

JAY RICKETS

OFFERING PLAN

CROSSWINDS COMMUNITY HOMEOWNERS, INC.

CROSSWINDS MARINA COMMUNITY ON LAKE CHAUTAUQUA

State Route 430
Town of Ellery,
Chautauqua County, New York 14712

Total Amount of Offering: \$250,000.00
(value of improved common areas to be conveyed
to Crosswinds Community Homeowners, Inc.
The cost of membership in Crosswinds
Community Homeowners, Inc. is included in
the purchase price of lots and homes sold in
conjunction with this offering.)

SPONSOR AND CROSSWINDS DEVELOPMENT CORPORATION
SELLING AGENT: 27600 Chagrin Boulevard
Cleveland, Ohio 44122

Date of this Offering Plan: June 28, 1985. This Plan may not
be used after June 27, 1986 unless extended by amendment.

49 Lots

SEE PAGE iii FOR SPECIAL RISKS TO PURCHASERS.

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

OFFERING PLAN FOR
 CROSSWINDS COMMUNITY HOMEOWNERS, INC.
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OFFERING PLAN - CROSSWINDS COMMUNITY HOMEOWNERS, INC.

PART I

SPECIAL RISKS

Purchasers are advised of the following:

1. No completion bond is to be posted to secure Sponsor's obligations to complete construction of the improvements to the Association Property or to secure any other obligations of the Sponsor. All of the improvements are expected to be completed at the time of the First Lot closing, except the tennis court which is projected for completion in 1986. See No. 1 of "Rights and Obligations of the Sponsor" on pages 37, 38, 39, 40 and 41 of this Offering Plan and No. 1 of Trust Funds on page 41 of this Offering Plan.

2. So long as the Sponsor holds title to 10% or more of the Lots, the written consent of the Sponsor (which consent shall not be unreasonably withheld) will be required for certain actions which would affect expenditures including: (i) the making of any addition, alteration or repair to Association Property (except for any necessary repairs or any repairs required by law); (ii) a greater than proportionate increase of reserve amounts; (iii) the hiring of additional employees by the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) the entering into of any service or maintenance contract for work not provided for in the initial budget for the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time the first Unit was placed under the declaration; (v) borrowing of money on behalf of the Association; or (vi) the reduction of the quantity or quality of services or maintenance of the Property. See page 36 of this Offering Plan.

3. The Sponsor has no obligation to defend any suits or proceedings arising out of Sponsor's acts or to indemnify the Board of Directors of the Association. See "Rights and Obligations of Sponsor" on pages 37, 38, 39, 40 and 41 of this Offering Plan.

4. Owners of Lots which are not improved with dwelling units are liable for only one-half of the maintenance and special assessments payable by Owners of Lots improved with dwelling units. So long as the Sponsor holds title to any Lot, no change in the basis of Association assessments which adversely affects a substantial right or interest of the Sponsor with respect to unsold Lots may be made without the written consent of the Sponsor, which consent will not be unreasonably withheld. See page 33 of this Offering Plan.

SPECIAL RISKS
(Continued)

5. The Sponsor shall retain ownership and control of the area located on the west (Lake) side of the Property on which lands the Sponsor will construct a marina (the "Marina"). This Marina will be available for the docking of boats by Lot Owners for a lease fee on a "first come-first serve" basis. The Marina will not be for the exclusive use of Lot Owners, unless Lot Owners lease all boat slips in the facility within the time period afforded to the Lot Owners by the Sponsor each year for the leasing of boat slips. The rents to be charged for the use of boat slips will be controlled by the Sponsor and not the Association. Approximately 35 boat slips are planned. See "Marina" on page 19 and Site Plan in Part II of this Offering Plan. The Sponsor will grant to the Association a "right of first refusal" which will entitle the Association to meet, at its option, any bona fide offer acceptable to the Sponsor for the sale or lease of the entire Marina. (See page 19 of this Offering Plan and Article XII of Declaration in Part II of this Offering Plan.)

6. The Sponsor will retain the right to approve plans and specifications of residential dwellings to be built upon the Lots. The purpose of this reservation is to assure the quality, size and design of homes and their placement on the Lots to preserve lake views. No assurance is given by the Sponsor that lake views acceptable to each Lot Owner will be preserved. (See page 24 of this Offering Plan and Article VII of Declaration in Part II of this Offering Plan.)

