year intervals at the going market rate of \$0.05 plus tax per square foot, for \$2,970 requiring an annual Reserve of \$990.

k. Driveways and parking areas if properly maintained will require spot levelling and resurfacing after 20 to 30 years. Spot levelling and resurfacing with  $\frac{3}{4}$ " to 1" asphalt topping, at the current market rate of \$0.75 per square foot, after 20 years, will require an annual budget of \$2,062.00 This amount is based on an estimate from Monroe Roadways, Inc, 300 Hogan Road, Fairport, NY. 11050.

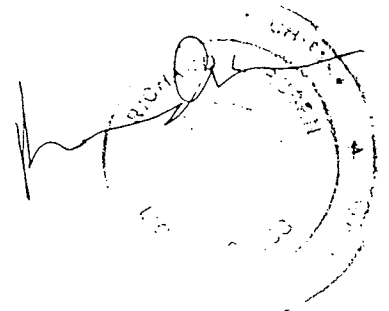
annual Reserve \$2,062

l. Water laterals and sanitary sewer laterals: With a 50-100 year life, estimate one event of subsidence or settlement per year, at \$550

m. A contingency for removal and replacement of diseased or blighted trees, with nursery stock of the size considered standard for new construction, is budgeted at \$700 per year.

n. Additional mulch must be added to planting beds every three years at a cost estimated at \$2,250 or \$750 per year.

TOTAL OF RESERVES PER ANNUM: \$20,180



# ROCKHURST CORPORATION

339 East Avenue □ Rochester, New York 14604-2615 □ 716-232-8910 □ Fax 716-232-8915



## CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK )  
COUNTY OF MONROE )       SS:

The undersigned, being duly sworn, deposes and says as follows:

Mark IV Construction Co., Inc., the Sponsor of **Heritage Meadows Homeowners Association, Inc.** has retained our firm to review the Projected Schedules of Receipts and Expenses for Heritage Meadows Townhomes for the third year of operation.

Our firm is currently managing agent for thirty community associations. These organizations range in size from eleven to two hundred thirty-six units. We have been in the community association management business for fourteen years.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to Schedule A.

We have reviewed the Schedule and investigated facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential property.

We certify that the projections in Schedule A appear reasonable and adequate under existing circumstances, and the projected revenue will be sufficient to meet the anticipated operating expenses for the projected third year of operation as a homeowners association.

We certify that the projection:


- 1) sets forth in detail the terms of the transaction as it relates to the projections and is complete, current, and accurate;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the third year of operation as a homeowners association;

- 3) does not omit any material fact;
- 4) does not contain any untrue statement of a material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) does not contain any representation or statement which is false, where I (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

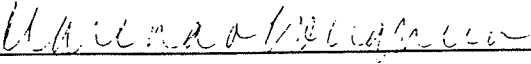
We further certify that our firm is not owned or controlled by the sponsor. I understand that it is intended that a copy of this certification will be incorporated into the offering plan.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 09 April 1996

  
\_\_\_\_\_  
William G. Tomlinson, PCAM®, President  
**ROCKHURST MANAGEMENT CORPORATION**

Sworn to before me this  
9th day of April 1996

  
\_\_\_\_\_  
KAREN ALRIGHT O'LOUGHLIN  
NOTARY PUBLIC, State of N.Y., Ontario  
My Commission Expires Aug. 31, 1997

f:\wp\rh\certs\heritage\cert\_3



Trade Services  
One Fountain Plaza  
Buffalo, NY 14203-1495

Exhibit 3A-4

Cable Address: MANDTBANK  
Telex Number: 420076  
Answer Back: MANDTBANK NYK  
Swift Number: MANTUS 33  
Telephone: (716) 848-3597  
(800) 724-1268

AMENDMENT NO. 4 TO IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8639

ISSUING BANK:  
MANUFACTURERS AND TRADERS TRUST COMPANY  
TRADE SERVICES  
ONE FOUNTAIN PLAZA - 3RD FLOOR  
BUFFALO, NEW YORK 14203-1495

DATE: January 10, 1996

BENEFICIARY: SPIRO JANETOS, ESQ.  
301 EXCHANGE STREET  
ROCHESTER, NEW YORK 14608

APPLICANT: MARK IV CONSTRUCTION CO., INC.  
301 EXCHANGE BLVD.  
ROCHESTER, NEW YORK 14608

The above mentioned credit is amended as follows:

Expiration date at M&T Bank is extended to February 1, 1997.

