

DECLARATION  
of  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
of  
THE VICTORIA WOODS HOMEOWNERS' ASSOCIATION PHASE IV, INC.

THIS DECLARATION, made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_ by Victoria Woods Village, 6400 Victor-Manchester Road, Victor, New York, 14564, being referred to hereinafter as the "Sponsor".

WITNESSETH

WHEREAS, the Sponsor is the owner of property located in the Town of Victor, County of Ontario, New York consisting of approximately 10.33 acres, as more fully described in Schedule A of this Declaration, which the Sponsor intends to continue the development known as Victoria Woods Village (hereinafter sometimes referred to as the "Development"), with open spaces and other common facilities for the benefit of said community; and

WHEREAS, Phase IV will also consist of private access roads, lighting on the private access roads and green and landscaped areas up to the foundations of the Homes, which areas hereinafter collectively are referred to as the "Association Property"; and

WHEREAS, the Sponsor desires that the amenities of the lands described be available for use by the residents of the Development; and

WHEREAS, the Sponsor desires to provide for the maintenance, repair and replacement of the Association Property, and to this end desires to subject the property described in Schedule A hereto to the Declaration of Protective Covenants, Conditions, Restrictions, Easement, Charges and Liens (sometimes referred to as the "Declaration") hereinafter set forth, each and all of which is and are for the benefit of said Association Property, and to provide for the future subjection of such other areas as may not be initially developed, to such Declaration; and

WHEREAS, the Sponsor has deemed it desirable, to create an agency to which should be delegated and assigned the powers of: (i) managing, maintaining, repairing and replacing the Association Property; (ii) administering and enforcing the Covenants, Conditions and Restrictions of the Association; and (iii) collecting and disbursing the Assessments and charges hereinafter created; and

WHEREAS, the Sponsor has incorporated The Victoria Woods Homeowners' Association Phase IV, Inc. under the Not-for-Profit Corporation Law of the State of New York on February 3, 1988 for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Sponsor, for itself, its successors and assigns, declares that the real property described in Article II hereof is and shall be held, transferred, sold, conveyed and occupied subject to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens hereinafter set forth.

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. The following words, when capitalized and used in this Declaration, the By-Laws, the Rules and Regulations, the Offering Plan or in any instrument supplemental to this Declaration, the By-Laws, the Rules and Regulations or the Offering Plan, shall, unless the context otherwise prohibits, have the following meanings:

- a. **Architectural Committee:** The Architectural Committee, a permanent committee of the Association, established pursuant to Article IX of this Declaration.
- b. **Assessments:** As described in Article V of this Declaration, Assessments shall be charges for the maintenance and operation of Association Property and shall also include, but not necessarily be limited to, Special Assessments for capital improvements and Special Assessments for casualty loss of Association Property in addition to routine repair and maintenance Assessments and any other charges, from time to time, deemed to be Assessments pursuant to this Declaration and the By-Laws.
- c. **Association:** The Victoria Woods Homeowners' Association Phase IV, Inc., organized under the Not-for-Profit Corporation Law of the State of New York, to own, manage and maintain the Association Property which may be designated as common or limited common areas and to enforce architectural, landscape and environmental restrictions.
- d. **Association Property:** All land, improvements and other properties, personal or mixed, heretofore and hereafter owned by The Victoria Woods Homeowners' Association Phase IV, Inc.

- e. **Authorized Votes:** There shall be only one vote for each Voting Owner regardless of the number of Homes owned by such Owner. There shall be a minimum of one (1) vote and a maximum of seventy three (73) votes.
- f. **Board of Directors or the Board:** The Board of Directors, elected by the Owners and/or appointed by the Sponsor (subject to initial control by Sponsor) to administer the affairs of the Association.
- g. **Book of Mortgagees:** Record of Mortgagees for Homes as reported by the Sponsor or Sponsor's closing attorney to the Secretary of the Board of Directors at the time of each closing, or upon a resale of a Home, by an Owner, as may be reported by the Purchaser of such Home at the time of taking title. The Secretary shall be responsible for maintaining the Book of Mortgagees. Every First Mortgagee of a Home shall have the right, upon written notification to the Secretary, to have its name and address, as set forth in such notification, entered into the Book of Mortgagees. It is the responsibility of the Sponsor's closing attorney, or upon a resale, the new Owner, to provide such information. The Secretary has no obligation to examine the records of the Office of the Ontario County Clerk for such information.
- h. **Building.** A structure which is comprised of two or more Homes, together with the garages of such Homes if there be such, and such Homes being attached one to the other with party walls.
- i. **By-Laws:** The By-Laws of the Association set forth as set forth in Part II of the Offering Plan, as the same may be supplemented, extended or amended from time to time.
- j. **Declaration:** This document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of The Victoria Woods Homeowners' Association Phase IV, Inc. as it may, from time to time, be supplemented, extended or amended in the manner provided for in this Declaration.
- k. **First Mortgage:** A mortgage which is a first lien on a Home granted by an Owner to a bank, federal savings and loan association, life insurance company, pension fund, trust company or other institutional lender, licensed mortgage banker or broker, an individual or the Sponsor.
- l. **First Mortgagee:** The holder of a first mortgagee on a Home pursuant to instruments duly recorded in the Book of Mortgagees.

- m. **Home:** Each completed Home (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Victor) including the garage appurtenant to such Home, if there be one. Unless the context clearly indicates otherwise, the term "Home" shall be deemed to include the term "Lot".
- n. **Lot:** Any portion of the Property (with the exception of the Association Property) under the scope of this Declaration, as shown on the "as built" Subdivision Map or Maps filed, or to be filed, with the Ontario County Clerk and identified as a separate parcel on the tax records of the Town of Victor. Unless the context clearly indicates otherwise, the term "Lot" is included in the term "Home".
- o. **Member:** Each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.
- p. **Mortgagee:** Any mortgagee holding a mortgage on a Home, including where applicable, its representatives, servicing agent, assignees and successors holders of such mortgage.
- q. **Offering Plan:** The Offering Plan filed with the New York State Department of Law, Real Estate Financing Bureau, relating to The Victoria Woods Homeowners' Association Phase IV Inc.
- r. **Owner:** The holder of record title, whether one (1) or more persons or entities, of fee simple title to any Home, whether or not such a holder actually resides in such Home, and shall include the Sponsor with respect to any such property to which title has not transferred. An Owner may be one or more individuals, corporations, partnerships or trusts, or any other legal entity or any of the foregoing. All such Owners are collectively called "The Owners".
- s. **Property:** All properties as are subject to this Declaration which may, from time to time, be supplemented, extended or amended.
- t. **Rules and Regulations:** The Rules and Regulations of the Association governing the use and care of the Property set forth in this Declaration, the By-Laws or promulgated from time to time by the Association Board of Directors.
- u. **Subdivision Map or Maps:** The map or maps as filed in Office of the Ontario County Clerk for Victoria Woods Village.

- v. **Sponsor:** Victoria Woods Village, a Joint Venture, its successors and assigns.
- w. **Transfer of Control Date:** The date on which: (i) the Sponsor has transferred title to all Homes in Phase IV; or (ii) five (5) years from the transfer title to the first Home to an Owner, whichever first occurs.
- x. **Unsold Home:** Any Home owned by the Sponsor or its designee to which title has not transferred, other than a Home purchased by and for the use of any principal or affiliate of the Sponsor or held by the Sponsor for personal use or investment.
- y. **Voting Member.** When a Home is owned by more than one (1) person, or other than an individual natural person, the person entitled to vote on behalf of the Home as designated in a certificate signed by all Owners of the Home and filed with the Secretary of the Association. Such Member shall hereinafter be referred to as the "Authorized Voting Owner".

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.01. 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 Victor, County of Ontario and State of New York, and is more particularly described in Schedule A hereto.

**Section 2.02. Additional Property.** The Sponsor may extend this Declaration to all or any portion of the land approved for development as described in Schedule A of this Declaration, up to a maximum of seventy three (73) Homes, without obtaining the approval of the Owners, by filing an amendment with the New York State Department of Law and recording a supplement to this Declaration in the Office of the Ontario County Clerk. A copy of such amendment shall also be served on all Owners and Purchasers by certified mail, return receipt requested.

**Section 2.03. Merger.** Upon a merger or consolidation of the Association with another association in accordance with the Association's Certificate of Incorporation, this Declaration, the By-Laws or New York State Law, 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, or consolidated association, and the Association may administer the Protective Covenants, Conditions and Restrictions established by this Declaration, together with the Covenants, Conditions and Restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the Protective Covenants, Conditions and Restrictions established by this Declaration, except as hereinafter provided.

Notwithstanding the above, no merger or consolidation shall occur without the recording of a supplemental Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens with respect to the merger or consolidation in the Office of the Ontario County Clerk.

SO LONG AS THE SPONSOR HAS ANY HOMES WITHIN VICTORIA WOODS PHASE IV TO WHICH TITLE HAS NOT TRANSFERRED, THE PROVISIONS OF THIS ARTICLE II MAY NOT BE AMENDED WITHOUT THE PRIOR WRITTEN CONSENT OF THE SPONSOR.

### ARTICLE III

#### THE ASSOCIATION STRUCTURE AND MEMBERSHIP

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of the State of New York, the Sponsor has formed The Victoria Woods Homeowners' Association Phase IV, Inc., to own, operate and maintain the Association Property, enforce the Protective 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, the Certificate of Incorporation and the By-Laws of the Association, as such may be supplemented, extended or amended from time to time, and to manage the maintenance, repair and replacement of all areas up to the foundations of the Homes and the exteriors, including roofs, of all Homes. 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 New York State Not-for-Profit Corporation law as the same may be amended from time to time.

**Section 3.02. Membership.** The Association shall have as Members only Owners of Homes within Victoria Woods Phase IV. All Owners shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definition of the word "Owner" as found in Article I of this Declaration. Ownership of such Home shall be the sole qualification for membership.

**Section 3.03. Holder of Security Interest.** Any person or entity which holds an interest in a Home merely as security for the performance of an obligation shall not be a Member and shall have no voting rights.

**Section 3.04. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.**

- a. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor has any Homes within Victoria Woods Phase IV to which title has not transferred, the Board of Directors may not, without the Sponsor's prior written consent, which consent will not unreasonably be withheld, except for necessary alterations, additions or improvements required by law or by any government agency or Board of Fire Underwriters:
  - (i) make any addition, alteration or improvement to Association Property;
  - (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 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;
  - (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, except for the maintenance of an improvement not in existence or owned by the Association at the time of the recording of this Declaration;
  - (v) borrow money on behalf of the Association; or
  - (vi) reduce the quantity or quality of the services or maintenance of the Association Property.
  
- b. This section shall not be amended without the prior written consent of the Sponsor so long as the Sponsor has any Unsold Homes within Victoria Woods Phase IV.

## ARTICLE IV

## PROPERTY RIGHTS AND EASEMENTS

## Section 4.01. Association Property.

- a. The Sponsor will convey by deed to the Association subsequent to the recordation of this Declaration, and at or prior to the conveyance of the first Home, the Association Property, and record such deed in the Office of the Ontario County Clerk.
- b. The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration. The conveyance of such lands to the Association shall state that such land has been designated as Association Property for the purpose of this Section 4.01. No portion of the Property shall be subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the same shall have been so designated and the above described conveyance recorded in accordance with the procedures provided herein.

Section 4.02. Right and Easement of Enjoyment. The following easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon, and for the benefit of, the Association, the Owners, the Sponsor and their successors and assigns:

- a. Every Owner, and such Owner's guests, lessees, licensees and invitees, shall have a right and easement of enjoyment in and to all Association Property. Such easements shall be appurtenant to and shall pass with interests of an Owner. Such rights, easements and privileges shall be subject, however, to the rights of the Sponsor and the Owners, together with the rights of the Association as set forth in Section 4.03 and herein and the rights of the Sponsor as set forth in Sections 4.07 and 4.08 herein.
- b. Every Owner shall also have an easement for ingress and egress by vehicle or otherwise over and to all Association Property and further shall have common utility and conduit easements as described in Section 4.05 herein. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that a conveyance or encumbrance referred to in Section 4.03 (c) hereof shall be subject to said easement of each Owner for ingress and egress.



- c. Each Home and the Association Property shall be subject to an easement for encroachments created by construction, settling and overhangs of the Homes, or other improvements, as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.
- d. The Sponsor shall have a right and easement in and across the Association for the completion of the development of the lands within Victoria Woods Phase IV. With respect to its exercise of the above rights, the Sponsor agrees: (i) to repair, or cause to be repaired, any damages resulting from construction within a reasonable time after the completion of development or when such rights are no longer needed by the Sponsor, whichever first occurs; and (ii) until development has been completed, to hold the Association harmless from all liabilities which are directly caused by the Sponsor's exercise of its rights or its assignment of such rights hereunder. This Section "d" shall not be amended without prior written consent of the Sponsor so long as the Sponsor has any Homes within Victoria Woods Phase IV to which title has not transferred.

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

- a. To grant easements or rights-of-way to any public or private utility corporation, governmental agency or political subdivision or cable television franchisee with or without consideration.
- b. 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, subject to the following:
  - (1) such a conveyance shall require the consent of sixty seven percent (67%) of all Authorized Votes, other than the Sponsor;
  - (2) any conveyance by the Association prior to the transfer of title to all Homes by the Sponsor, shall also require the prior written approval of the Sponsor unless the Sponsor waives such right in a written agreement recorded in the Office of the Ontario County Clerk;

(3) no such conveyance shall be made if First Mortgagees of fifty one percent (51%) or more of the Homes advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable. Written notice of any proposed conveyance shall be sent to all First Mortgagees whose names appear on the records of the Association not less than ten (10) days nor more than fifty (50) days prior to the date set for voting on the proposed conveyance

- c. To enter into agreements, reciprocal or otherwise, with other homeowners' associations, condominiums and cooperatives for the use of, or sharing of, Association Property. Such agreements shall require the consent of sixty seven percent (67%) of the Authorized Votes of the Association, other than the Sponsor.
- d. To borrow funds from any recognized lending institution, and in conjunction therewith, mortgage its properties. No such mortgage, however, shall encumber or otherwise interfere with the easement of ingress and egress of Owners as described in this Declaration. The amount, terms, rate or rates of all borrowing and provisions of all agreements with note holders shall be subject to the approval of at least sixty seven percent (67%) of all Authorized Votes, other than the Sponsor.
- e. Except as may be prohibited by law, the Certificate of Incorporation, this Declaration or the By-Laws, to contract with any person for the performance its management and other duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives and other homeowners' associations both within and without the Victoria Woods, Phase IV.
- f. To permit the Managing Agent to establish a management office within Victoria Woods Phase IV, solely for the management and maintenance of the Association Property.

So long as the Sponsor has Homes within Victoria Woods Phase IV to which title has not transferred, the Board of Directors may not exercise such rights as those set forth above in this Section 4.03, without the prior written consent of the Sponsor, or if required, by HUD and/or FHA.