7. Purchasers of Lots are advised that they will have to expend a substantial amount, which amount the Sponsor estimates to be approximately \$2,000, to install a grinder pump on their Lot to pump sewage from their Lot into the common sewage system. (See page 20 of this Offering Plan.)

8. The Sponsor has not made any provision for professional management of the affairs of the Association. Accordingly, members of the Association will be required to assume the obligation of preparing the Association's budget, collecting assessments, supervising the performance of Association employees, checking the performance of independent contractors retained by the Association and obtaining and maintaining the appropriate insurance coverages. (See page 30 of this Offering Plan.)

9. The annual financial statement of the Association operations furnished to members of the Association may, at the option of the Association's Board of Directors be either (i) an audited balance sheet and audited financial statement or (ii) an

SPECIAL RISKS
(Continued)

unaudited balance sheet and a review of operations. By written request of not less than two-thirds (2/3) of all Lot Owners independent of the Sponsor, the Board of Directors shall have an audit undertaken at the Association's expense. (See page 36 of this Offering Plan.)

10. A single-family residential dwelling may be built on each Lot subject to (i) compliance with the applicable provisions of the Town of Ellery Zoning Ordinance as to set-backs, square footage limitations, etc. (ii) compliance with the provisions of the New York State Building Code as adopted by the Town of Ellery and (iii) the approval of the Sponsor (see no. 6 above). Before they sign a contract, purchasers should assure themselves that the home they propose to build is in compliance with the applicable provisions of the Zoning Ordinance and Building Code and that the Sponsor will approve the plans, specifications and location of the proposed structure. (See opinion of Sponsor's counsel on page 18 of this Offering Plan).

INTRODUCTION

The Sponsor, Crosswinds Development Corporation, is an Ohio corporation with its office at 27600 Chagrin Boulevard, Cleveland, Ohio 44122.

On November 9, 1984, the Sponsor acquired approximately 15 acres of land on the west side of New York State Route 430 in the Town of Ellery, County of Chautauqua and State of New York. The property is on the east shore of Lake Chautauqua. The property is hereinafter referred to as "Crosswinds Marina Community on Lake Chautauqua", "Crosswinds Marina Community" or "Crosswinds". The property is accessible from the west side of Route 430 across from the Farm Bell Basket Barn about 5 miles southeast of Mayville. Lake Chautauqua is useable for recreational purposes such as swimming, sailing, motor boating, fishing, water skiing and wind surfing.

The Sponsor plans to develop the property into 49 building lots for detached homes and to sell each lot to an individual or builder for the construction of a home thereon. In addition, the Sponsor plans to develop the portion of the property, along Lake Chautauqua into a marina ("Marina") which will be initially owned and operated by the Sponsor or by another entity composed of or controlled by principals of the Sponsor. The property ("Property") will include certain "common areas" which will be owned and maintained by the Crosswinds Community Homeowners, Inc., a New York not-for-profit corporation comprised of the Sponsor and the owners ("Owners") of all the lots ("Lots"). The common areas will include a sewage treatment plant, water treatment plant, parking area for boat trailers, gazebo, two parking areas for motor vehicles, tennis court and a beach area. The Sponsor will retain ownership to the marina ("Marina") on the west or lake side of the development. Each of the Lots will be offered for sale to purchasers. Development is projected to occur over a number of years in one phase. Development will be limited to single-family detached homes, the design, architecture, height and location of which will be subject to the approval of the Sponsor.

The Plot Plan in Part II of this Offering Plan shows the location of the various Lots and common area facilities.

All of the lands comprising the Property, i.e. excluding the Marina, will be covered by a declaration, sometimes hereinafter referred to as the "Declaration" or the "Crosswinds Declaration", recorded or to be recorded in the Chautauqua County Clerk's Office. A copy of the Declaration can be found in Part II of this Offering Plan.

Each purchaser of a Lot shall, upon becoming the Owner of the Lot, automatically be a member of the Crosswinds Community Homeowners, Inc., hereinafter sometimes referred to as the "Association". Accordingly, if a Lot Owner sells his Lot, the purchaser automatically becomes a member of the Association. The Association is a New York corporation organized under the New York Not-For-Profit Corporation Law. The Association will hold title to common property, hereinafter sometimes referred to as "Association Property," which consists of all areas within the boundaries of the Property outside the boundaries of the Lots.