All other terms and conditions remain unchanged.

This amendment is to be considered as part of the above credit and must be attached thereto.

MANUFACTURERS AND TRADERS TRUST COMPANY

By: Sharon Fortuna  
Sharon Fortuna  
L/C Analyst  
Trade Services



**DISPOSAL & RECYCLING SERVICE AGREEMENT**

Customer name: HERITAGE MEADOWS HOA  
 Service Address: Old Settlers Dr.  
 City: Henrietta State: NY Zip: 14467  
 Name (If different) HERITAGE MEADOWS HOA  
 Billing Address 301 Exchange St.  
 City: Rochester State: NY Zip: 14608  
 Contract Period From 1/1/96 To 12/31/96

Date: February 14, 1996  
 Telephone No: \_\_\_\_\_  
 Fax No: \_\_\_\_\_  
 Credit Contact \_\_\_\_\_  
 Telephone No: \_\_\_\_\_  
 Fax No: \_\_\_\_\_

\*Reference to terms and conditions on reverse

**DISPOSAL SERVICE REQUIREMENTS**

Qty	Size	Service Days							Monthly Service Charge	Monthly Rental Charge	Extra P/UP Charge Per Cont
		Mon	Tue	Wed	Thur	Fri	Sat	on call			
37	Units				X				\$ 9.00 each		Still Bldg

**RECYCLING SERVICE REQUIREMENTS**

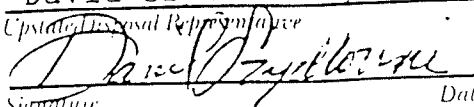
Qty	Size	Service Days							Monthly Service Charge	Monthly Rental Charge	Extra P/UP Charge Per Cont
		Mon	Tue	Wed	Thur	Fri	Sat	on call			
37	Units				X				Incl.		

**ROLL-OFF SERVICE REQUIREMENTS**

Qty	Size	Service Days							Disposal Charge (Per Ton)	Hauling Charge (Per Haul)	Monthly Container Rental Charge
		Mon	Tue	Wed	Thur	Fri	Sat	on call			

All charges are subject to applicable Sales Tax

Customer Acceptance  
 \_\_\_\_\_  
 Please Print Name  
 \_\_\_\_\_  
 Signature Title  
 \_\_\_\_\_  
 Date Start Date  
 \_\_\_\_\_

Upstate Disposal  
 David Szudlowski, General Manager  
 Upstate Disposal Representative  
  
 Signature Date  
 2-15-96  
 50x12 = 450x12 = 5400 = 5832



CORTLAND L. BROVITZ & CO., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

PRINCIPALS

CORTLAND L. BROVITZ, CPA  
MELVYN J. POPLOCK, CPA  
DAVID H. ZUGEHOER, CPA  
STEVEN G. SCHWARTZ, CPA  
RICHARD M. KASPERSKI, CPA  
JEFFREY D. WILLIAMS, CPA  
MIRIAM KACHIOFF, CPA  
MICHAEL C. SMITH, CPA  
BLISS E. OWEN, CPA

1235 MIDTOWN TOWER  
ROCHESTER, NEW YORK 14604  
716-454-6996  
FAX 716-454-4024

MEMBER  
The MCGGLADREY Network

MANAGERS

MICHAEL F. PRAGEL, CPA  
PAMELA L. MERRICK, CPA  
MICHAEL J. DINAN, CPA  
NICHOLAS R. BOTTINI, CPA  
JAYNE M. PENEPEP, CPA  
MICHELLE A. PIPERNI, CPA  
JAMES C. DERIDDER, CPA  
STANLEY P. STEVENS, JR., CPA  
WILLIAM G. MAY, EA  
JERRY A. DAGGS, CPA

February 15, 1996

Mr. Anthony DiMarzo  
First Monroe Management Co.  
301 Exchange Boulevard  
Rochester, New York 14608

Re: Heritage Meadows Homeowners Association

Dear Mr. DiMarzo:

We appreciate the opportunity to propose on the audit for Heritage Meadows Homeowners Association comprising 50 dwelling units. Our fee to perform the audit, preparation of financial statements, and tax returns for the year ending December 31, 1996, is \$825.