Section 4.04. Rights of Sponsor With Respect to Association Property. The following easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon, and for the benefit of, the Association, the Owners, the Sponsor and their successors and assigns:

- a. With respect to the Property, the Sponsor shall have the right, until the completion of construction, marketing and sale of all Homes within Victoria Woods Phase IV, provided the rights of the Owners are not substantially and materially restricted (except for temporary inconvenience):
- (1) 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 necessarily limited to sewer, water, electric, telephone, drainage and cable television, to serve any property set forth in Schedule A of this Declaration.
  - (2) to connect with and make use of utility lines, wires, pipes, conduits, and related facilities located on the Property for the benefit of any property set forth in Schedule A of this Declaration;
  - (3) to use the Property for ingress and egress and for the storage of building materials;
  - (4) to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of the Property;
  - (5) to maintain a construction office on the Property;
  - (6) to determine the grading, elevation, and design (including reversal of the building layout and number of floors) of the Home to fit into the general pattern of the development, together with the right to modify interior layout to suit individual purchasers, provided such modifications do not materially affect the Property, to change the configuration to include type and number of Homes within a Building, providing the Building shall remain compatible with existing Buildings and to alter location on the site if the grade and/or contour of the land so requires; and

- (7) to grant to itself or to others such easements and rights-of-way as may be reasonable needed for the orderly development of the other property, even if such property should not be added to the scope of this Declaration.
- b. With respect to its exercise of the above rights, the Sponsor agrees: (i) to repair any damages resulting from construction within a reasonable time after the completion of development or when such rights are no longer needed by the Sponsor, whichever first occurs; and (ii) until development has been completed, to hold the Association harmless from all liabilities which are directly caused by the Sponsor's exercise of its rights hereunder.
- c. Notwithstanding anything to the contrary, this Section 4.04 shall not be amended without prior written consent of the Sponsor so long as the Sponsor has any Homes within Victoria Woods Phase IV to which title has not transferred.

#### Section 4.05. Common Utility and Conduit Easement

- a. All pipes, wires, conduits and public utility lines and cable television lines located within any Home shall be owned by the Owner of such Home. Every Owner shall have an easement in common with the Owners of other Homes to maintain and use all pipes, wires, conduits, drainage areas, public utility lines and cable television lines located within other Homes or on the Property and servicing such Owner's Home. Each Home shall be subject to an easement in favor of the Owners of other Homes to maintain and use the pipes, wires, conduits, drainage areas and public utility lines and cable television lines servicing, but not located on such other Home.
- b. The Association shall have the right of access to each Home for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas, public utility lines or cable television lines located within any Home and servicing any other Home. Such right shall be exercised at a reasonable time upon reasonable notice to the Owner, provided, however, that in an emergency such right may be exercised at any time and without notice. The cost of such repair, maintenance or replacement shall be funded from the Assessments, except that, if such repair, maintenance or replacement is occasioned by a negligent

or willful act or omission of an Owner, it shall rather be considered a special expense allocable to the Owner responsible and such cost shall be added to the Assessment of such Owner and, as part of that Assessment, shall constitute a lien on the Home of such Owner to secure the payment thereof.

- c. The Association shall have an easement for the placement, maintenance, repair and replacement of utility banks and telephone pedestals and over the exterior walls of Homes for the maintenance and repair of the exterior of the Homes.

**Section 4.06. Environmental Considerations.** In carrying out its responsibilities in enforcing the provisions of this Declaration, the Association and the Architectural Committee (as defined in Article IX hereof) shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any activities which could have adverse environmental impact or take affirmative action to improve the quality of the environment, and shall comply with all applicable laws, rules and regulations.

**Section 4.07. Easements Reserved to Sponsor for Benefit of Additional Property.**

- a. Easements are reserved to Sponsor over the Property covered by this Declaration for the benefit of any and all lands owned by the Sponsor, and its assigns, for the following purposes:
  - (1) ingress and egress over roadways; and
  - (2) use of and connection with utility lines and related facilities including but not limited to, telephone, water, electric, sewer and cable television. This easement shall not include the right to consume any water or electricity for which one (1) or more individual Owners are billed directly without the consent of the individual Owners affected.
- b. Upon connection of lines and/or facilities servicing such land area comprising any other property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands, if any.

Section 4.08. Easement to Owners for Maintenance of Air Conditioning Condensers. Each Owner shall have an easement over the Property for the maintenance, repair and replacement, as necessary, of air conditioning condensers, if any, located on the Property and servicing such Owner's Home. Each Owner will be responsible for the cost of maintenance, repair and replacement of the condenser servicing such Owner's Home, if any.

Section 4.09. 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 such property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article VIII of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceedings to all Mortgagees whose names appear on the books and 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 arbitrations statutes of the State of New York.

ARTICLE V

ASSESSMENT AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Creation of the Lien. The Sponsor, for each Home owned by it within the Property, hereby covenants, and each Owner of a Home by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- a. Annual Assessments of charges for the maintenance and operation of the Association Property, including utility lines servicing two (2) or more Homes (whether or not on the Property), private access roads, and landscaped areas located within the bounds of The Victoria Woods Homeowners' Association Phase IV, Inc. Property ("Maintenance Assessments"); and
- b. Special assessments for capital improvements ("Special Assessments"); and

- c. Special assessments that may become necessary as a result of a casualty loss of Association Property caused by nature, such as an ice storm or extraordinary wind, snow and/or rain storm, not otherwise covered by insurance and creating a budget deficit for the fiscal year.

The Maintenance Assessments and the Special Assessments together are hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Except to the extent prohibited by law, the Board of Directors, on behalf of all Owners, shall have a lien on each Home for unpaid Assessments, with interest thereon, assessed against such Home, subject to foreclosure.

**Section 5.02. Basis for Assessment.** The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Owner at least thirty (30) days prior to assessing the Owners thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board.

The total annual requirements and any supplemental requirements for the operation of the Association, as set forth in Schedule A of the Offering Plan (the "Association Expenses"), shall be allocated among, assessed to and paid by the Owners. Each Owner shall pay an equal portion of said requirements. However, the Sponsor's obligation for such Assessments on Unsold Homes subject to this Declaration shall be limited to insurance and reserves for each Unsold Home and the difference between the actual operation costs of the Association and the Assessments levied on Owners who have closed title on their Home. In no event, however, will the Sponsor be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying Assessments on each Unsold Home. The sum due the Association from each Owner shall constitute an Assessment of the Board of Directors.

**Section 5.03 Purpose of Assessment.** The purpose of the Assessments shall be to fund the maintenance, repair, replacement and improvement of the Property brought under the scope of this Declaration, including, but not necessarily limited to:

- a. The payment of taxes on the Association Property, if any;

- b. Any utility services to the Association Property which may be commonly metered and/or billed;
- c. All casualty, liability and other insurance obtained pursuant to Article VIII of this Declaration covering the Association Property, the Homes for full replacement cost and the Association's officers, directors, members and employees, if any;
- d. The facilities included in Section 6.01 hereof (except those excluded by such Section of any other Section hereof);
- e. The cost of labor, equipment, materials, management and supervision thereof;
- f. Accounting and record keeping of all Association financial transactions and annual financial statements and income tax reporting;
- g. Legal, architect, engineering and other professional fees and disbursements; and
- h. Such other needs as may arise and which the Board of Directors deems appropriate or desirable.

**Section 5.04. Date of Commencement and Notice of Assessments.**  
 The Assessments provided for herein shall commence on the day on which the first Home is conveyed by the Sponsor to the initial Purchaser. 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.

**Section 5.05 Change in the Basis of Assessments.**

- a. Other than as set forth in Section 5.02 above, the Association may change the basis of determining the Maintenance Assessments by obtaining the written consent of Owners by an affirmative vote of not less than sixty seven percent (67%) of all Authorized Votes, excluding the Sponsor, except that so long as the Sponsor has any Homes in Victoria Woods Phase IV to which title has not transferred, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to Unsold Homes shall require the specific prior written consent of the Sponsor. No such change shall be made if First Mortgagees whose names appear on the records of the Association, of one-third (1/3rd) or more of the Homes advise the Association in writing, prior to the date or initial date set for voting



on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. Written notice shall be sent at least ten (10) days and not more than fifty (50) days in advance of the date or initial date set for voting thereon to all Owners and First Mortgagees of Homes whose names appear on the records of the Association. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Ontario County Clerk.

- b. Any change in the basis of Assessments shall be equitable and nondiscriminatory.

**Section 5.06. Special Assessments for Capital Improvements.** In addition to the annual Maintenance Assessment, the Association may levy a Special Assessment, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction, replacement or repair of a capital nature to the Association Property, including the necessary fixtures and personal property related thereto. For any Special Assessment for the construction (rather than reconstruction or replacement) of any capital improvement, or for any Special Assessment amounting to more than twenty-five percent (25%) of the then current amount of annual Maintenance Assessments, the consent of Owners by an affirmative vote of sixty seven percent (67%) of the Authorized Votes cast in person or by proxy at a meeting duly called for this purpose, must be obtained, except when such a Special Assessment is necessary to cure an emergency condition as set forth in Section 5.07 below. Written notice of such meeting shall be sent to all Owners not less than ten (10) days nor more than fifty 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 thirty (30) days prior to the first such due date.

**Section 5.07. Special Assessments for Emergency Conditions or for Loss Due to Casualty.** In addition to the annual Maintenance Assessments, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of repairs or replacement of Association Property or budget deficit resulting from such emergency, including without limitation, the construction, reconstruction, replacement or repair of Association Property, including the necessary fixtures and personal property related thereto, resulting from a casualty caused by nature, such as an ice storm or extraordinary wind, snow and/or rain storms not otherwise covered by insurance. Any such Special Assessment shall not require the consent of Owners. The Board shall establish

one (1) or more due dates for each payment or partial payment of such Special Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date. The Sponsor will pay its proportionate share based on the number of Homes to which title has not transferred.

**Section 5.08. Assessments: Personal Obligation of the Owner and Lien on the Home.** The Assessments shall be paid when due. All sums assessed by the Board of Directors, but unpaid, together with any accelerated installments, late charges in the amount of ten dollars (\$10) per month and fees for violations of Rules and Regulations as may be established by the By-Laws and interest thereon at such rate as may be fixed by the Board of Directors, from time to time, (such rate not to exceed the maximum rate of interest then permitted by law) shall be the personal obligation of Owner and shall constitute a lien upon the Owner's Home prior to all other liens except: (i) tax or assessment liens on the Home by the taxing subdivision of any governmental authority, including but not limited to state, county, city, town and school district taxing agencies; and (ii) all sums unpaid on any First Mortgage of record encumbering any Home.

Assessments shall be levied on an annual basis and shall be due and payable on a monthly basis on the first day of each month unless the Board of Directors establishes other periods of payment, except that, if any installment of Assessments due is not paid within thirty (30) days from the date due, the Board of Directors may accelerate the remaining installments, if any, upon notice thereof to the delinquent Owner.

All costs and expenses incurred in collection of past due Assessments, including, but not necessarily limited to, reasonable attorneys' fees, late charges and interest, shall be added to and shall constitute an Assessment payable by the delinquent Owner.

**Section 5.09. Foreclosure of Lien for Assessments.** The lien for past due Assessments may be foreclosed by the Association in accordance with the laws of the State of New York, in like manner as a mortgage on real property, and the Association shall also have the right to recover all costs incurred by it in pursuing such right, including, but not necessarily limited to, accelerated payments, if any, late charges, interest and reasonable attorneys' fees. In the even the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments, the unpaid balance shall be charged equally to all Owners. The Purchaser of a Home at a foreclosure sale of a First Mortgage, their successors or assigns, shall not be liable for Assessments unpaid up to the date such foreclosure sale or conveyance. Nothing contained in this Section with regard to the right of the Association to enforce its lien by foreclosure shall prohibit the Association from obtaining a money judgment against the Owner or Owners and issuing execution for a sheriff's sale.

**Section 5.10. Notice of Default.** The Board of Directors, when giving notice to a Owner of a default in paying Assessments, may, at its option, or shall, at the request of a Mortgagee, send a copy of such notice to each such Owner's Mortgagee whose name and address appears on the records of the Association. The Mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments at any time prior to the time title is conveyed pursuant to Section 5.09 above.

**Section 5.11. No Exemption or Waiver of Assessments.** Every Owner shall pay the Assessments assessed against him when due and no Owner may exempt himself from liability for the payment of Assessments so assessed against him by waiver of the use or enjoyment of any of the Property or by the abandonment of his Home. However, no Owner shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him of such Home made in accordance with the provisions of this Declaration and the By-Laws. An Owner may, by conveying his Home to the Board of Directors on behalf of all other Owners, exempt himself from Assessments thereafter accruing.

**Section 5.12. Grantee to be Liable with Grantor for Unpaid Assessments.** In any conveyance of a Home either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Home shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to receive from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Board of Directors setting forth the unpaid Assessments against the Grantor and the Grantee shall not be liable for, nor shall the Home conveyed, be subject to a lien for any unpaid Assessments against the Grantor in excess of the amount therein set forth. "Grantee" as used herein shall not include either the holder of a mortgage of record or a purchaser of a Home at a foreclosure sale.

**Section 5.13. Exempt Property.** Property subject to the Declaration shall be exempt from Assessment Charges and liens created herein, to the extent of any easements or other interest therein dedicated and accepted by local public authority and devoted to public use.

Section 5.14. 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 Assessments or otherwise, and may carry forward as surplus any balances remaining. The Association, also, shall not be obligated to apply any such surpluses to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from the 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 more efficient effectuation of the purposes of the Association.

Section 5.15. Assessment Certificates. Upon written request of an Owner, Mortgagee, lessee or title insurer of a Home, (or any prospective purchaser, Mortgagee, lessee, or title insurer of such Home), or the agent or agents of any of the foregoing, the Board of Directors, the manager or the Managing Agent, shall, within fifteen (15) days of receipt of such written request, issue a certificate in writing, signed by an Officer or designee of the Board of Directors, setting forth with respect to such Home, as of the date of such certificate: (i) whether the Assessments due have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for Special Assessments or for the cost of extinguishing a violation of this Declaration, the By-Laws and/or Rules or Regulations.

A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide Owner, Purchaser, Mortgagee, lessee of, or title insurer of, the Home with respect to which such certificate has been issued.

## ARTICLE VI

### MAINTENANCE BY THE ASSOCIATION

#### Section 6.01. Repairs and Maintenance by the Association.

- a. Except as specifically otherwise provided in this Section 6.01, all maintenance, repair and replacements of the exterior of the Homes and improvements on the Association Property, the maintenance of all access roads, driveways, lighting on the access roads and landscaped areas up to the foundation of each Home, and replacement of identification or directional signs, shall be the responsibility of, and an expense of the Association.

Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing more than one (1) Home, and for which a utility company or other entity (such as cable television) is not responsible, whether or not such lines and facilities are on the Property shall also be the responsibility of, and an expense of, the Association.