As shown on the Site Plan included in Part II of this Offering Plan, the Association Property consists of

1. a parcel immediately contiguous to the west side of State Route 430 on which is or will be located (i) a parking area for boat trailers, (ii) a sewage treatment plant, (iii) a tennis court and adjacent parking area, and (iv) a water treatment plant;
2. two landscaped center mall areas at the entrance to the Property from State Route 430;
3. a landscaped parcel of land on the north side of the entrance to the Property from State Route 430;
4. a parcel of land at the northwest corner of the Property on which is or will be located (i) a "gazebo" type shelter facility, (ii) a gravel approach to the launching ramp for boats, and (iii) a small beach area.

The capacities of the Association's recreational and parking facilities are:

tennis court - four persons

parking - boat trailer area - 30 boat trailers, (estimated), 5 automobiles.

parking - tennis court area - 10 automobiles

parking - southeasterly end of property - 15 automobiles.

The Sponsor intends to dedicate all roadways to the Town of Ellery. The Sponsor will be responsible for all necessary maintenance, repair and replacement of the roadways until

their dedication to the Town of Ellery. Sewer and water treatment facilities and those sewer and water lines servicing two or more Lots will be owned by the Association. The costs of operating and maintaining such sewer and water treatment facilities and distribution lines will be included in the Association maintenance assessments payable by Lot Owners. A reserve fund or funds will be established to fund the cost of replacement of the sewer and water treatment facilities.

Electric lines and gas lines on the Property shall be maintained by the Association except (i) such portion as is maintained by the supplier, e.g. electric company, gas company, and (ii) any line, e.g. lateral, servicing only one Lot, the Owner of the Lot so serviced being responsible for such maintenance.

Each purchaser will exclusively own his own Lot. Purchasers will not directly own any common property, but will indirectly own an undivided interest in Association Property as members of the Association. The price paid by purchasers for Lots includes the cost of membership in the Association. The prices of Lots are set by the Sponsor alone and are not subject to review or approval by the Department of Law or any other government agency.

The Association will (1) own, maintain and repair the Association Property; administer and enforce protective covenants, conditions, restrictions, charges and liens imposed on the Property, (2) obtain and maintain (i) common fire and casualty insurance on any buildings owned by the Association, (ii) insurance of Association Property against loss or damage by explosion of pressure vessels and pressure pipes installed in, on or about the Association Property, (iii) liability insurance on the Association Property, (iv) fidelity bond indemnifying the Association from fraudulent or dishonest acts of any employee of the Association, and (v) such other insurance as the Board of Directors of the Association may determine to be appropriate from time to time; and (3) collect and disburse the assessments and charges necessary to perform its functions. The projected budget for the Association's first year of operation is found beginning on page 7 of this Offering Plan.

Members will pay maintenance charges to the Association (initially on an annual basis) for:

1. the operation and maintenance of the Association Property including the sewage treatment plant and water treatment plant;

2. the insurance obtained by the Board of Directors as provided above;
3. the funding of such reserves for maintenance, repair, replacement and contingencies as the Board of Directors of the Association may deem proper or as the Board of Directors is required to fund by the Association Declaration;

Sale and Lease of Lots and Homes - There are no limitations on the selling or leasing of Lots and homes, except that an Owner shall not lease any portion of a home (other than the entire home).

Government and Other Services - Police protection to the area is provided by the Chautauqua County Sheriff's Department and the New York State Police. Water service is from wells on the Property. Fire protection is provided by the Ellery Center Fire Department (volunteer), located at Dutch Hollow Road, R.D. #1, Bemus Point, New York 14712. The roadways on the Property will be dedicated to the Town of Ellery. After dedication, the Town will maintain the roadways, including snow removal. Cable TV service is expected to be available to the Crosswinds area within the next several years. The Sponsor cannot give any assurance as to when or if the availability of such service will become a reality.

Adjoining Areas - The areas adjoining the Crosswinds development are partially developed with residential homes with the undeveloped portion of such areas being zoned for agricultural use.