Respectfully Submitted.



Cortland L. Brovitz & Co., P.C.  
Certified Public Accountants

DHZ:mkc  
3dhz6215.sam

Flower City Site Contractors, Inc.  
1729 Empire blvd. #40  
Webster, N. Y. 14580

April 1 1996

Mark IV Construction Co Inc  
attn: Mr Rosen  
301 Exchange Blvd  
Rochester NY 14608

To whom it may concern:

We are prepared to quote your sealing needs for the driveways and parking areas of townhouse projects. The present rate we charge for a single application of seal coat is \$0.05 per square foot, plus tax.

By

A handwritten signature in cursive script that reads "Michael L. Nasello". The signature is written in black ink and is positioned to the right of the word "By".

Michael L. Nasello



TOWN OF HENRIETTA

County of Monroe, State of New York  
475 Calkins Road P.O. Box 999, Henrietta, NY 14467-0999 (716) 334-7700

JAMES R. BREESE  
Supervisor

WILLIAM J. MULLIGAN, JR.  
CATHERINE A. McCABE  
MICHAEL P. ZUBER  
JOHN J. HOWLAND  
Council Members

Mark IV Construction Co., Inc.  
Att. Richard Rosen  
301 Exchange Blvd.-Suite 200  
Rochester, New York 14608

March 8, 1996

Re: Heritage Meadows Homeowners Association- Tax Estimate

Dear Mr. Rosen:

I have reviewed the copy of the Offering Plan for Heritage Meadows Homeowners Association that I received from you on February 28, 1996. In response to your request for a tax estimate to include in the amendments to the plan to be submitted to the Attorney General, I offer the following:

There are eight(8) separate parcels owned by the Heritage Meadows Homeowners Association which are designated as common areas in the filed Final Subdivision Plan. Each of the individual parcels carries a nominal assessment of \$100.00. The total real property taxes on each parcel using current County, Town and School District tax rates is approximately \$26.00 per year.

I trust that this is the information you require. If you have any questions concerning this, please call me at 359-7034.

Sincerely,

James E. Schirmer IAO  
Assessor  
Town of Henrietta



HOME OFFICE ONE NATIONWIDE PLAZA • COLUMBUS, OHIO 43216

J. Parisi Associates, Inc.  
1738 East Ridge Road  
Rochester, NY 14622  
(716) 342-6790

April 1, 1996

MARK IV Construction Co., Inc.  
Attn: Richard Rosen

Re: Heritage Meadows

Building Value	\$3,250,000	Estimated completed value
All-risk		coverage
Replacement Value		
Agreed Amount		
General Liability	\$1,000,000	Occurrence limit
	\$2,000,000	Aggregate limit
Directors & Officers	\$1,000,000	
Proposed effective dates	4/1/96 to 4/1/97	
Estimated annual premium	\$3,679.00	

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

BALANCE SHEETS  
DECEMBER 31, 1995 AND 1994

Assets

	<u>1995</u>	<u>1994</u>
<u>Current Assets</u>		
Cash - Operating Fund	\$ 7,178	\$ 4,334
Cash - Restricted Fund	23,879	12,127
Cash - Working Capital	9,207	8,970
Accounts Receivable	376	375
Prepaid Expenses	<u>3,673</u>	<u>4,085</u>
Total Current Assets	<u>44,313</u>	<u>29,891</u>
Total Assets	\$ <u>44,313</u>	\$ <u>29,891</u>