- b. The Association shall be responsible for the maintenance of all shrubbery and other plantings installed by, or at the direction of, the Sponsor, the Board of Directors or the Architectural Committee, but not for shrubbery or other plantings installed by, or at the direction of any Owner. The Association shall not be responsible for any area adjacent to any Home modified by such Home's Owner or obstructed by furniture, grills or other obstacles preventing the continuous cutting of the grass or access thereto.
- c. With respect to the Homes, the Association shall repair and replace the Home exterior (except for doors), including, but not limited to, siding, gutters and downspouts, if any, and roofs; paint or stain the exterior trim and the exterior of windows and the exterior of doors which open from a Home; paint or stain, repair and replace patio fences; repair and replace driveways; and caulk the windows from the outside; but shall not repair or replace stoops, stairs or steps or window panes or screens, or repair or replace doors. However, upon notification to the Owner, the Association has the right, but not the duty, to repair or replace broken window panes or screens, or replace damaged doors, to preserve the appearance and value of the Property, the cost of which shall constitute an Assessment payable by such Owner and shall constitute a lien upon the Home for payment thereof.
- d. The Board of Directors of the Association may, upon the affirmative vote of not less than sixty seven percent (67%) of the entire Board of Directors, provide for additional maintenance with respect to the Homes or other improvements up to the foundations of the Homes to be undertaken by the Association.
- e. Subject to the provisions of Section 6.02 below, 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.

- a. Except as provided in Section 6.01 above, the Association shall not be responsible for: (i) the maintenance, repair or replacement of any Buildings, structures or landscaped areas not owned by the Association; or (ii) the maintenance, repair and replacements of any sewer lines, water lines or other utility lines not servicing two or more Homes or which are maintained, repaired and replaced by a municipality, public authority, special district, utility company or cable television company.
- b. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 herein, but which is occasioned by a negligent or willful act or omission of an Owner or the Sponsor, shall be made at the sole cost and expense of such Owner, his guests, lessees, licensees or invitees, or the Sponsor, its guests, lessee, licensees or invitees, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a Maintenance Assessment, but shall rather be considered a special expense allocable to the Owner's Home and such cost shall be added to that Owner's Assessments and, as part of those Assessments, shall constitute a lien on the Home, 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 providing 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 or staining 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) shall, upon reasonable notice to the Owner, have the right to enter upon any portion of the Property and into and upon any Home, at any reasonable hour and upon reasonable notice, to carry out its functions as provided for in this Declaration, except that, in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Home to make necessary repairs or to prevent damage to any other Home or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be undertaken by the Association at its expense.

## ARTICLE VII

### PARTY WALLS

**Section 7.01 Party Walls.** Each wall which is built as part of the original construction of the Homes, whether or not such wall is on the dividing line between two adjacent Homes, and which serves as the exterior limits of such Homes, shall be considered a Party Wall.

#### **Section 7.02. Maintenance of Party Walls.**

- a. Each Owner whose Home contains a Party Wall shall have an easement to enter upon the Home which shares the Party Wall to effect necessary repairs or maintenance of such Party Wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of a Party Wall. Subject to Section 7.03 and 7.05 hereof, 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) Owners whose Homes share such wall.
- b. In any event, where it is necessary for an Owner (or said Owner's authorized employees, contractors, or agents ) to enter upon a Home owned by another for purpose of maintaining, repairing or rebuilding a Party Wall, such right shall be exercised upon reasonable notice to the adjoining Owner, shall be limited to reasonable times and shall be exercised so as not to unreasonably impair the right of the adjacent Owner to the use and quiet enjoyment of said adjacent Home.

**Section 7.03. Exposure of Wall.** An 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 such elements, and the necessary repair resulting because of such act.

**Section 7.04. Materials Used.** If and when any Party Wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar material as the original wall.

Section 7.05. Destruction of the 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 either Home which used the wall may restore it. The Owner who undertakes such rebuilding shall be entitled to a contribution (equalling one half (1/2) the cost of such restoration) from the Owner owning the adjacent Home sharing such Wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of an 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 7.06. Party Wall Rights Run with the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of same, which are described in this Article, shall run with the land and shall bind heirs, successors and assigns of each Owner.

## ARTICLE VIII

### INSURANCE AND RECONSTRUCTION

Section 8.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain (i) fire and casualty insurance; (ii) liability insurance; (iii) Directors' and Officers' liability insurance (iv) fidelity bond; and (v) workers' compensation insurance, with coverages to be as follows:

a. Fire and Casualty.

- (1) The policy shall cover the interests of the Association, the Board of Directors and all Members and Mortgagees as their interest may appear. Coverage shall be for the full replacement cost (without deduction for depreciation) of all improvements on the Property, excluding the land and foundations, with a maximum deductible of \$1,000 under the "single entity" concept, i.e. covering the Homes as initially built and including the wall-to-wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings and all machinery servicing the Homes and common facilities, excluding personal property of the Members and occupants and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting, lighting fixtures, built-ins and wall coverings) made by present or prior Owner or occupant. Except for damage to Association Property, in which event the amount of



- 2 -

the deductible shall be an Assessment, each Owner shall be liable for the amount of the deductible for each occurrence as may be applicable for each occurrence as may be applicable to such Home owned. Each Owner shall be responsible for adequately insuring the interior of each Home owned (see Section 8.03 herein).

- (2) The policy shall have the following provisions, endorsements and coverages:
- (a) extended coverage, including debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage;
  - (b) inflation guard;
  - (c) coverage for loss of Assessments from Owners forced to vacate because of fire or other insured-against casualty, such coverage to be for actual loss up to at least \$100,000.00;
  - (d) waiver of any right to claim by way of subrogation against individual Owners and member of their households and families, the Association, the Officers and Directors of the Association, and the Managing Agent, if any for the Association.
  - (e) an exclusion from the "no other insurance" clause of individual Owner's policies so that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by Owners or Mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by Owners or Mortgagees.
  - (f) a provision that the policy cannot be canceled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control;
  - (g) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insurance carrier;

- (h) a provision that the policy may not be canceled, substantially modified, invalidated or suspended, without at least forty-five (45) days prior written notice to all of the insured, including all Mortgagees of Homes reported to the insurance carrier of its agent. The provisions for non-payment of premiums may provide for at least thirty (30) days prior written notice to the insured and such Mortgagees; and
  - (i) a provision that adjustment of loss shall be made by the Board of Directors and the insurance carrier.
- (3) The Board of Directors shall review the coverage with the agent at least annually to assure adequacy of coverage.
  - (4) Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal for the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance pursuant to this Section.
  - (5) Until the first meeting of the Board of Directors following the first annual meeting of the Members, the amount of fire insurance to be maintained shall be in at least the sum of \$65,000.00 per Home.
  - (6) Each Member and such Owner's known Mortgagee, if any, shall be 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 is renewed, a certificate evidencing proof of insurance coverage.
  - (7) No portion of the Property is located in a Flood Hazard Zone. However, if in the future any portion of the Property is determined to be located in an area subsequently identified by the Federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Homes and other insurable improvements on the Property or portion thereof located entirely or partially in the flood

hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program, or one hundred percent (100%) or the current replacement cost of all such Homes and other insurable property, whichever is greater.

- (8) The proceeds of all policies of physical damage insurance, if less than \$50,000 shall be payable to the Association, and if more than \$50,000, to an insurance trustee (as defined in Section 8.02 hereof) to be applied for the purpose of repairing, restoring or rebuilding, unless otherwise determined by the Owners pursuant to Section 8.02 of these By-Laws. This \$50,000 limitation shall increase automatically by eight percent (8%) each calendar year after the year in which these By-Laws are recorded and may be further raised or lowered from time to time upon approval of not less than sixty seven percent (67%) of the entire Board of Directors.
- (9) The policy shall contain the standard Mortgagee clause in favor of Mortgagees which shall provide that any loss shall be payable to a Mortgagee as its interest shall appear, subject, however, to the loss-payment provisions in favor of the Board of Directors. 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.

b. Liability.

- (1) The liability insurance shall cover the Directors and Officers of the Association, and all Owners, but not the liability of the Owners arising from occurrences within such Owner's Home. The policy shall include the following endorsements:
  - (a) comprehensive general liability (including liable, slander, false arrest and invasion of privacy;
  - (b) personal injury;
  - (c) medical payments;

- (d) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured;
  - (e) "severability of interest" precluding the insurer from denying coverage to a Owner because of negligent acts of the Association or any other Owner;
  - (f) contractual liability;
  - (g) water damage liability;
  - (h) hired and non-owned vehicle coverage;
  - (i) liability for the property of others;
  - (j) host liquor liability coverage with respect to events sponsored by the Association; and
  - (k) deletion of the normal products exclusion with respect to events sponsored by the Association.
- (2) 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 covering all claims for bodily injury and property damage arising out of a single occurrence.

c. Directors' and Officers' Liability

- (1) The Director's and Officers' liability insurance shall cover the "wrongful" acts of a Director or Officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors and any deductible provision shall apply only to each occurrence and not to each item of damage.
- (2) 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.

d. Fidelity Bond.

- (1) The fidelity bond shall cover all Directors, Officers and employees of the Association, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association at any given time, but in no event less than a sum equal to six months' aggregate assessments on all Homes, plus the reserves and other funds on hand. In the event a professional property manager is employed or retained by the Association, such professional property manager, serving the Association under a contract (not as an employee of the Association) shall maintain fidelity bond in the same amounts as the Association. The professional property manager (unless an employee of the Association) cannot be covered under the Association fidelity bond.
- (2) Until the first meeting of the Board of Directors elected by the Members, the coverage shall be \$50,000 for dishonest acts and \$50,000 for forgery.

e. Worker's Compensation. Workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person working on behalf of the Association, including the Directors and Officers of the Board of Directors.

f. Other.

- (1) 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.
- (2) The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Article VIII 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.
- (3) The deductible, if any, on any insurance policy purchased by the Board of Directors shall be the responsibility of the Owner owning the Home affected, except in the event of damage to Association Property, in which event it will be an Assessment. The Board of Directors of the Association may assess any deductible amount

necessitated by the gross negligence or 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 Home involved, shall constitute a personal obligation of such member and shall be collectible in same manner as Assessments under Article V of the Declaration.

**Section 8.02 Insurance Trustee.** The Insurance Trustee shall be any bank, trust company or law firm located in the State of New York, designated by the Board of Directors. All reasonable fees and reasonable disbursements of the Insurance Trustee shall be paid by the Board of Directors and shall constitute an Assessment of the Association. In the event the Insurance Trustee resigns or fails to qualify, the Board of Directors shall designate a new Insurance Trustee which shall be a bank, trust company or law firm located in the State of New York.

**Section 8.03. Restoration or Reconstruction After Fire or Other Casualty.**

- a. Any repair or restoration of damaged property shall be in substantial accordance with the plans and specifications of the damaged improves as originally built. Any proposed substantial deviation therefrom shall require: (i) a written consent of at least seventy five percent (75%) of the Authorized Votes; and (ii) must be in compliance with all governing agencies rules and regulations.
- b. In the event of any damage or destruction as hereinabove described, the Board of Directors shall promptly send written notification of the casualty to all Mortgagees as they appear on the books and records of the Association.
- c. If there shall have been a repair or restoration pursuant to the first paragraph of this section, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds shall be divided by the Board of Directors or the Insurance Trustee, as the case may be, among all the Owners, subject to the rights of holders of mortgages encumbering such Homes, in proportion to their respective common interests after first paying out of the share due each member such amounts as may be required to reduce unpaid liens on such Home in order of priority of such liens.

- d. If seventy-five percent (75%) or more of the Homes are destroyed or substantially damaged as determined by the Board of Directors and seventy-five (75%) or more of the Owners of the affected Homes do not duly and promptly resolve to proceed with repair and restoration, the Property shall be subject to an action for partition upon the suit of any Owner or lienor, as if owned in common, in which event, the net proceeds of sale, together with the net proceeds of insurance policies shall be held in escrow by the Board of Directors or the Insurance Trustee, as the case may be to be divided among all Owners, subject to the rights of Mortgagees, in proportion to their respective common interests after first applying the share of the net proceeds of such sale, otherwise payable to any Owner, to the payment of any liens on his Home, in the order of the priority of such liens.
- e. Wherever the words "promptly repair" are used, it shall mean repairs are to begin, weather permitting, not more than sixty (60) days from the date the Board of Directors or the Insurance Trustee, if there be one, notifies the Owners that it holds proceeds of insurance sufficient to pay the estimated costs of such work; or not more than ninety (90) days after the Board of Directors or the Insurance Trustee, if there be one, notifies the Owners that such funds are sufficient to pay said estimated costs and advises them of the amount of the required bonds, if any. In the event there is no Insurance Trustee, such phrase shall mean not more than sixty (60) days from the date of receipt of insurance funds on account of such damage or destruction. Wherever the phrase "promptly resolve" is used, it shall also mean not more than sixty (60) days from the date of receipt of said insurance funds, providing that if new or revised permits from a governmental authority are required, a reasonable time is allowed to procure such permits.
- f. Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damages improvements as originally built. Any proposed substantial deviation therefrom shall require: (i) a written consent of at least fifty one percent (51%) of First Mortgagees of all Homes affected listed in the records of the Association; and (ii) written consent of sixty seven percent (67%) of the Authorized Votes for the Homes affected.

**Section 8.04. Insurance Carried by Owners.** Each Owner shall, at such Owner's expense, obtain adequate insurance covering fixtures, installations or additions comprising a part of the Home within the unfinished interior surfaces of the perimeter walls, floors and ceilings of such Home, not initially installed, or replacements thereof, or installed by or at the expense of the Owner, naming the Association as an additional insured on the policy and provide the Association evidence of such coverage upon the anniversary of such policy. Each Owner has the right, at such Owner's sole expense, to obtain for such Owner's benefit: (i) fire, casualty and theft coverage for the Owner's personal property; and (ii) such Owner's personal liability for occurrences within such Owner's Home.

All such policies shall contain waivers of subrogation, if available, and 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.

**Section 8.05. Actions Which May Increase Insurance Rates Prohibited.** Under no circumstances shall an Owner permit or suffer anything to be done or left in such Owner's Home, garage, if there be one, or storage area which will increase insurance rates on such Home or on any other Home or on the Association Property. The penalty for violation shall be an Assessment against equal to the increased rate(s).

## ARTICLE IX

### ARCHITECTURAL CONTROL

**Section 9.01. Control by Association.** Except for Construction by the Sponsor, upon Transfer of Control, enforcement of this Declaration pertaining to the appearance of the Association Property and control over any change in use or any improvements, additions, modifications or alterations to the completed Association Property or to the exterior of any Home shall be the responsibility of the Association acting through the Architectural Committee as provided in Section 9.02 below.

**Section 9.02. Composition and Function of Architectural Committee.**

- a. The Architectural Committee shall be a permanent committee of the Association. It shall serve in an advisory capacity to the Board of Directors, with final approvals and/or enforcement resting solely with the Board of Directors. However, the findings of the Architectural Committee shall be binding on the Board unless there are unusual or extenuating circumstances to cause the Board to find otherwise.



- b. The Committee shall be composed of three (3) or more persons (as determined by the Board of Directors), who shall be appointed for terms of two (2) years, subject to removal, with or without cause, by the affirmative vote of seventy five percent (75%) of the entire Board of Directors and/or the Sponsor.
- c. The Committee shall advise the Board of Directors on the following:
  - (1) All proposed additions, modifications or alterations to the Association Property;
  - (2) All site improvements, including, but not limited to, lawns, landscaping, walks, roadways, fencing, site lighting, additional amenities, design, any changes, including color, to the exterior of the Homes and/or garages, location, elevation and materials thereof; and
  - (3) Perform other such functions as may be assigned by the Board of Directors from time to time.