The purpose of this Offering Plan is to set forth all of the terms of an offer to sell membership interests in the Association in conjunction with the sale of Lots located in the Crosswinds Marina Community. This Offering Plan may be altered from time to time by amendments filed with the New York State Department of Law. All amendments will be served upon contract purchasers and Owners of Lots.

This Offering Plan as presented to prospective purchasers contains all of the detailed terms of a purchase of a Lot in the Crosswinds Marina Community as it relates to the Association. Parts A, B and C of the Exhibits delivered to the Department of Law contain all of the documents referred to in this Offering Plan. Copies of this Offering Plan and Parts A, B and C of the Exhibits will be available for inspection without charge to prospective purchasers and their attorneys at the Law Offices of George R. Grasser, counsel to the Sponsor, 3350 Marine Midland Center, Buffalo, New York 14203.

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

There is no minimum number of Lots which must be contracted for sale before closings can commence.

DEFINITIONS

As used in this Plan the following terms have the meanings as follows:

"Assessments" - composed of "Maintenance Assessments" (see definition below) and "Special Assessments" (see definition below) charged to the Owners on an annual basis and payable on a quarterly or other basis as the Association shall determine.

"Association" - Crosswinds Community Homeowners, Inc.

"Association Property" - all land, improvements and other properties heretofore or hereafter owned by the Association.

"Declaration" or "Association Declaration" - the declaration of covenants, conditions, restrictions, easements, charges and liens affecting the Property which has been or will be recorded in the Chautauqua County Clerk's Office. The Declaration establishes the mandatory nature of the Association and includes the administrative framework and responsibilities of the Association and the basis (all Lots pay the same amount) for collection of maintenance assessments to enable the Association to carry out its responsibilities. The Declaration also sets forth the property rights and easements of the members of the Association.

"Lot" - a plot of land subject to the Declaration which is designed for individual ownership and on which a separate Unit has been or is projected to be constructed.

"Maintenance Assessments" - amounts charged by the Association to the Owners for the maintenance and operation of the Association Property, for such other services the Association is required or elects to provide its members and for the administrative costs of the Association, including but not limited to office expenses, insurance premiums for casualty and

liability insurance covering the Association Property, legal fees for enforcing restrictive covenants, accounting fees and charges for reserve funds.

"Marina" - the facility for the mooring of boats located west of the Property which will be owned by the Sponsor and which is not part of the Association Property.

"Owner" - the holder of record title, whether one or more persons or entities, of the fee interest in any Lot, whether or not such holder actually resides on such Lot.

"Property" - all properties, including the Association Property, and the Lots and Units, which are subject to the provisions of the Declaration.

"Special Assessments" - amounts charged by the Association to the Owners for capital improvements and any monetary penalties imposed against an Owner pursuant to Section 11.02 of the Declaration. (See Section 11.02 of the Declaration in Part II of this Offering Plan.)

"Unit" - each completed home (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Ellery) situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

SCHEDULE A

CROSSWINDS COMMUNITY HOMEOWNERS, INC.

PROJECTED SCHEDULE OF RECEIPTS AND EXPENSES
FOR FIRST YEAR OF OPERATION COMMENCING AUGUST 1, 1985

	1 Lot With Unit	10 Lots with Units*
	\$826.16 For	\$766.06 per
	Lot With Unit,	Lot For Lots
	\$419.54 For	With Units
	Vacant Lots	\$383.03 Per
		Lot For
		Vacant Lots
	<u>\$20,654.00</u>	All Lots With Units** <u>\$461.20 Per Lot</u>
Maintenance Assessments (For Lots improved with Units. For Lots not improved with Units. Assessments are payable annually(1)	\$20,654.00	\$22,599.00
Sales tax on assessments at 7%	1,445.78	1,581.93
Estimated receipts from other sources - Interest income(2)	<u>100.00</u>	<u>120.00</u>
Total	<u>\$22,199.78</u>	<u>\$24,300.93</u>

* This is Sponsor's projection of average number of Lots to be improved with Units in first year of Association operation.
 ** Although these projected expenses are based on 1985 costs, the Sponsor does not anticipate all Lots being improved during the first year of Association operation.