Liabilities and Fund Balances

<u>Current Liabilities</u>		
Accounts Payable	\$ 3,371	\$ 4,115
Advance Assessments	1,544	1,102
Accrued Income Taxes	<u>484</u>	<u>390</u>
Total Current Liabilities	<u>5,399</u>	<u>5,607</u>
<u>Fund Balances</u>		
Working Capital Fund (Note 3)	9,207	8,970
Reserve Fund (Note 6)	23,879	12,127
Operating Fund	<u>5,828</u>	<u>3,187</u>
Total Fund Balances	<u>38,914</u>	<u>24,284</u>
Total Liabilities and Fund Balances	\$ <u>44,313</u>	\$ <u>29,891</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
FOR THE YEARS ENDED DECEMBER 31, 1995 AND 1994

	<u>Working Capital Fund</u>	<u>Reserve Fund</u>	<u>Operating Fund</u>	<u>Total</u>
Fund Balances - January 1, 1994	\$ 8,750	\$ 2,406	\$ 418	\$ 11,574
Revenues from Assessments For The Year Ended December 31, 1994	-	10,401	20,056	30,457
Interest Income For The Year Ended December 31, 1994	220	146	39	405
Expenditures For The Year Ended December 31, 1994	<u>-</u>	<u>(826)</u>	<u>(17,326)</u>	<u>(18,152)</u>
Fund Balances - December 31, 1994	8,970	12,127	3,187	24,284
Revenues from Assessments For The Year Ended December 31, 1995	-	15,501	29,752	45,253
Interest Income For The Year Ended December 31, 1995	237	482	152	871
Expenditures For The Year Ended December 31, 1995	<u>-</u>	<u>(4,231)</u>	<u>(27,263)</u>	<u>(31,494)</u>
Fund Balances - December 31, 1995	\$ <u>9,207</u>	\$ <u>23,879</u>	\$ <u>5,828</u>	\$ <u>38,914</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF REVENUES, EXPENDITURES AND CHANGES IN OPERATING FUND BALANCE  
FOR THE YEARS ENDED DECEMBER 31, 1995 AND 1994

	<u>1995</u>	<u>1994</u>
<u>Revenues</u>		
Assessments	\$ 29,752	\$ 20,055
Interest Income	<u>152</u>	<u>39</u>
Total Revenues	<u>29,904</u>	<u>20,094</u>
<u>Expenditures</u>		
<u>Grounds Maintenance:</u>		
Lawn	8,192	4,184
Repairs and Maintenance	1,326	518
Snowplowing	3,366	2,142
Water	547	445
<u>Building Maintenance</u>		
Roof and Gutter	-	-
<u>Operating Expenses:</u>		
Insurance - Fire and Casualty	2,171	2,044
Trash Removal	3,917	2,537
<u>Administrative Expenses:</u>		
Legal and Accounting	850	600
Management Fee	5,713	3,833
Miscellaneous Expense	336	250
Office Supplies	21	50
Real Estate Taxes	340	332
Income Taxes (Note 2)	<u>484</u>	<u>390</u>
Total Expenditures	<u>27,263</u>	<u>17,325</u>
Excess of Revenues Over Expenditures	2,641	2,769
Fund Balance - Beginning	<u>3,187</u>	<u>418</u>
Fund Balance - Ending	\$ <u>5,828</u>	\$ <u>3,187</u>

See Notes to Financial Statements.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31, 1995 AND 1994

	<u>1995</u>	<u>1994</u>
<u>Cash Flows From Operating Activities</u>		
Excess of Revenues Over Expenditures	\$ 14,630	\$ 12,710
Adjustments to Reconcile Excess of Revenues Over Expenditures to Net Cash Provided by Operating Activities:		
(Increase) Decrease in Accounts Receivable	-	(375)
(Increase) Decrease in Other Current Assets	412	(3,119)
Increase (Decrease) in Accounts Payable	(744)	2,807
Increase (Decrease) in Other Current Liabilities	<u>535</u>	<u>677</u>
Net Cash Provided by Operating Activities	<u>14,833</u>	<u>12,700</u>
<u>Cash Flows From Investing Activities</u>	<u>-</u>	<u>-</u>
<u>Cash Flows From Financing Activities</u>	<u>-</u>	<u>-</u>
Net Increase in Cash	14,833	12,700
Cash - Beginning	<u>25,431</u>	<u>12,731</u>
Cash - Ending	\$ <u>40,264</u>	\$ <u>25,431</u>
Supplemental Disclosure of Cash Flow Information		
Cash Paid During the Year For:		
Interest	\$ <u>-</u>	\$ <u>-</u>
Income Taxes	\$ <u>390</u>	\$ <u>374</u>

See Notes to Financial Statements.



HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1995 AND 1994

Note 1 Significant Accounting Policies

Reporting Entity

The Association is a membership organization organized to oversee the maintenance of common property and enforce its bylaws and regulations.

Basis of Reporting

The Association's financial statements are prepared on the accrual basis. Revenues from assessments are recognized as income when they become due. Prepaid assessments (advance payments) are deferred until the month due. Expenses are recognized as incurred, not when paid.

Management Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and revenues and expenses during the reported period. Actual results could differ from those estimates.

Tax Status

The Association has been incorporated under the New York State Not-For-Profit Corporation Law. As such the corporation qualifies under Section 528 of the Internal Revenue Code. Federal tax and State tax will not be payable on profit due to assessment fees charged members. Tax will be payable on non-exempt function income, including interest.

Note 2 Income Tax Matters

Income Taxes consisted of the following at December 31, 1995 and 1994:

	<u>1995</u>	<u>1994</u>
Taxes Currently Payable:		
Federal	\$ 134	\$ 24
State	<u>350</u>	<u>366</u>
	<u>\$ 484</u>	<u>\$ 390</u>

Note 3 Working Capital Advance Due Sponsor

The Sponsor, Mark IV Construction Co., Inc., was required to advance \$175 per lot (50 lots) as initial working capital for the Association. The amount is kept in a separate fund and not used until the Association is no longer sponsor controlled. Interest accumulated is part of the fund balance.

Note 4 Reserve Fund Expenditures

Reserve Fund Expenditures consisted of landscaping and driveway sealing in 1995 and landscaping in 1994.

Note 5 Transaction with Sponsor

The Sponsor or a related Company are paid a management fee and for snowplowing services and grounds maintenance services by the Association.

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1995 AND 1994

Note 6 Future Major Repairs and Replacements (Reserve Fund)

The Association has elected to accumulate funds for future major repairs and replacements. Accumulated funds are accounted for separately and generally are not available for expenditures for normal operations.

The management company determines amounts to be collected to the major maintenance fund. Actual expenditures may vary from the estimated future expenditures, and the variations may be material. Therefore, amounts accumulated in the major maintenance fund may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available. It is the intent of the management company and the Association to review the matter annually.

First Monroe Management Corp. conducted an analysis in preparing the 1996 budget, to estimate the remaining useful lives and the replacement costs of components of common property. The estimates were based on future estimated replacement costs.

The following unaudited table is based on the study and presents significant information about the components of common property.

<u>Components</u>	<u>Estimated Remaining Lives (Years)</u>	<u>Estimated Future Replacement Costs</u>	<u>Component of Fund Balance at December 31, 1995</u>	<u>Estimated 1996 Funding Needed</u>
Roof	17 - 20	\$ 120,000	\$ 7,512	\$ 6,000
Painting	1 - 2	35,000	13,908	10,833
Asphalt Sealing and Repair	2 - 3	3,000	-	918
Asphalt Resurface	17 - 20	25,000	1,635	1,237
Utility Laterals	-	-	258	200
Plant Replacement	1	400	(93)	500
Concrete Repair	-	-	640	500
Landscape Material	3	2,000	17	600
Contingency	-	-	2	2,000
		<u>\$ 185,400</u>	<u>\$ 23,879</u>	<u>\$ 22,788</u>

HERITAGE MEADOWS HOMEOWNERS ASSOCIATION, INC.  
ROCHESTER, NEW YORK

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 1995 AND 1994

Note 7

Disclosure About Fair Value of Financial Instruments

The Association's financial instruments consist of cash, accounts receivable and accounts payable. The carrying amounts approximate fair value.