**Section 9.03. Submission of Plans to Architectural Committee.**  
After transfer of title to any Home or any portion of the Association Property by the Sponsor, no improvement, addition, modification or alteration shall be made on or to any portion of the Association Property or to the improvements located thereon, nor to the exterior of any Home, unless and until a plan or plans thereof, in such form and detail as the Architectural Committee requires, shall have been submitted to and reviewed by the Architectural Committee and approved by the Board of Directors in writing. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval, including any fees and reasonable fees which may be charged by architects, engineers or attorneys retained by the Architectural Committee in connection with the review of such plans.

**Section 9.04. Recommendations of the Architectural Committee for Approval of Plans.**

- a. Upon recommendation to the Board of Directors for approval or qualified approval by the Architectural Committee of any plans submitted pursuant to this Article, the Board of Directors shall vote upon such recommendations and advise the Owner, in writing, of its decision.

Upon a vote by the Board for approval, or qualified approval, the notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved in the Association's permanent records (together with such qualifications or conditions, if any) and, if requested, provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval.

- b. Once plans have been approved they may not be revoked unless the Board of Directors determines that: (i) the work currently being performed is not in substantial conformity with the approved plans; or (ii) adequate insurance is not being maintained by the applicant; or (iii) appropriate permits have not been obtained, maintained and/or complied with; or (iv) a period of six (6) months has passed from the date of approval of the plans and the alterations, modifications or improvements have not commenced.

**Section 9.05. Written Notification of Disapproval.** In any case where the Board of Directors disapproves the plans submitted, the Board of Directors 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 9.04 hereof. In any such case, the Architectural Committee shall, if requested and if practicable, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Plans could be disapproved, including without limitation for:

- a. failure of such plans to comply with Covenants, Conditions and Restrictions contained in the Declaration;
- b. failure to include information in such plans as reasonably requested by the Architectural Committee;
- c. objection to the site plan, exterior design, appearance of materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, and style of architecture;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses within the Property;
- e. failure of the applicant to furnish to the Architectural Committee proof satisfactory to the Committee that insurance in the form and amount satisfactory to the Architectural Committee has been obtained and will be maintained for the appropriate period of time by the applicant;

- f. failure of proposed improvements to comply with zoning, building, health or other governmental laws, codes, ordinances, rules and regulations; or
- g. any other matter which, in the reasonable judgment of the Architectural Committee, would render the proposed improvement use or uses inconsistent or incompatible with the general plan of improvement of the Property, including any possible adverse impact on the use and enjoyment of the Property by any other Owner.

**Section 9.06. Failure of Committee to Act.** If any applicant has not received notice from the Board of Directors approving (including qualified approval) or disapproving any plans within sixty (60) days after submission pursuant to Section 9.03 hereof, said applicant may notify the Board in writing of a demand for a decision on the plans submitted. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board of Directors twenty (20) days after the date of receipt of such notice, if no decision is rendered by the Board within said twenty (20) day period.

**Section 9.07. Liability.** No action taken by the Architectural Committee or any member of a 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 Building or other portion of the Property. Neither the Association, the Board of Directors, the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval, 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, to defend, indemnify and hold harmless the Association, the Board of Directors and the Architectural Committee (or any officer, member of a subcommittee, employee or agent thereof) from any action, proceeding, suit or claim arising out of, or in connection with, such submission.

**Section 9.08. Architectural Compliance Certificate.** Upon written request of any Owner, Mortgagee, lessee, licensee or title insurer (or any prospective Owner, Mortgagee, lessee, licensee or title insurer) of a Home or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee shall, within fifteen (15) days, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Compliance Certificate") signed by a an officer of the Board of Directors, stating, as of the date of such Certificate, whether or not the Home or other portion of the Property, or any improvements thereon, violates any of the provisions of this Declaration, pertaining to exterior materials,

design or maintenance and describing such violations, if any. A reasonable charge, determined by the Board of Directors may be imposed for issuance of such Architectural Compliance Certificate. Any such Architectural Compliance Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein state.

**Section 9.09. Completion of Work by the Board of Directors.** In the event the Board of Directors deems it necessary to complete work previously commenced by an Owner, or to otherwise protect the appearance, value or structural integrity of the Home or the Property, the cost for the completion of such work shall become a binding personal obligation of the Owner and an additional Assessment payable by such Owner, which shall become a lien against his Home, subject to the provisions of Article V herein.

**Section 9.10. 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 the approval or disapproval of certain types of alterations, modifications or improvements to the Homes or other property, 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 right 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 this Declaration, the By-Laws or any applicable governmental law, code, ordinance, rule or regulation.

**Section 9.11. 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 Committee as long as the number and identify of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee and the Board of Directors. The approval or disapproval of plans by the staff members, 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 Committee. As provided in Section 9.03 hereof, the Architectural Committee may hire engineers, architects and other consultants reasonably necessary to perform its functions.

## ARTICLE X

### GENERAL COVENANTS AND RESTRICTIONS

**Section 10.01. Use of Homes.** Except as otherwise provided in this Declaration and the By-Laws, the Homes shall be used only for residential purposes and purposes incidental and accessory thereto. This shall not prohibit an Owner or occupant from maintaining an office within the Home, providing no extraordinary traffic results, there are no alterations or modifications to the exterior of the Home and no signs or other evidence of such office are displayed in any window, on the exterior of any Home or anywhere on the Property without prior written approval of the Board of Directors. However, prior to transfer of title by Sponsor to all of the Homes in Victoria Woods Phase IV, the Sponsor may use one (1) or more Homes or other portions of the Property for model Homes, a sales office and/or a construction office.

**Section 10.02. Garages and Garage Doors.** In accordance with the Town of Victor requirements, garages may be used for vehicular parking only and may not be modified for any other use. Occupants of Homes shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage and shall cause the garage door to be kept in a closed position, except for ingress and egress, whenever possible.

**Section 10.03. Awnings, Blinds and Window Guards.** No awnings, blinds, shutters, window guards or other exterior window and/or door coverings, decorative or protective, may be installed without the prior written consent of the Architectural Committee. Shades. The side of all interior window coverings visible from the outside, shall be white or light beige.

**Section 10.04. Television and Radio Antennas.** No outside television or radio satellite dish or antenna for any other transmission or receiving purposes, shall be erected upon any Home or other portion of the Property without prior written consent by the Board of Directors.

**Section 10.05. Home and Occupant Identification.** Home Owners and/or tenants shall not be allowed to put their names or Home numbers in any area except the area so designated by the Board of Directors.

**Section 10.06. Mechanical Installations.** No machinery, refrigeration or heating devices, other than those originally provided with the Home, or similar replacements of same, or lighting fixture other than standard electric lights shall be installed or operated in or about any Home without prior written permission of the Board of Directors.

**Section 10.07. Pets.** Occupants of Homes shall have the right to have pets within the Homes, which must be kept leashed or otherwise restrained. However, the Board of Directors shall have the right to require any occupant, or any family member, or guest of any occupant, to remove any pet from the Home, or the Property, if, in the opinion of the Board of Directors, acting in its sole discretion, such pet is creating a nuisance or such pet possesses a threat to the safety or health of the occupants of other Homes, or that such pet is not kept under leash or restraint.

**Section 10.08. Parking.**

- a. **Recreational Vehicles.** No recreational vehicles, including but not limited to, all terrain vehicles, motor bikes, motorcycles, minibikes, snowmobiles, boat trailers, campers, golf carts or other such vehicles shall be permitted on the premises at any time for any reason except with the prior written consent of the Board of Directors. If such permission is granted, such vehicle shall be parked or stored only in such area as designated by the Board of Directors.
- b. **Oversized, Commercial and/or Unlicensed Vehicles.** Unless used in connection with the construction or sale of Homes by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the property:
  - (i) any vehicle which cannot fit into a garage of the size constructed by the Sponsor as a part of each Home;
  - (ii) commercial vehicles, unless garaged; or
  - (iii) unlicensed motor vehicles of any type, unless garaged.
- c. **Unauthorized Parking.** Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the Property or an occupant's driveway, shall be towed from the premises at the expense of the respective owner of such vehicle so parked. The Board of Directors, Managing Agent or authorized employee of either, may order such removal on behalf of the Board of Directors after giving reasonable notice to the owner of the vehicle to remove such unauthorized parked vehicle, if such owner can be readily

located, and shall not be liable for any costs, loss or damage of any nature whatsoever, directly or indirectly, resulting therefrom or connected therewith. Notice is not required prior to removing a vehicle blocking the roadway or impeding access by emergency vehicles.

- d. **Guest Parking.** Any additional vehicles belonging to guests or occupants, will be parked in such areas as designated for such purpose by the Board of Directors.

#### Section 10.09. Use of the Property.

- a. **Advertising and Signs.** Except for signs erected by or with the permission of the Sponsor in connection with the development, sale or lease of Homes, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Home, or other portion of the Property (including temporary signs advertising Homes for sale or rent) except with the consent of the Architectural Committee and/or the Board of Directors.
- b. **Protective Screening and Fences.** Any screen planting, fence enclosure or walls initially planted, installed or erected, on the Property shall not be removed or replaced by any Owner (other than the Sponsor) except with the prior written 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 any portion of the Property without the prior written permission of the Architectural Committee and the Board of Directors. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.
- c. **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 the established slope ratios, create erosion or sliding problems, or change the direction of flow drainage channels. The slope control areas of any Home or other portion of the

Property and all improvements thereon shall be maintained by the Association, except in those cases where a governmental agency or other public entity or utility company is responsible for such maintenance.

- d. **Trees and Other Natural Fences.** After the transfer by the Sponsor of title to a Home or other portion of the Property, no trees shall be removed from any portion of the Property, other than as may be necessary for the Sponsor to complete development, except with the prior written consent of the Architectural Committee and the Board of Directors. The Architectural Committee may adopt and promulgate rules and regulations, subject to the Board of Directors approval, regarding the preservation of trees and other natural resources upon the Property.
- e. **Outdoor Storage.** No storage of personal property shall be permitted outside the Home on the patio, balcony, (if any) or elsewhere on the Property, except for customary seasonal outdoor furniture, grills and the like.
- f. **Outdoor Repair Work.** No extensive work on any motor vehicles, boats, trailers or other equipment of any kind shall be permitted on the Property.
- g. **Refuse Disposal.** Except for building materials being used during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, refuse, or other waste material shall be kept, stored or allowed to accumulate 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 twenty-four (24) hours of a scheduled pick-up, at such place as so designated by the Architectural Committee or the Board of Directors to provide access to persons making such pick-up. The Architectural Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size and type of containers permitted and the manner of storage of the same on any portion of the Property.
- h. **Clotheslines.** No outdoor drying or airing of any clothing, bedding or other items shall be permitted on the Property. No clotheslines of any type shall be permitted on any Home or other portion of the Property.



- i. **Flammable Substances.** No flammable substances or articles deemed hazardous to life, limb or property shall be stored or permitted to be stored anywhere on the Property, in any Home or in any garage, except in an area so designated for such storage by the Board of Directors.
- j. **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 the Property) and no derrick or other structure designed for use in boring for oil or natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with prior written consent of the Board of Directors.
- k. **Noxious or Offensive Activities.** No noxious or offensive activity shall be carried out upon any portion of the Property, or in any Home, nor shall anything be done thereon that may be or become, a nuisance or annoyance to the residents or Home Owners thereof.
- l. **No Above Surface Utilities.** No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, 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 the Architectural Committee or Board of Directors.

**Section 10.10. General.**

- a. **Lease Restrictions.** An Owner shall not lease any portion of a Home (other than the entire Home), nor shall a Owner lease a Home to a lessee for an initial term of less than one (1) year. This restriction shall not preclude the Sponsor from permitting a Purchaser of a Home to occupy the Home being purchased prior to transfer of title to such Home.

- b. **Obligation to Maintain Utility Service.** Regardless of whether the Home is occupied, the Owner owning such Home shall be obligated to maintain sufficient utility service to prevent damage to other Homes or the Property. If such service is not maintained by the Owner, the Board of Directors shall have the right to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances and without notice in emergency situations. If such service must be arranged by the Board of Directors, any costs incurred shall be collectible in the same manner as Assessments and shall constitute a lien on the Home involved and a personal obligation of the Owner.
- c. **Interaction With the Board of Directors, Managing Agent and/or Employees of the Association.**
- (i) If an Owner, his family, guests, lessees, licensees or invitees, gives a key, whether to his Home or an automobile or other item of personal property, to an employee or Officer or Director of the Association or the Managing Agent, he does so at his own risk, and neither the Board of Directors nor the Managing Agent nor the employee of either shall be liable for injury, loss or damage indirectly resulting therefore or connected therewith.
- (ii) No employee of the Homeowners' Association or the Managing Agent shall be asked to perform any personal services for any Owner or Occupant or guest, except in an emergency, during hours such employee is employed by The Association or Managing Agent on behalf of The Association.

THE BOARD OF DIRECTORS MAY PROMULGATE SUCH OTHER RULES AND REGULATIONS, FROM TIME TO TIME, AS MAY BE NECESSARY TO PRESERVE AND ENHANCE THE VICTORIA WOODS HOMEOWNERS' ASSOCIATION PHASE IV, INC. PROPERTY.

ARTICLE XI

DURATION, ENFORCEMENT AND AMENDMENT  
OF DECLARATION

Section 11.01. Duration. This Declaration shall continue until such time as withdrawal of the Property from the provisions of this Declaration is authorized by a vote of at least eighty percent (80%) of the Authorized Votes. No such vote shall be effective without a written consent of the holders of First Mortgages on the Homes, if any. The Sponsor will not vote its interests appurtenant to Homes to which title has not transferred for such withdrawal unless at least eight percent (80%) of all other Authorized Voters so elect for such withdrawal, at which time Sponsor may vote as he sees fit.

Section 11.02. Declaration Runs with the Land. The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Sponsor and the Association (being hereby deemed the agent for all of the Owners), and by any 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 this Declaration, and monetary damages will not adequately compensate for violations of this Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

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

Each person or entity acquiring an interest in a Home or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for him and for his heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration, including personal responsibility for the payment of all charges 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 Home or other portion of the Property.

**Section 11.03. No Waiver by Failure to Enforce.** The failure of any beneficiary hereof to enforce any provision of this Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Sponsor, the Association (or any officer, director, employee, Owner, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of this Declaration.

**Section 11.04. Obligation and Lien for Cost of Enforcement by Association.** If the Board of Directors successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, the By-Laws or Rules and Regulations promulgated hereunder or thereunder, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) an Owner; or (ii) any family member, tenant, guest, or invitee of the tenant of the Owner; or (iii) a family member or guest or invitee of the tenant of the Owner; or (iv) a guest or invitee of any member of such Owner's family or any family member of the tenant of such Owner, such costs shall also be a lien upon the Home or other portion of the Property owned by such Owner, if any.