SCHEDULE A
(Continued)

	1 Lot With Unit	10 Lots with Units*	All Lots With Units** \$461.20 Per Lot
	\$826.16 For	\$766.06 per	
	Lot With Unit,	Lot For Lots	
	\$413.08 For	With Units	
	Vacant Lots	\$383.03 Per	
		Lot For	
		Vacant Lots	

Projected Expenses

Labor(3)	\$ 4,200.00	\$ 4,200.00	\$ 4,200.00
Heating	-0-	-0-	-0-
Utilities(4)	1,804.00	1,804.00	1,804.00
Water and Sewer(5)	4,060.00	4,060.00	4,060.00
Telephone	200.00	200.00	200.00
Management(7)	-0-	-0-	-0-
Road Maintenance(8)	-0-	-0-	-0-
Repairs and Maintenance(9)	500.00	500.00	500.00
Service Contracts(10)	-0-	-0-	-0-
Security	-0-	-0-	-0-
Supplies and Office Equipment(11)	30.00	300.00	300.00
Snow Removal(12)	-0-	-0-	-0-
Refuse Removal(13)	40.00	40.00	40.00
Dues	-0-	-0-	-0-
Permits	-0-	-0-	-0-
Insurance(14)	4,380.00	4,380.00	4,380.00
Accounting(15)	350.00	350.00	350.00
Legal(16)	350.00	350.00	350.00
Taxes			
Real Estate(17)	-0-	-0-	-0-
Corporate Franchise(18)	250.00	250.00	250.00

SCHEDULE A
(Continued)

	1 Lot With Unit	10 Lots with Units*	All Lots With Units**
	<u>\$826.16 For</u>	<u>\$766.06 per</u>	<u>\$461.20 Per</u>
	<u>Lot With Unit,</u>	<u>Lot For Lots</u>	<u>Lot</u>
	<u>\$413.08 For</u>	<u>With Units</u>	<u>With Units**</u>
	<u>Vacant Lots</u>	<u>\$383.03 Per</u>	<u>\$461.20 Per</u>
		<u>Vacant Lots</u>	<u>Lot</u>
Taxes (continued)			
Income(19)	-0-	-0-	-0-
Sales(20)	1,445.78	1,581.93	1,581.93
Reserve for replacement of capital			
improvements(21)	2,670.00	2,670.00	2,670.00
Contingencies(22)	1,550.00	2,615.00	2,615.00
Flowers and Fertilizer(23)	1,000.00	1,000.00	1,000.00
Total	<u>\$22,199.78</u>	<u>\$24,300.93</u>	<u>\$24,300.93</u>

* This is Sponsor's projection of average number of Lots to be improved with Units in first year of Association operation.

** Although these projected expenses are based on 1985 costs, the Sponsor does not anticipate all Lots being improved during the first year of Association operation.

*
**

SCHEDULE A FOOTNOTES

- (1) As per Declaration, Lots not improved with Units are obligated to pay one-half of Maintenance Assessment charged to Lots improved with Units. Based on Sponsor's estimate of average of 10 homes (Units) completed during initial 12 months of Association operation.
- (2) Estimate of interest to be earned at 5-1/2% per annum on average amount of reserve funds and other cash on hand.
- (3) Based on estimate received from Edward J. Zabel, Inc., East Amherst, New York, an experienced property management firm. Contemplates 600 work hours per year for non-union labor (30 hours per week for 20 weeks during spring and summer at \$7.00 per hour including all benefits required by law such as FICA, workers' compensation, disability insurance, unemployment insurance and payroll taxes.) It is estimated that up to three persons will be employed all on a part-time basis. In subsequent years the addition of the tennis court is expected to increase the number of work hours by 2 to 3 per week. Work to be performed is expected to include (i) spring and fall cleanup of the common areas, (ii) landscape maintenance in the entrance area to the development and in the area of the gazebo, including lawn cutting and application of fertilizer (should the Association elect to provide same) a minimum of two times each summer, and (iii) periodic cleanup of the beach area and other common areas.

Breakdown of labor cost for wages and for each benefit at \$5.50 per hour:

Salary	\$3,300.00
FICA	232.65
Unemployment (Federal, State)	115.50
Workers' compensation	66.00
Disability	6.00
Total	<u>\$3,720.15</u>

An additional amount was added for possible overtime.

Scott Morris, a high school student whose family spends their summers in the area of the Crosswinds development has agreed to perform most of the above work for the 1985 season at the hourly rate indicated.

FOOTNOTES
(Continued)

- (4) For electricity needed for operation of sewage and water treatment plants based on estimate received from David R. Hoops, P.E. Chardon, Ohio, \$260 per month from May through August and \$75 per month from September through April, plus 10%.
- (5) For supervision of sewage and water treatment plants and chemicals based on estimates received from Stewart M. Giambelluca of Safewater Service, Jamestown, New York. Includes 1 hour per day, three days per week at \$10.00 per hour for maintenance, operation, testing and preparation of reports plus \$2,000 maximum amount for chemicals and \$500 for additional testing from time to time. No contract for such services has been arranged or procured. Sponsor will pay treatment plant start up costs. Water is from wells on the Property.
- (6) Based on estimate received from Edward J. Zabel, Inc., East Amherst, New York for reimbursement to Association directors and officers for calls to Lot Owners and others involving Association business. Amount takes into account probable geographic diversity of permanent residences of Lot Owners.
- (7) Sponsor does not intend to hire a manager during period Sponsor is in control of Board of Directors. Association members will be required to handle bookkeeping and supervision of employees on a voluntary basis. Should Association decide to hire a manager in the future to handle bookkeeping and supervision of employees, the Sponsor estimates that such cost will not exceed \$1,200 per year.
- (8) As roads will be owned and maintained by Town of Ellery, maintenance by the Association will not be necessary.
- (9) Based on estimate received from David R. Hoops, P.E., P.S., Cleveland, Ohio. Includes such items as repair of potholes in boat trailer and parking areas owned by Association and to the gazebo. No contracts have been procured or arranged for such services. If only one Lot improved, Sponsor estimates repairs will be only 10% of estimate.
- (10) No service contracts are contemplated except the maintenance of the treatment plant and for refuse removal. See footnote (5) above and footnote (13) below.

**FOOTNOTES
(Continued)**

- (11) Based on estimate received from Edward J. Zabel, Inc., East Amherst, New York for postage, stationery, printing, photocopying, typing service, etc. Sponsor projects expenditure at only 10% of estimate when only one Lot improved.
- (12) As roads are maintained by Town of Ellery and common areas are not designed for winter use, no provision is made for snow removal services.
- (13) Based on estimates received from Robert E. Samuelson, Jamestown, New York. For removal of refuse from trash container in common areas on a regular basis, i.e. one time per week. Estimate is based on amount charged a single-family house.
- (14) Based on estimate received from Novak Insurance Agency, Beachwood, Ohio. Covers all insurance required to be obtained and maintained by Association as described in this Offering Plan. Includes fire and casualty coverage for the gazebo (limit \$18,000), general liability (limit \$500,000), directors' and officers' liability (limit \$1,000,000), workers' compensation, an "umbrella" policy (limit \$1,000,000), and explosion of pressure vessels and pressure pipes (limit \$500,000).
- (15) Based on estimate received from Ferber & Weinstein, Inc., Beachwood, Ohio. For annual review of Association's books and records and preparation of required tax returns. If the Board of Directors of the Association approves an audit or if two-thirds (2/3) or more of all Lot Owners independent of the Sponsor request an audit in lieu of a review, additional costs will result.
- (16) Based on estimate received from the Law Offices of George R. Grasser, special counsel to the Sponsor, for interpretation of legal documents. At an hourly rate of \$120.00 per hour, this will permit the Association to obtain 2.9 hours of service.
- (17) No real estate taxes on Association Property are contemplated. The Tax Assessor of the Town of Ellery has advised the Sponsor that because value of the common areas is reflected in the value of the Lots and Units there will be no taxes or a nominal tax on the Association Property.