**Section 11.05. Default Notices to be Sent to Mortgagees.** Each Owner shall notify the Board of Directors of the name and address of the Mortgagee and any other information necessary to identify the mortgage and Mortgagee of any mortgage of such Owner's Home, if any. Upon receipt of a written request from any such Mortgagee, the Board of Directors 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 11.06. Amending. Subject to other provisions of this Declaration, this Declaration may be modified, altered or amended at any duly called meeting of Owners, provided that:

- a. Written notice of the meeting, containing a full statement of the proposed modifications, alteration or amendment has been sent to all Owners and all holders of First Mortgages on Homes who have requested notification of any such proposed action, listed on the books and records of the Association, no less than ten (10) days nor more than fifty (50) days prior to the date of the meeting; and
- b. At least sixty-seven percent (67%) or more of the total Authorized Voters approve the change and not more than thirty four percent (34%) of the holders of First Mortgages on the Home, if any, advise the Association in writing, within thirty (30) days from the date of notice, that they are opposed to such proposed modification, alteration or amendment, which opposition must not be unreasonable; and
- c. Any action to terminate the legal status of the Association for reasons other than substantial destruction or condemnation of the Property, the eligible First Mortgagees representing at least sixty seven percent (67%) of the mortgaged Homes must agree; and
- c. An instrument evidencing the change is duly recorded in the Office of the Ontario County Clerk. Such instrument need not contain a written consent of the required number of Owners and First Mortgagees of Homes, but shall contain a certification by the Board of Directors that the consents required by this Section for such change have been received and files with the Board of Directors.

So long as the Sponsor has Home within Victoria Woods, Phase IV to which title has not transferred, the prior written consent of the Sponsor shall be required for any amendment which adversely affects a substantial interest or right of the Sponsor (as determined by the Sponsor in its sole judgment) to become effective, which consent may not be unreasonably withheld.

**Section 11.07. Conflict with Municipal Laws.** The 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 11.08. Attorney's Fees.** Any party to a proceeding who succeeds in enforcing the Covenants, Conditions and Restrictions, or enjoining the violation of any Covenants, Conditions and Restrictions against an Owner (or such Owner's lessee, licensee or invitee), shall be entitled to reasonable attorney's fees against such Owner.

**Section 11.09. 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 11.10. Inspection and Entry Rights.** Any agent of the Board of Directors (or the Architectural Committee) may, at any reasonable time or times, upon not less than twenty-four (24) hours notice to the Owner or occupant, enter upon a Home 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 this Declaration, the By-Laws or Rules and Regulations issued pursuant hereto. Neither the Board of Directors nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 11.11. Owner Responsible for Tenants.** Any lease of a Home shall provide that the tenant shall comply in all respects with the terms of the Declaration, the By-Laws and Rules and Regulations, if any of the Association. If a tenant is in violation of this Declaration, the By-Laws or Rules and Regulations, the Board of Directors shall so notify the Owner owning such Home which such tenant occupies, in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced by the Owner against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies which it may have pursuant to this Declaration.

## ARTICLE XII

## COMPLIANCE AND ARBITRATION

Section 12.01. Compliance with Rules of the Association Pursuant to this Declaration and the By-Laws. Should any Owner, members of such Owner's family, his employees, guests, lessees, licensees or other invitees fail to comply with any of the provisions of the Declaration, the By-Laws, the Certificate of Incorporation or the Rules and Regulations, and as such may be amended from time to time, the following procedures may be followed to obtain compliance:

- a. A committee of three (3) people shall be appointed by the Board of Directors and designated the Compliance Committee to serve at the pleasure of the Board of Directors. The Compliance Committee may, initially, be the Board of Directors.
- b. The Compliance Committee shall first undertake to obtain compliance informally, by discussing the violation or violations with the violator, and seeking to obtain future compliance, or correction, of the ongoing violation or violations.
- c. Should this informal procedure prove unsatisfactory or not secure future compliance, the Compliance Committee shall then send a written notice to the violator, and if such person is not an Owner, to the Owner who brought such person onto the Property, notifying him of the claimed violation, requesting, as the case may require, either a correction of the violation, or an assurance that a similar violation will not occur in the future. Such notice shall establish a date for compliance.
- d. Should such notice obtain the requested compliance, that will dispose of the matter, unless the same or a similar violation thereafter reoccurs.
- e. Should such notice not obtain the requested compliance within the time requested, the Compliance Committee shall then be authorized, at its discretion, to establish a monetary and/or non-monetary penalty, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar violations in the future by the same or any other person. Such fine shall become a binding personal obligation of the violator, if an Owner, or the Owner responsible for such violator. Failure to correct the condition or situation which leads to the first fine for a period of twenty (20) days after the initial fine becomes finally due and

payable, shall constitute a second offense. Notice of the imposition of such fine or fines shall be mailed to the violator and/or the Owner responsible for such violator, and shall be paid to the Association within ten (10) days from the date of such notice, unless the violator, if an Owner, or the Owner responsible for such violator, requests the right to arbitrate the matter, within ten (10) days, before the Arbitration Committee, as hereinafter set forth. Should the fine not be paid within the ten (10) days, or if a request to arbitrate is not received within the said ten (10) days, the amount of the fine shall be added to the Owner's Assessments on the first of the month following the termination of the ten (10) day period above set forth, and shall be a lien upon the Owner's Home.

- f. The Arbitration Committee shall consist of the President of the Board of Directors, as Chairman of the Committee, and two (2) other members who shall be appointed by the Board of Directors to serve at the pleasure of the Board.
- g. Should the violator, or the Owner responsible for the violator, request the right to arbitrate the imposition or extent of a fine, as above set forth, he shall do so in writing, directed to the Board of Directors, within the ten (10) days of his receipt of notice of the imposition of said fine. The Board of Directors shall promptly forward the same to the Arbitration Committee, which shall meet within twenty (20) days thereafter, on notice to the alleged violator, to hear and dispose of the matter. At such hearing, the alleged violator and/or the Owner responsible for such violator, and one (1) or more members of the Compliance Committee may be present and heard. A decision on the matter shall be made by the Arbitration Committee, by a majority vote, within ten (10) days following said hearing, and shall be promptly communicated to the alleged violator and/or the Owner responsible for such violator, in writing. If the decision of the Arbitration Committee is to uphold the determination of the Compliance Committee, the provision relating to the payment and enforcement thereof set forth in Subparagraph e. above shall apply. If their decision is in favor of the alleged violator, no fine will be imposed. The decision of the Arbitration Committee shall, to the extent permitted by law, be final and binding upon all parties.



- h. In the event the violator is a person other than an Owner, or member of such Owner's immediate family, copies of notices required to be given to the violator under this Declaration, the By-Laws or the Certificate of Incorporation shall also be given to the Owner of the Home responsible for such violator.

## ARTICLE XIII

### GENERAL

**Section 13.01. 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 13.02. Invalidly of Declaration.** The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

**Section 13.03. Gender.** The use of masculine gender herein shall be deemed to include the masculine, feminine or neuter and the use of the singular shall be deemed to include the plural whenever the context so requires.

**Section 13.04. Right Reserved to Impose Additional Protective Covenants.** The Sponsor reserves the right to record additional Covenants, Conditions and Restrictions affecting the Property prior to the conveyance of any Homes subject to this Declaration.

**Section 13.05. Notice.** All notices hereunder shall be in writing and, if required to be timely, shall be sent by certified mail, return receipt requested, or otherwise at least by prepaid first class mail, addressed, if to the Board of Directors, to the Office of the Board of Directors, and if to an Owner or Mortgagee, to the address of such Owner or Mortgagee as appears on the books of the Association, and if to the Sponsor, to the address of Sponsor as appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of this Declaration, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed the equivalent of such notice.

**Section 13.06. 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. Upon such assignment, the successor corporation shall have all the rights and be subject to all the duties of the 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 had been an original party and all references herein to the Board of Directors shall be deemed to refer to the Board of Directors of such successor corporation. Any such assignment shall be accepted by the successor corporation under a written agreement pursuant to which the successor corporation expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, the Covenants, Conditions and Restrictions 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 to take over the duties and responsibilities of the Association, such corporation to exist, subject to the conditions provided for herein, with respect to an assignment and delegation to a successor corporation.

**Section 13.07. Right of Association to Transfer Functions.** Unless otherwise specifically prohibited herein, or within the Certificate of Incorporation or the By-Laws of the Association, any and all functions of the Association shall be fully transferrable in whole or in part to any other homeowners' association, condominium or similar entity.

**Section 13.08. Right of a First Mortgagee to Make Payment of Charges.** First Mortgagees may (i) jointly or singly pay taxes or other charges that are in default and that may, or have become, charges against the Association Property, and (ii) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage for the Association Property in the event of lapse of policy.

First Mortgagees making such payments are due immediate reimbursement from the Association, corporation or trust.

IN WITNESS WHEREOF, the undersigned, being the Owner of real property subject to this Declaration, as amended, set their hands and seals the date stated below.

VICTORIA WOODS VILLAGE  
(a Joint Venture)

B & G INVESTMENTS, INC.

Dated:

BY:

\_\_\_\_\_, 1993

\_\_\_\_\_  
GINO BELACCA, President

STATE OF NEW YORK )  
                          ) ss:  
COUNTY OF ONTARIO )

On the \_\_\_\_\_ day of \_\_\_\_\_, 1993, before me personally appeared GINO BELACCA, to me known, who being by me duly sworn, did depose and say that he resides at 1166 Ridgcrest Crescent, Victor, New York 14564, that he is the President of B & G INVESTMENTS, INC., the corporation described in and which executed the foregoing Instrument; and he signed his name thereto by order of the Board of Directors of said Corporation.

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

WOODBROOKE DEVELOPMENT, INC.

Dated:

BY:

\_\_\_\_\_, 1993

\_\_\_\_\_  
JEAN LIGOZIO, President

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 1993, before me personally appeared JEAN LIGOZIO, to me known, who being by me duly sworn, did depose and say that she resides at 4 Strathallan Park, Rochester, New York 14607, that she is the President of WOODBROOKE DEVELOPMENT, INC., the corporation described in and which executed the foregoing Instrument; and she signed her name thereto by order of the Board of Directors of said Corporation.

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

CANSTATES REALTY, INC.

Dated:

BY:

\_\_\_\_\_, 1993

\_\_\_\_\_  
JAMES C. GRIFFITHS, President

PROVINCE OF ONTARIO )  
TORONTO, ONTARIO, CANADA)

On the \_\_\_\_\_ day of \_\_\_\_\_, 1993, before me personally appeared JAMES C. GRIFFITHS, to me known, who being by me duly sworn, did depose and say that he resides at 16 Chestnut Park Road, Toronto, Ontario, Canada M4W 1W6, that he is the President of CANSTATES REALTY, INC., the corporation described in and which executed the foregoing Instrument; and he signed his name thereto by order of the Board of Directors of said Corporation.

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

SCHEDULE A TO DECLARATION

LEGAL DESCRIPTION OF ENTIRE SITE

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Victor, County of Ontario and the State of New York, bounded and described as follows:

BEGINNING at a found iron pipe on the northerly line of New York State Route No. 98 (66 feet wide) on the division line between the Town of Victor and the Town of Farmington at the southeast corner of the Grantors (Liber 813 of Deeds, Page 242); thence

- 1.) North  $79^{\circ} 16' 59''$  West, along the northerly line of New York State Route No. 96 a distance of 420.31 feet to a point; thence
- 2.) North  $10^{\circ} 57' 40''$  East, along the easterly line of Heath Row (60 feet wide) a distance of 260.62 feet to the point of curvature; thence
- 3.) Along a curve to the left, having a radius of 180 feet, an arc length of 172.67 feet, a delta angle of  $54^{\circ} 57' 40''$ , a chord bearing of North  $16^{\circ} 31' 10''$  West, and a chord length of 166.12 feet to the point of tangency; thence
- 4.) North  $44^{\circ} 00' 00''$  West, along the northerly line of Heath Row a distance of 330.45 feet to the point of curvature; thence
- 5.) Along a curve to the left having a radius of 180 feet, an arc length of 87.87 feet, a delta angle of  $27^{\circ} 58' 07''$ , a chord bearing of North  $57^{\circ} 59' 03''$  West, and a chord length of 87 feet to the point of tangency; thence
- 6.) North  $10^{\circ} 40' 00''$  East, along Section No. 4, Phase 3, Victoria Woods a distance of 117.49 feet to a point; thence
- 7.) South  $79^{\circ} 20' 00''$  East and continuing along said Section No. 4 a distance of 179.26 feet to a point; thence
- 8.) North  $10^{\circ} 05' 17''$  East, and continuing along said Section No. 4 a distance of 57.17 feet to a point; thence
- 9.) South  $79^{\circ} 20' 00''$  East, and continuing along said Section No. 4 a distance of 650.00 feet to a point; thence South  $10^{\circ} 05' 17''$  West, along land now or formerly of L. Proia, Jr., A. Meloni and D. Proia a distance of 215.22 feet to a found iron pipe; thence

10.) South 09° 14' 59" West, along land now or formerly of J. Taddeo a distance of 591.17 feet to the true point of beginning; and containing 10.3292 acres, more or less, or 449,940 square feet of land.

## SCHEDULE B TO DECLARATION

## LEGAL DESCRIPTION OF ASSOCIATION PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Victor, County of Ontario and the State of New York, bounded and described as follows:

BEGINNING at a found iron pipe on the northerly line of New York State Route No. 98 (66 feet wide) on the division line between the Town of Victor and the Town of Farmington at the southeast corner of the Grantors (Liber 813 of Deeds, Page 242); thence

1.) North  $79^{\circ} 16' 59''$  West, along the northerly line of New York State Route No. 96 a distance of 420.31 feet to a point; thence

2.) North  $10^{\circ} 57' 40''$  East, along the easterly line of Heath Row (60 feet wide) a distance of 260.62 feet to the point of curvature; thence

3.) Along a curve to the left, having a radius of 180 feet, an arc length of 172.67 feet, a delta angle of  $54^{\circ} 57' 40''$ , a chord bearing of North  $16^{\circ} 31' 10''$  West, and a chord length of 166.12 feet to the point of tangency; thence

4.) North  $44^{\circ} 00' 00''$  West, along the northerly line of Heath Row a distance of 330.45 feet to the point of curvature; thence

5.) Along a curve to the left having a radius of 180 feet, an arc length of 87.87 feet, a delta angle of  $27^{\circ} 58' 07''$ , a chord bearing of North  $57^{\circ} 59' 03''$  West, and a chord length of 87 feet to the point of tangency; thence

6.) North  $10^{\circ} 40' 00''$  East, along Section No. 4, Phase 3, Victoria Woods a distance of 117.49 feet to a point; thence

7.) South  $79^{\circ} 20' 00''$  East and continuing along said Section No. 4 a distance of 179.26 feet to a point; thence

8.) North  $10^{\circ} 05' 17''$  East, and continuing along said Section No. 4 a distance of 57.17 feet to a point; thence

9.) South  $79^{\circ} 20' 00''$  East, and continuing along said Section No. 4 a distance of 650.00 feet to a point; thence South  $10^{\circ} 05' 17''$  West, along land now or formerly of L. Proia, Jr., A. Meloni and D. Proia a distance of 215.22 feet to a found iron pipe; thence

10.) South  $09^{\circ} 14' 59''$  West, along land now or formerly of J. Taddeo a distance of 591.17 feet to the true point of beginning; and containing 10.3292 acres, more or less, or 449,940 square feet of land, excepting therefrom Buildings No. 1 thru 13 as shown on the final site plan of Victoria Woods, Phase 4, drawn by Tonias Engineers, Map dated March 7, 1988, revised to July 14, 1988, Map No. 16503 as recorded in the Ontario County Clerk's Office.