**FOOTNOTES
(Continued)**

- (4) For electricity needed for operation of sewage and water treatment plants based on estimate received from David R. Hoops, P.E. Chardon, Ohio, \$260 per month from May through August and \$75 per month from September through April, plus 10%.
- (5) For supervision of sewage and water treatment plants and chemicals based on estimates received from Stewart M. Giambelluca of Safewater Service, Jamestown, New York. Includes 1 hour per day, three days per week at \$10.00 per hour for maintenance, operation, testing and preparation of reports plus \$2,000 maximum amount for chemicals and \$500 for additional testing from time to time. No contract for such services has been arranged or procured. Sponsor will pay treatment plant start up costs. Water is from wells on the Property.
- (6) Based on estimate received from Edward J. Zabel, Inc., East Amherst, New York for reimbursement to Association directors and officers for calls to Lot Owners and others involving Association business. Amount takes into account probable geographic diversity of permanent residences of Lot Owners.
- (7) Sponsor does not intend to hire a manager during period Sponsor is in control of Board of Directors. Association members will be required to handle bookkeeping and supervision of employees on a voluntary basis. Should Association decide to hire a manager in the future to handle bookkeeping and supervision of employees, the Sponsor estimates that such cost will not exceed \$1,200 per year.
- (8) As roads will be owned and maintained by Town of Ellery, maintenance by the Association will not be necessary.
- (9) Based on estimate received from David R. Hoops, P.E., P.S., Cleveland, Ohio. Includes such items as repair of potholes in boat trailer and parking areas owned by Association and to the gazebo. No contracts have been procured or arranged for such services. If only one Lot improved, Sponsor estimates repairs will be only 10% of estimate.
- (10) No service contracts are contemplated except the maintenance of the treatment plant and for refuse removal. See footnote (5) above and footnote (13) below.

**FOOTNOTES
(Continued)**

- (11) Based on estimate received from Edward J. Zabel, Inc., East Amherst, New York for postage, stationery, printing, photocopying, typing service, etc. Sponsor projects expenditure at only 10% of estimate when only one Lot improved.
- (12) As roads are maintained by Town of Ellery and common areas are not designed for winter use, no provision is made for snow removal services.
- (13) Based on estimates received from Robert E. Samuelson, Jamestown, New York. For removal of refuse from trash container in common areas on a regular basis, i.e. one time per week. Estimate is based on amount charged a single-family house.
- (14) Based on estimate received from Novak Insurance Agency, Beachwood, Ohio. Covers all insurance required to be obtained and maintained by Association as described in this Offering Plan. Includes fire and casualty coverage for the gazebo (limit \$18,000), general liability (limit \$500,000), directors' and officers' liability (limit \$1,000,000), workers' compensation, an "umbrella" policy (limit \$1,000,000), and explosion of pressure vessels and pressure pipes (limit \$500,000).
- (15) Based on estimate received from Ferber & Weinstein, Inc., Beachwood, Ohio. For annual review of Association's books and records and preparation of required tax returns. If the Board of Directors of the Association approves an audit or if two-thirds (2/3) or more of all Lot Owners independent of the Sponsor request an audit in lieu of a review, additional costs will result.
- (16) Based on estimate received from the Law Offices of George R. Grasser, special counsel to the Sponsor, for interpretation of legal documents. At an hourly rate of \$120.00 per hour, this will permit the Association to obtain 2.9 hours of service.
- (17) No real estate taxes on Association Property are contemplated. The Tax Assessor of the Town of Ellery has advised the Sponsor that because value of the common areas is reflected in the value of the Lots and Units there will be no taxes or a nominal tax on the Association Property.

FOOTNOTES
(Continued)

- (18) Minimum New York State tax.
- (19) 30% of interest income. See footnote (2) above Association will likely not be otherwise taxable. See legal opinion of Sponsor's special counsel which follows.
- (20) 7% of total assessments. See Opinion of Sponsor's Counsel which follows.
- (21) For replacement of capital improvements owned by Association.*
- (22) Approximately 15% of all amounts projected as expenses excluding reserves and sales tax, except when only one Lot is improved with a Unit, contingency amount is set at 10% because of likelihood other budget items will be lower than projected.
- (23) Based on estimate received from Lee Road Nursery Inc., Shaker Heights, Ohio. Includes fertilizer for minimum of two applications per season and some flowers for the enhancement of the common areas.

* (Due to the uncertain effect of inflation fluctuating interest rates, no assurance is given that this amount, if collectable annually, will be sufficient.)

LAW OFFICES OF
GEORGE R. GRASSER
3350 MARINE MIDLAND CENTER
BUFFALO, NEW YORK 14203

June 3, 1985

GEORGE R. GRASSER
JAMES J. CONTINO
RONALD S. SHUBERT

TELEPHONE:
(716) 854-1016

Crosswinds Development Corporation
27600 Chagrin Boulevard
Cleveland, Ohio 44122

Re: Crosswinds Marina Community and
Crosswinds Community Homeowners, Inc.