## SCHEDULE C TO DECLARATION

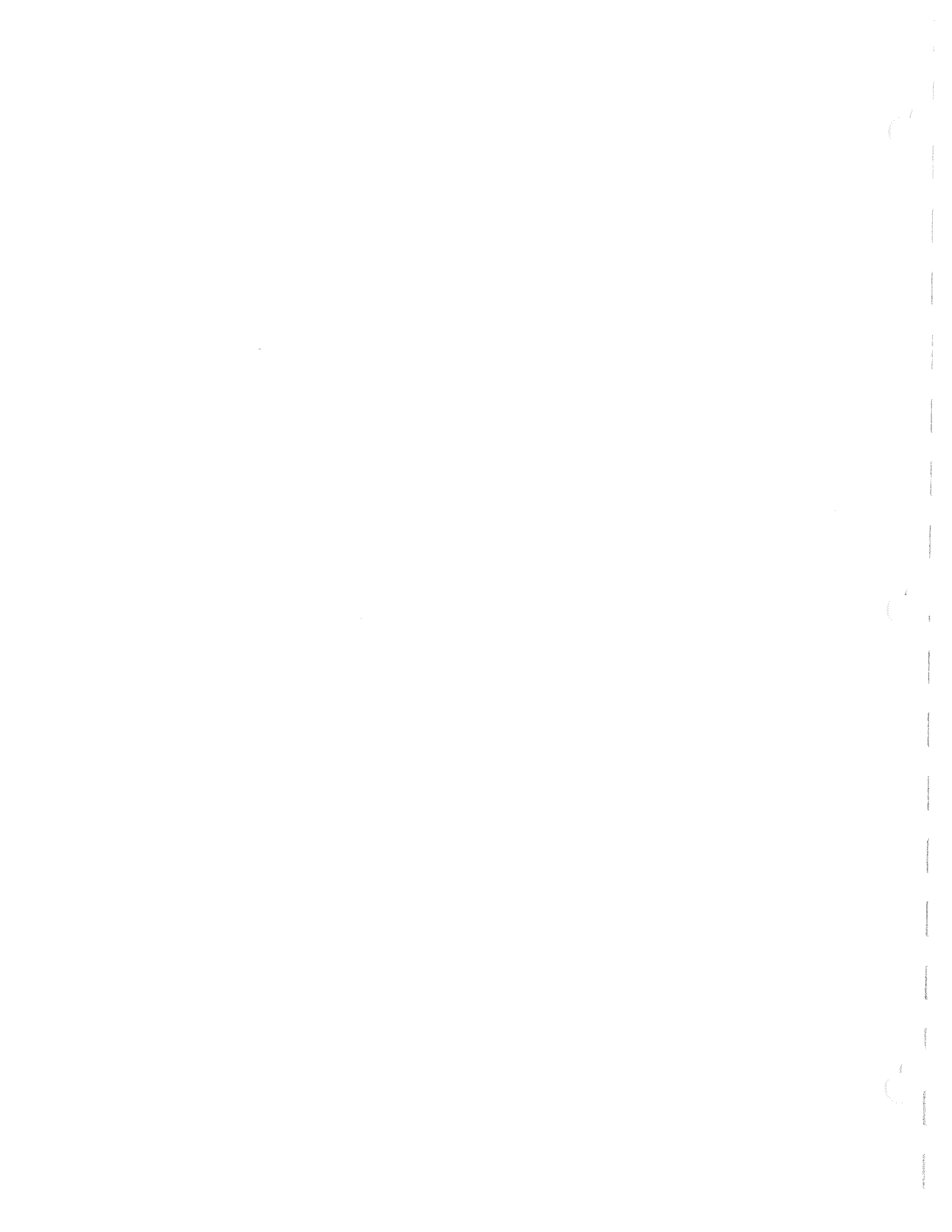
## LIENS, ENCUMBRANCES AND OTHER TITLE EXCEPTIONS

1. The terms, conditions, covenants, easements and provisions of the Declaration and By-Laws relating to the Association, include:
  - a. Each Home and the Association Property shall be subject to an easement for encroachments created by construction, settling and overhangs of the Homes or other improvements as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.
  - b. Each Owner shall have an easement in common with the Owners of other Homes to maintain and use all pipes, wires, conduits, drainage areas, public utility lines and cable television lines located within other Homes or on the Association Property and servicing such Owner's Home. Each Home shall be subject to an easement in favor of the Owners of other Homes to maintain and use the pipes, wires, conduits, drainage areas and public utility lines and cable television lines servicing, but not located in such other Home.
  - c. Each Owner shall have an easement over the Property for the maintenance, repair and replacement, as necessary, of air conditioning condensers, if any, located on Association Property and servicing such Owner's Home.
  - d. The Association shall have the right of access to each Home for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas, public utility lines or cable television lines located within any Home and servicing any other Home.
  - e. The Association shall have an easement over the exterior walls of the Homes for the placement, maintenance, repair and replacement of utility banks and telephone pedestals and for the maintenance and repair of the exterior of the Homes.

- f. Each Owner whose Home contains a Party Wall shall have an easement to enter upon the Home with which the Party Wall is shared to effect necessary repairs or maintenance of such Party Wall.
  - g. Easement and rights retained by Sponsor.
2. State of facts shown on a survey of the Land and Buildings.
  3. Zoning, regulations and ordinances, and any amendments thereto, provided that neither the Building in which the Home is located, nor its use as contemplated by the Plan, are prohibited thereby.
  4. New York State franchise taxes of any corporation in the chain of title, provided that the Rochester Abstract Co., or any other member of the New York State Board of Title Underwriters, is willing to insure that such taxes will not be collected out of the Home.
  5. Sewer, water, electric, plumbing, heating, telephone, cable television and other utility easements and consents, if any, then or thereafter recorded, including the right to maintain and operate lines, pipes, ducts, wires, cables conduits, connections, fittings, poles and distribution boxes in, over, under and upon the Property and the Buildings.
  6. Leases or tenancies, and service, maintenance and license agreements affecting the Homes or portions of the Association Property, if any.
  7. Water charges (but the Sponsor will be obligated to pay all such charges through the date preceding the date of the first closing of title to a Home).
  8. Future installments of special assessments for improvements payable to the Town, County and School District.
  9. Utility easements, rights of way and agreements granted to or made with the Rochester Telephone Company, Rochester Gas and Electric Corporation, the Town of Victor or any other utility company or municipality.
  10. The lien of a purchase money mortgage, if any, obtained by Purchase to finance the purchase of the Home.

11. Standard exceptions contained in the form of title insurance policy then issued by Rochester Abstract Co., or such other title insurance company insuring Purchaser's title to the Home.

ALL OF THE ABOVE SHALL SURVIVE DELIVERY OF THE DEED.



certificate of incorporation

CLERK OF THE COUNTY OF ONTARIO

I, Renato G. Vecchi, Clerk of the County of Ontario of the County Court of said County and of the Supreme Court, both being Courts of Record having a common seal.

Do hereby certify that I have compared this copy with the original filed or recorded in this office and that the same is a correct transcript thereof and the whole of said original.

In witness whereof, I have hereunto set my hand and affixed my seal of said County

and Courts on Jan 15 1993

Renato G. Vecchi

Ontario County Clerk

*Catherine S. Meehan  
as Dep. Clerk*

565773 - 3

C F B

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED FEB 03 1988

AMT. OF CHECK \$  
FILING FEE \$  
TAX \$  
COUNTY FEE \$  
COPY \$  
CERT \$  
REFUND \$  
SPEC HANDLE \$

60 C  
50 C  
M B

CERTIFICATE OF INCORPORATION  
OF

BY: *PG*  
*Ontario*  
*Type A*

VICTORIA WOODS HOMEOWNERS ASSOCIATION PHASE IV, INC.

**BILLED**

*W*

*Elliot Stern and Calabrese*

ONTARIO COUNTY CLERK'S OFFICE  
FILED  
MAR 9 1988

FEB 2 1988

108680

ELLIOT STERN AND CALABRESE  
ONE EAST MAIN ST.  
ROCHESTER, N.Y. 14614

STATE OF NEW YORK  
DEPARTMENT OF STATE  
CLERK OF STATE  
AS ORIGINAL  
PERSON

*CPR*  
*Type A*

MAR 5 1988

FEB 3 10 42 AM '88

FILED

C F S

C F S

OF

VICTORIA WOODS HOMEOWNERS ASSOCIATION PHASE IV, INC.

Under Section 402 of the Not-for-Profit Corporation Law  
The undersigned, being over the age of eighteen years,  
for the purpose of forming a corporation under Section 402 of  
the Not-for-Profit Corporation Law, does certify as follows:

1. NAME

The name of the corporation shall be

VICTORIA WOODS HOMEOWNERS ASSOCIATION PHASE IV, INC.

2. NON-PROFIT STATUS

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 except to the extent  
permitted under the Not-for-Profit Corporation Law.

3. PURPOSES

a. The purposes for which the corporation is formed  
are to own, operate and maintain common areas and recreational  
facilities for the exclusive use of the homeowners of residences  
located in Phase IV of Victoria Woods Village located in the  
Town of Victor, Ontario County, New York.

b. To carry on any activities in furtherance of the  
foregoing.

4. TYPE

The corporation is a Type A corporation as defined

590773

590773

|

in Section 201 of the Not-for-Profit Corporation Law.

5. OFFICE

The office of the corporation is to be located in the  
County of Ontario, State of New York.

6. PROCESS

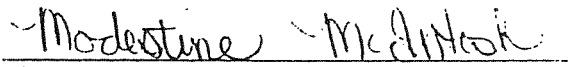
The Secretary of State is designated as agent of the  
corporation, upon whom process against it may be served and  
the post office to which the Secretary of State shall mail a  
copy of any process against it served upon him is: 6400 Victor-  
Manchester Road, Victor, New York 14564.

IN WITNESS WHEREOF, I have signed this Certificate of Incorporation  
this 19th day of January, 1988.



RICHARD A. CALABRESE  
One East Main Street  
Rochester, New York 14614

On this 19th day of January, 1988 before me personally  
appeared Richard A. Calabrese to me known and known to me to  
be the person described in and who executed the foregoing instrument,  
and acknowledged to me that he executed the same.

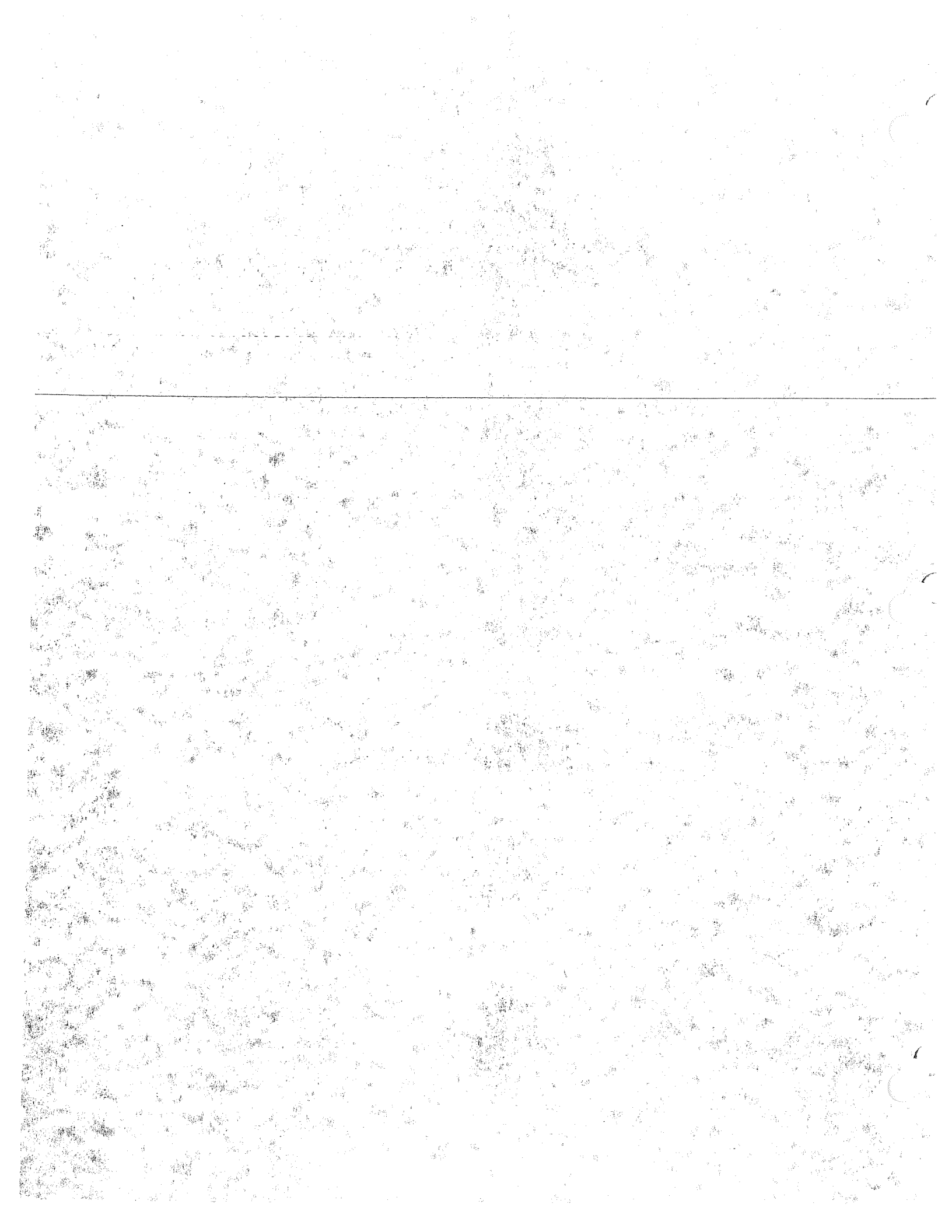
  
NOTARY PUBLIC

MODESTINE MC INTOSH  
Notary Public in the State of New York  
MONROE COUNTY #226480  
Commission Expires Aug. 31, 1989

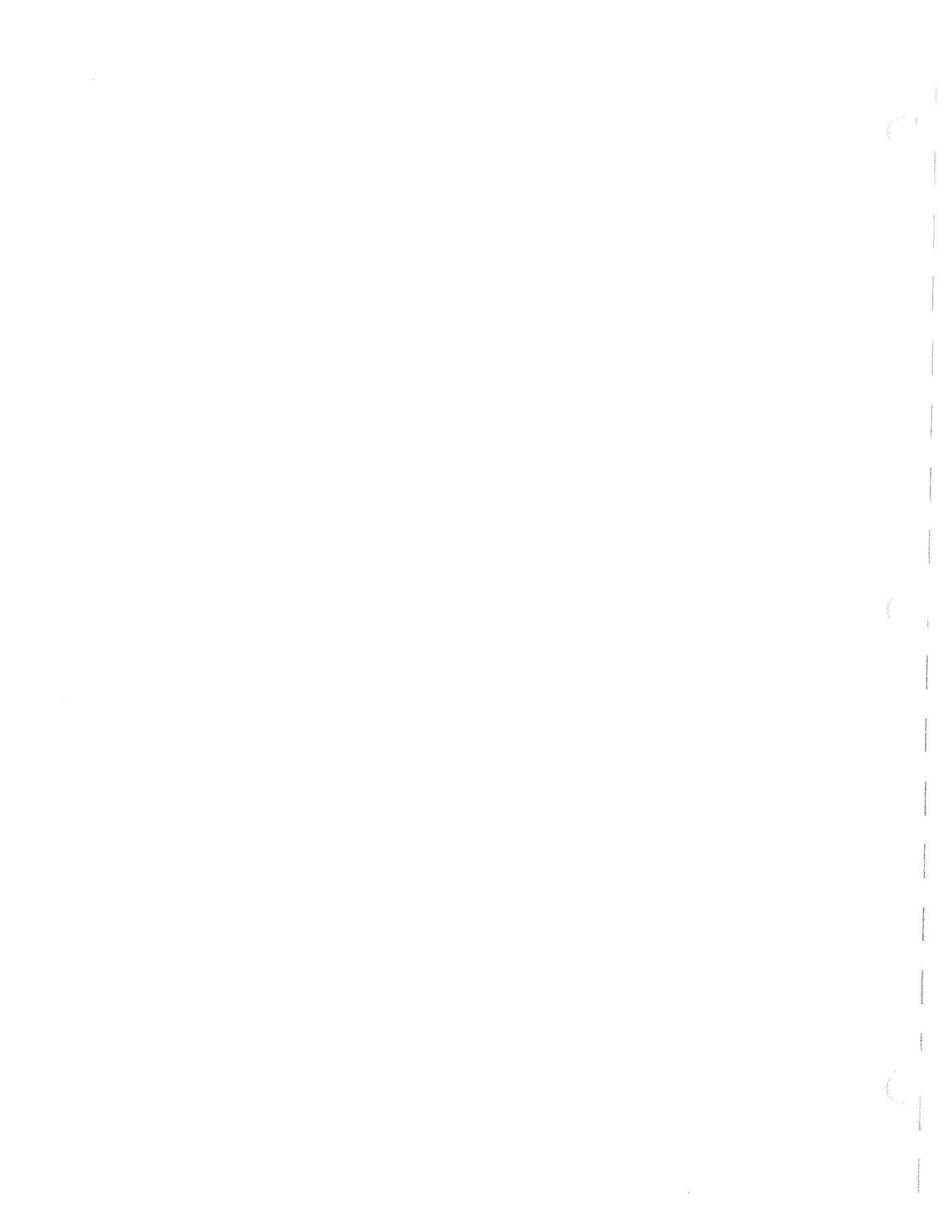
2







BY-LAWS  
OF  
THE HOMEOWNERS' ASSOCIATION  
OF  
VICTORIA WOODS PHASE IV, INC.



BY-LAWS  
OF  
THE HOMEOWNERS' ASSOCIATION OF VICTORIA WOODS PHASE IV, INC.

TABLE OF CONTENTS

	PAGE
ARTICLE I      NAME, LOCATION AND APPLICATION.....	1
Section 1.01    Name and Location.....	1
Section 1.02    Applicability of By-Laws.....	1
Section 1.03    Personal Application.....	1
ARTICLE II      DEFINITIONS.....	1
Section 2.01    Definitions.....	1
ARTICLE III     MEMBERS; VOTING RIGHTS.....	2
Section 3.01    Membership in the Association.....	2
Section 3.02    Voting.....	2
Section 3.03    Right to Vote.....	2
Section 3.04    Proxies.....	2
Section 3.05    Absentee Ballot.....	2
Section 3.06    Voting Regulations.....	3
Section 3.07    Sponsor's Right to Assign its Vote.....	3
ARTICLE IV      MEETING OF OWNERS.....	3
Section 4.01    Annual Meeting.....	3
Section 4.02    Special Meetings.....	3
Section 4.03    Notice of Meetings.....	4
Section 4.04    Waiver of Notice.....	4
Section 4.05    Waiver and Consent.....	4
Section 4.06    List of Owners.....	4
Section 4.07    Quorum.....	5
Section 4.08    Majority Vote.....	5
Section 4.09    Inspectors of Election.....	5
Section 4.10    Order of Business of Meetings.....	6
ARTICLE V      BOARD OF DIRECTORS.....	6
Section 5.01    Number and Qualifications of Directors...	6
Section 5.02    Nominations.....	7
Section 5.03    Election and Term of Office.....	7
Section 5.04    Vacancies.....	7
Section 5.05    Resignation.....	8
Section 5.06    Removal.....	8
Section 5.07    Compensation.....	8
Section 5.08    Regular Meetings.....	8
Section 5.09    Special Meetings.....	8
Section 5.10    Waiver of Notice.....	9
Section 5.11    Quorum and Voting.....	9
Section 5.12    Informal Action by Directors.....	9
Section 5.13    Powers and Duties.....	9
Section 5.14    Managing Agent and Manager.....	11
Section 5.15    Indemnification of Officers and Directors	12

## TABLE OF CONTENTS

	PAGE
ARTICLE VI OFFICERS.....	12
Section 6.01 Officers.....	12
Section 6.02 Election.....	12
Section 6.03 Term and Vacancies.....	13
Section 6.04 Resignation and Removal.....	13
Section 6.05 President.....	13
Section 6.06 Vice President.....	13
Section 6.07 Secretary.....	13
Section 6.08 Treasurer.....	13
Section 6.09 Other Officers.....	14
Section 6.10 Agreements, Contracts, Deeds, Checks and Other Instruments.....	14
Section 6.11 Compensation of Officers.....	14
ARTICLE VII COMMITTEES.....	14
Section 7.01 Committees of Directors.....	14
Section 7.02 Committees of Owners.....	14
Section 7.03 Rules.....	14
ARTICLE VIII FINANCE.....	15
Section 8.01 Checks.....	15
Section 8.02 Fiscal Year.....	15
Section 8.03 Annual Report.....	15
ARTICLE IX BOOKS, RECORDS, AND LEGAL DOCUMENTS.....	15
Section 9.01 Books and Records.....	15
Section 9.02 Separate Account for Capital Reserve Fund	16
ARTICLE X CORPORATE SEAL OPTIONAL.....	16
Section 10.01 Corporate Seal Optional.....	16
ARTICLE XI AMENDMENTS.....	16
Section 11.01 Amendments to By-Laws.....	16
ARTICLE XII RULES AND COMPLIANCE AND ARBITRATION.....	16
Section 12.01 Compliance with Rules of the Association Pursuant to These By-Laws.....	16
ARTICLE XIII MISCELLANEOUS.....	17
Section 13.01 Notices.....	17
Section 13.02 No Waiver for Failure to Enforce.....	17
Section 13.03 Gender.....	17
Section 13.04 Captions.....	17
Section 13.05 Severability.....	17
Section 13.06 Conflict with Certificate of Incorporation or with the Declaration....	17

107  
BY-LAWS

OF

THE HOMEOWNERS' ASSOCIATION OF VICTORIA WOODS  
PHASE IV, INC.

ARTICLE I

NAME, LOCATION AND APPLICATION

Section 1.01 Name and Location. The name of the not-for-profit corporation, organized pursuant to the New York State Not-for-Profit Corporation Law, is The Homeowners' Association of Victoria Woods Phase IV, Inc. The Certificate of Incorporation was filed in the Office of the Secretary of the State of New York on February 3, 1988. The Corporation (hereinafter referred to as the "Association") was organized for the purpose of taking title to the Property deeded, or to be deeded, to the Association and to be maintained by the Association, and administering the operations of the Association. The principal office of the Corporation shall be located in the Town of Victor, County of Ontario, and State of New York.

Section 1.02. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Association and to the use thereof.

Section 1.03. Personal Application. All present and future Owners, their guests, lessees, licensees, invitees and Mortgagees and any other persons having a right to use all or a portion of the Association Property by virtue of rights previously granted by deed and other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations (as hereinafter defined).

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. All capitalized terms herein, which are not separately defined or denominated herein, shall have the meanings given to those terms in Article I of the Declaration.

## ARTICLE III

## OWNERS; VOTING RIGHTS

**Section 3.01. Membership in the Association.** Membership in the Association is set forth in Article III, Section 3.02 of the Declaration.

**Section 3.02. Voting.** Each Owner (including the Sponsor if the Sponsor shall then own or hold title to one (1) or more Homes) shall be entitled to cast one (1) vote, regardless of the number of Homes owned, at all meetings of Owners. In the event any Home is owned by more than one person, the vote shall be cast by the person named in a "Voting Owner Certificate" signed by all Owners of such Home and filed with the Secretary of the Board of Directors. Such "Voting Owner Certificate" shall be valid until revoked by a subsequent Certificate. If such Certificate is not on file, the person first named on the deed by which title was obtained shall be the person considered the Voting Owner or Member.

A fiduciary shall be the Voting Member with respect to any Home owned in a fiduciary capacity and a Certificate naming such fiduciary shall be filed with the Secretary of the Board of Directors.

Voting rights of any Owner delinquent in the payment of his Assessments may not be suspended.

**Section 3.03. Right to Vote.** At any meeting of Owners, every Voting Member having the right to vote shall be entitled to vote in person, by mail or by a person designated by him to act as proxy on his behalf (who need not be an Owner).

**Section 3.04. Proxies.** All proxies shall be in writing and shall be filed with the Secretary of the Board of Directors prior to the meeting at which the same are to be used. Such proxies shall only be valid for such meeting or subsequent adjourned meetings thereof. A notation of such proxies shall be made in the minutes of the meeting.

**Section 3.05. Absentee Ballot.** All absentee ballots shall be in writing and shall be filed with the Secretary of the Board of Directors prior to the commencement of the meeting at which the same are to be used. Such absentee ballots shall be valid only for such meeting or subsequent adjourned meeting thereof. A notation of such absentee ballots shall be made in the minutes of the meeting.



**Section 3.06. Voting Regulations.** The Board of Directors 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 Owners in regard to proof of membership in the Association, evidence of the right to vote, the appointment and duties of inspectors of the election, registration of Owners 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 3.07. Sponsor's Right to Assign its Vote.** The Sponsor may, subject to a duly filed amendment to the Offering Plan for the sale of the Homes together with interests in the Association, 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. Memberships in the Association shall not otherwise be transferable or assignable.

#### ARTICLE IV

#### MEETING OF OWNERS

**Section 4.01. Annual Meeting.** Upon Transfer of title to all Homes in Victoria Woods Phase IV, or five (5) years from the transfer of title to the first Home, whichever shall first occur, the Sponsor shall notify all Owners that the first meeting shall be held within thirty (30) days thereafter. The annual meeting of the Owners thereafter shall be held on or about the same date each succeeding year, at a time to be determined by the Board of Directors and at such place convenient to the Board of Directors, adequate in size to accommodate all Owners. If such date shall be a legal holiday, the meeting shall be held on the first day following such date which is not a legal holiday. Failure to hold an annual meeting at the designated time shall not terminate the Association's existence or affect otherwise valid acts of the Association. At such meeting, the Owners shall elect the Board of Directors in accordance with the provisions of Section 5.03 hereof and may transact such other business as may properly come before them.

**Section 4.02. Special Meetings.** It shall be the duty of the President to call a Special Meeting of Owners if so directed by resolution of the Board of Directors or upon a petition presented to the Secretary, signed by not less than forty percent (40%) of the Authorized Voting Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 4.03. Notice of Meetings.** It shall be the duty of the Secretary to mail by first class, postage prepaid, a notice of each annual or special meeting of Owners at least ten (10) but not more than fifty (50) days prior to such meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each Owner of record, at such address as such Owner shall have designated by notice in writing to the Secretary, if other than his Home, and to all Mortgagees who have requested the same. Notwithstanding the foregoing, if the purpose of any meeting shall be to act upon a proposed amendment to the Declaration or to these By-Laws, the notice of meeting shall be mailed at least ten (10) but not more than fifty (50) days prior to such meeting. The mailing of a notice of meeting shall be in the manner provided in this Section and shall be considered service of notice.

**Section 4.04. Waiver of Notice.** Whenever under any provisions of these By-Laws, the Declaration, any agreement or instrument, or law, the Association or the Board of Directors or any committee is authorized to take any action after notice to any person, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed, the person entitled to such notice or entitled to participate in the action to be taken, or in the case of an Owner, by his duly authorized attorney-in-fact, submit a signed waiver of notice of such requirement. The attendance of an Owner at a meeting, in person or by proxy, without protesting prior to the commencement of the meeting the lack of notice of such meeting, shall also constitute a waiver of notice by such Owner.

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

**Section 4.06. List of Owners.** A list of Voting Members and all Owners as of a request date, certified by the corporate officer responsible for its preparation, shall be produced at any meeting of Owners upon the request thereat, or prior thereto, of any Owner. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of Owners to be produced as evidence of the right of persons challenged to vote at such meeting. All Voting Members who appear from such list to be Owners entitled to vote thereat, may vote at such meeting.

100

Section 4.07. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy or by mail ballot of Voting Owners having fifty-one percent (51%) of the total Authorized Votes of all the Owners shall constitute a quorum at all meetings of the Owners. If, however, such quorum shall not be present or represented by any meeting of Owners, the Owners entitled to vote thereat, present or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called.

Section 4.08. Majority Vote. Members of the Board of Directors elected at any meeting of the members shall, except as otherwise provided by law or these By-Laws, be elected by a plurality of votes cast. All other actions shall be taken by vote of Owners by a majority of Authorized Votes cast at a meeting at which a quorum shall be present or represented by proxy or by mail ballot, except where a higher percentage vote, or other vote, is required by the Declaration, these By-Laws or by law. The term "majority of Owners" shall mean those Owners having more than fifty-one percent (51%) of the total Authorized Votes voting in person or by proxy or by mail ballot at any meeting of the Owners, determined in accordance with the provisions of Section 3.02 of these By-Laws.

Section 4.09. Inspectors of Election. The Board of Directors, in advance of any meeting of Owners, may appoint two (2) or more persons, who need not be Owners, to act as inspectors of election at such meeting or any adjournment thereof. If inspectors of election are not so appointed prior to the meeting, the person presiding at such meeting may appoint two (2) or more inspectors of election. In case any person appointed fails to appear or act, the vacancy may be filled in advance of the meeting by the Board of Directors or at any meeting by the person presiding thereat.

The inspectors of election shall: (i) determine the Owners entitled to vote at the meeting; (ii) determine the existence of a quorum and the validity and effect of proxies and mail ballots; (iii) receive ballots or determine votes or consents; (iv) hear and determine any challenges or questions arising in connection with any Owner's right to vote; (v) count and tabulate all votes, ballots or consents and determine the result thereof; and (vi) do such other acts as may be proper to conduct an election or vote with fairness to all Owners.

Section 4.10. Order of Business at Meetings. The order of business at all meetings of the Board of Directors or Owners shall follow Roberts Rules of Order and be as follows:

- a. Roll Call
- b. Proof of Notice of Meeting
- c. Reading of Minutes of Preceding Meeting
- d. Reports of Officers
- e. Reports of Board of Directors
- f. Reports of Committees
- g. Election of Inspectors of Election (when so required)
- h. Election of members of the Board of Directors (when so required)
- i. Unfinished Business
- j. New Business

## ARTICLE V

### BOARD OF DIRECTORS

Section 5.01. Number and Qualifications of Directors.

- a. The business and affairs of the Association shall be managed by a Board of Directors which shall consist of at least three (3) but not more than five (5) persons. The Board shall initially consist of three (3) persons designated by the Sponsor. Within thirty (30) days after the initial transfer of title to all Homes in Victoria Woods Phase IV, or five years from the transfer of title to the first Home, whichever first occurs, members of the Board shall be elected by Owners other than the Sponsor.

The first meeting of the Sponsor-appointed Board of Directors will be held within thirty (30) days of the date of transfer of title to the first Home, officers will be elected at such meeting and the By-Laws adopted.

- b. If a three-member Board is elected, two (2) shall serve for a term of two (2) years and one (1) for a term of one (1) year. If a five-member Board is elected, three (3) shall serve for a term of two (2) years and two (2) for a term of one (1) year. Thereafter the term of office shall be for two (2) years.
- c. All elected Directors shall be: (i) Owners; (ii) spouses of Owners; (iii) Mortgagees; (iv) members or employees of a partnership owner or Mortgagee; (v) officers, directors, shareholders, employees or agents of a corporate Owner or Mortgagee; (vi) fiduciaries or officers, agents or employees of such fiduciaries; or (vii) designees of the Sponsor.

**Section 5.02. Nominations.**

- a. Nominations for election to the Board of Directors shall be made by the Nominating Committee. Nominations may also be made from the floor at the Annual Meeting of Owners, or by write-in.
- b. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its sole discretion, determine, but not less than the number of vacancies that are to be filled by the votes of Owners as provided in Section 5.03 hereof.

**Section 5.03. Election and Term of Office.**

- a. At the first Annual Meeting of Owners, subject to the right of the Sponsor to elect or appoint Director(s) as provided in Section 5.01 hereof, a new Board of Directors shall be elected.
- b. At each Annual Meeting thereafter, the Owners shall replace those Directors whose terms have expired and elect such successor Directors for terms of two (2) years. Voting shall be by secret written ballot written ballot which shall: (i) set forth the number of vacancies to be filled; (ii) set forth the names of those nominated by the Nominating Committee to fill such vacancies; and (iii) contain space for nominations from the floor and write-ins for each vacancy.

**Section 5.04. Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Owners, shall be filled by vote of a majority of the remaining Directors at a Special Meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors until the next annual meeting of the Owners or until a successor is elected. Notwithstanding the foregoing, if the vacancy occurs with respect to any Director not designated by the Sponsor, the successor shall be an Owner independent of the Sponsor, and further, if the vacancy occurs with respect to any member of the Board of Directors designated by Sponsor, the Sponsor shall have the sole right to choose the successor to fill the unexpired portion of the term of such Director.

**Section 5.05. Resignation.** A member of the Board of Directors may resign at any time by giving written notice to the Board, or to an officer of the Board. Unless otherwise specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the Board, the President or Secretary, as the case may be, and acceptance of the resignation shall not be necessary to make it effective.

**Section 5.06. Removal.** At any regular or special meeting of Owners, any one (1) or more of the members of the Board elected by the Owners may be removed with or without cause by a majority of the Owners other than the Sponsor and a successor may then and there or thereafter be elected by the Owners to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed with or without cause, only by the Sponsor, and then and there or thereafter be replaced by the Sponsor.

**Section 5.07. Compensation.** Directors shall receive no compensation or salary for their services as Directors. However, any Director may be reimbursed for his actual reasonable expenses incurred in the performance of his duties providing prior approval has been granted by resolution of the Board of Directors. A Director who serves the Association in any other capacity, however, may receive compensation, if otherwise entitled to compensation, providing prior approval has been granted by resolution of the Board of Directors.

**Section 5.08. Regular Meetings.** Regular meetings of the Board of Directors shall be held at least quarterly at such places and at such time as is 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. Notice of regular meetings shall be given to each Director personally, by mail, by FAX or by telegram, at least seven (7) days prior to the date set for such meeting. Any Owner wishing to address the Board at any such meeting shall notify the Secretary at least five (5) days in advance of the meeting, and indicate the subject to be addressed.

**Section 5.09. 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 upon not less than five (5) days notice to each Director either personally, by mail, by FAX or by telegram which notice shall specify the time, place and purpose of the meeting. The person or persons authorized to call such Special Meeting of the Board may fix any time and place convenient to the Directors as the time and place for holding such Special Meeting.

**Section 5.10. Waiver of Notice.** Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors, in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of a member of the Board of Directors at any Special Meeting of the Board, without protesting prior to the conclusion of the meeting the lack of notice, shall constitute a waiver of notice by him of the time and place thereof. If all members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 5.11. Quorum and Voting.** At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, the Declaration or by these By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by a 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 5.12. Informal Action by Directors.** Any action required or permitted to be taken at a meeting of the Board of Directors or 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 all members of such committee, as the case may be, provided, further, such written consent is filed with the minutes of proceedings of the Board or committee.

**Section 5.13. Powers and Duties.** The Board of Directors may exercise all the powers of the Association, except such as are conferred upon, or reserved to, the Owners by statute, the Certificate of Incorporation, the Declaration or these By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not necessarily be limited to the following:

- a. to determine, levy and collect Assessments, and expend such Assessments for the maintenance, care, repair, replacement and operation of the Association Property and exterior of the Homes;
- b. to establish and maintain such bank accounts as may be required for the operation of the Association;
- c. to operate, maintain, repair and replace the Association Property, and the exterior of the Homes;

- d. 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 as it deems appropriate, and multiperil insurance on all Homes as provided in Article VIII of the Declaration;
- e. as required by these By-Laws, to repair, restore and alter the Association Property and the Homes after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
- f. to employ and terminate the employment of employees, independent contractors and professionals, to purchase supplies and equipment, enter into contracts and generally have the powers of manager in connection with the matters herein set forth. Any contracts entered into shall be terminable by the Board upon not more than ninety (90) days notice without penalty.
- g. to adopt and publish rules and regulations governing the uses of Association Property and facilities, and the personal conduct of the Owners and their guests thereon, and establish penalties for infractions thereof;
- h. to collect delinquent Assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Owners for violations of the provisions of the Declaration, these By-Laws or of any Rules or Regulations of the Association;
- i. to file such federal, state or other tax returns on behalf of the Association as it deems necessary or desirable and to pay any and all taxes owing by the Association;
- j. 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;
- k. to keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and to present a statement thereof to the Owners at the annual meeting of Owners;
- l. to issue, or cause to be issued, upon demand by any person, an "Assessment Certificate", as provided in the Declaration, setting forth the status of payment of Assessments of any Home;



- m. to exercise the rights and powers set forth in Article IV of the Declaration;
- n. to exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Owners by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration; and
- o. to establish such committees as the Board of directors deems necessary, or are required by the Declaration or these By-Laws, for the operation of the Association and the enhancement of the Property.

Notwithstanding anything to the contrary contained in these By-Laws, so long as the Sponsor has Homes within Victoria Woods Phase IV to which title has not transferred, the Board of Directors may not, without the Sponsor's written consent: (i) except for necessary repairs, alterations, additions or improvements required by law or by any government agency or Board of Fire Underwriters, make any addition, alteration or improvements to the Association Property; or (ii) to levy any Assessment 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 the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses of the Association bears to the total amount of the initial budget of estimated expenses appearing in Schedule A of the Offering Plan; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of service or maintenance of the Property; or (iv) enter into any maintenance contract for work not provided for in the initial budget of the Association, except for the maintenance of any improvement not in existence or not owned by the Association at the time of recording the Declaration; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of service or maintenance of the Property.

**Section 5.14. Managing Agent and Manager.** The Board of Directors may employ for the Association a Managing Agent and/or a manager at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize, other than the powers as may be restricted to the Board of Directors in Section 5.13 of these By-Laws. Any contract entered into with a Managing Agent shall provide that: (i) the Managing Agent shall carry its own liability insurance in such amounts as the Board shall deem adequate and which shall include the Association as Obligee; (ii) that the Managing Agent shall provide fidelity bonding for itself and its employees; and (iii) provide that such contract may be terminated by the Association

without penalty upon not less than sixty (60) days written notice, if without cause, and if with cause, upon not more than thirty (30) days notice. No such management agreement shall be for a term of more than two (2) years and no such management agreement shall be renewable without the consent of both parties.

**Section 5.15. 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 Director or Officer may be a party, or in which such Director or Officer may become involved by reason of being or having been a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is guilty of willful misfeasance or malfeasance in the performance of duties, provided that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement as being in the best interests of the Association.

The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, any rights to which each such Director or Officer may otherwise be entitled. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless such contract shall have been made in bad faith or contrary to the provisions of law, or the Declaration or these By-Laws. It is intended that the Board of Directors shall have no liability with respect to any contracts made by it on behalf of the Association.

## 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 thereof to be determined by the Board of Directors), the Secretary and the Treasurer. Two (2) or more offices may not be held by the President, except on a temporary, emergency basis.

**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 Owners.

**Section 6.03. Term and Vacancies.** The Officers of the Association shall be elected annually by the Board of Directors and each shall hold office until his successor shall have been duly elected, unless he 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 Owners, and if there is no Chairman of the Board, shall preside at all meetings of Directors, and shall perform such other duties and functions as are usually vested in the office of the President of a not-for-profit corporation. The President may not also serve simultaneously as Secretary or Treasurer, except on an emergency basis.

**Section 6.06. Vice President.** The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also perform such other duties as shall, from time to time, be assigned by the Board or the President and a Vice President may also be Secretary or Treasurer.

**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, if any, and corporate books and records of the Association, and the book of Mortgagees, and shall perform such other duties as are incident to the office of the Secretary of a not-for-profit corporation, and as may be required by the Board or the President.

**Section 6.08. Treasurer.** The Treasurer shall have the custody of all monies and securities belonging to the Association and shall be responsible for keeping full and accurate records and books of account showing all receipts and disbursements necessary for preparation of required financial reports. He shall account to the President and the Board, whenever they may require it, with

respect to all of his transactions and of the financial condition of the Association, and shall in general perform all other duties incident to the office of Treasurer of a not-for-profit corporation. The keeping of all records and books of account may be delegated to the managing agent, if there be one.

**Section 6.09. Other Officers.** The Board of Directors may elect such other officers as it shall deem desirable. Such officers shall have the authority and shall perform such duties prescribed, from time to time, by the Board of Directors.

**Section 6.10. Agreements, Contracts, Deeds, Checks and Other Instruments.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any two (2) officers of the Association, or by such other person or persons as may be designated by the Board of Directors.

**Section 6.11. Compensation of Officers.** No officer shall receive compensation from the Association for acting in his capacity as an officer. However, any officer may be reimbursed for his actual reasonable expenses incurred in the performance of his duties as an officer providing prior approval has been granted by resolution of the Board. An officer who serves the Association in any other capacity, however, may receive compensation therefore if otherwise entitled to compensation, providing prior approval has been granted by resolution of the Board of Directors.

## ARTICLE VII

### COMMITTEES

**Section 7.01. Committees of Directors.** The Board of Directors, by resolution adopted by a majority of the Directors, may designate one (1) or more committees, which committees, to the extent provided in the resolution, shall serve in an advisory capacity only to the Board of Directors and shall have no authority to approve an Amendment to the Certificate of Incorporation of the Association, the Declaration or these By-Laws or to plan a merger or consolidation or establish Assessments.

**Section 7.02. Committees of Owners.** The committees of the Association shall be the Architectural Committee, the Finance 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 Owners and need not include a member of the Board of Directors.

**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 payment of money, notes and other evidences of indebtedness, issued in the name of the Association shall be signed by two (2) officers of the Association, or by such other person or persons as may be designated by the Board of Directors.

**Section 8.02. Fiscal Year.** The fiscal year of the Association shall be the twelve (12) calendar months, ending at such time as may be deemed appropriate by the Board of Directors.

**Section 8.03. Annual Report.** An annual report of the receipts and expenditures of the Association, prepared by an independent public accountant, shall be rendered by the Board of Directors to all Owners, and to all Mortgagees of Homes who have requested the same, and for so long as the Sponsor remains in control of the Association the annual report shall be an audited certified financial statement. In the event that any substantial irregularities or any defalcation shall be uncovered by such accountant in the course of any such audit or review, such matters shall be promptly reported to each member of the Board of Directors, and to the Owners by such accountant. In addition, when called for by a vote of the Owners at any special meeting of Owners, the Board of Directors shall furnish to the Owners a full and clear statement of the business conditions and affairs of the Association, including a balance sheet and profit and loss statement, reviewed by an independent public accountant and a statement regarding any taxable income attributable to the Owners.

The cost of the annual report and other services required by this Section 8.03 shall be levied by the Board of Directors as an Assessment.

## ARTICLE IX

### BOOKS, RECORDS, AND LEGAL DOCUMENTS

**Section 9.01. Books and Records.** The Declaration, these By-Laws, the Certificate of Incorporation and other books, records and papers of the Association, or copies, shall, during reasonable business hours, upon reasonable notice, be subject to inspection by any Owner or agent of an Owner or Mortgagee, at the principal office of the Association. The Board of Directors may furnish copies of such documents to such parties and may charge reasonable fees to cover the cost of furnishing such copies.

**Section 9.02. Separate Account for Capital Reserve Funds.** Any funds of the Association collected or designated as reserves for the replacement of capital items shall be segregated from all other funds of the Association in one or more separate accounts. This shall not preclude the Association from segregating other portions of its funds in separate accounts for a specific purpose (e.g., reserves for non-capital items) or otherwise.

#### ARTICLE X

##### CORPORATE SEAL

**Section 10.01. Corporate Seal Optional.** The Association, if the Board of Directors so chooses, shall have a corporate seal.

#### ARTICLE XI

##### AMENDMENTS

**Section 11.01. Amendments to By-Laws.** Except as herein provided otherwise, these By-Laws may be modified, altered, amended or added to at any duly called meeting of Owners in the same manner at the Declaration, in accordance with Section 11.06 of the Declaration.

So long as the Sponsor has any Homes within Victoria Woods Phase IV to which title has not transferred, the prior written consent of the Sponsor shall be required for any amendment to become effective.

#### ARTICLE XII

##### RULES AND COMPLIANCE AND ARBITRATION

**Section 12.01. Compliance with Rules of the Association Pursuant to these By-Laws.** Should any Owner, member of his family, his employees, guests, lessees, licensees or other invitees fail to comply with any of the provisions of these By-Laws or the rules and regulations as such may be amended from time to time, the procedures set forth in Article XII of the Declaration shall be followed to obtain compliance.