Gentlemen:

In response to your request for our opinion as to various matters in conjunction with the offering of lots and homes at Crosswinds Marina Community on Lake Chautauqua together with automatic membership in the Crosswinds Community Homeowners, Inc., (the "Association"), a not-for-profit homeowners' association, please be advised as follows:

1. Enforceability of Declaration Provisions:

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

2. Tax Deductions Available to Unit Owners:

- (a) Association charges - Unit owners will not be entitled to deduct any portion of Association charges for federal or New York State income tax purposes.
- (b) Real estate taxes and interest on mortgage indebtedness - Under the provisions of Sections 164 and 163 of the Internal Revenue Code of 1954 as amended and Section 615 of the New York State Tax Law, each unit owner will be entitled to deduct from his gross

Crosswinds Development Corporation
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income for federal and New York State income tax purposes the real estate taxes assessed against his unit and lot, and paid by him, and the amount paid on account of interest on any mortgage indebtedness covering such unit. (See Revenue Ruling 64-31 (1964-1) Cumulative Bulletin Part I 300). No opinion is expressed as to the effect of either Federal or New York State income tax laws regarding tax preference or minimum tax on the foregoing deductions or on the unit owner's income tax liability. It is suggested that individual unit owners consult their own tax counsel or advisor for advice regarding tax preference items or minimum tax.

3. Taxation of the Association:

(a) Federal and New York State tax on income.

Section 528 of the Internal Revenue Code contains provisions exempting certain associations (including homeowners' associations) from federal income tax on funds retained in the association's account at the end of the association's fiscal year if:

- (1) 60% or more of the gross income in the fiscal year consisted of membership dues, fees or assessments from unit owners; and
- (2) 90% or more of the expenses were for the acquisition, construction, management or maintenance of the property; and
- (3) except for (2) above, no part of the net earnings of the association inures to the benefit of the unit owners; and
- (4) no part of the net earnings not used for the purposes set out in (2) above or rebated to the unit owners inures to

Crosswinds Development Corporation
Page Three

the benefit of any private individual or member; and

- (5) the association elects to take the exemption provided.

Based on our review of the estimates of projected income and expenses which you have submitted to us and which we understand you will include in your offering plan for the sale of these units, we are of the opinion that the Association will be eligible for tax exempt status should it elect to take such exemption. We suggest, however, that specific reference be made to the actual text of Section 528 prior to making any decisions which could have an impact on the taxability or the extent of taxability of the Association. We also bring to your attention that interest income earned on Association funds and any income not received from membership dues, fees or assessments will be taxable to the Association whether or not tax exempt status under Section 528 is obtained and that the Association must file a tax return even though it may qualify for tax-exempt status. We further advise you that we are making no opinion as to the taxability or effect of any income to the Association from the sale or lease of units acquired through the foreclosure of a lien for non-payment of common assessments.

Section 208(9) of the New York Tax Law creates a presumption that New York taxable income of a corporation for purposes of Article 9-A of the New York Tax Law shall be the same as its federal taxable income. To the extent that Section 528 of the Internal Revenue Code applies to the Association's income, there will be no taxable income under Article 9-A of the New York Tax Law and no tax liability.

(b) Franchise Tax.

Although no New York Franchise Tax will be payable on the income of the Association (other than certain exceptions as noted above) the New York State Tax Commission currently takes the position, which position has been opposed by many homeowners' associations, that homeowners' associations are liable for the payment of the minimum New York Franchise Tax for the privilege of exercising their corporate franchises.

Crosswinds Development Corporation
Page Four

Accordingly, unless the New York State Tax Commission reverses its position or legislation is passed exempting homeowners' associations from the payment of franchise taxes, the Association should include the amount of the minimum annual New York Franchise Tax (currently \$250) in its budget of expenditures.

(c) Sales Tax.

To our knowledge, homeowners' associations have not generally paid New York State Sales Tax on assessments collected from unit owner members. We have been informed that the New York State Tax Department has recently asserted that condominium and cooperative maintenance fees are subject to sales tax under the New York State Tax Law and that the Department has commenced efforts to collect such sales tax from some condominiums. Although we believe such taxation to be outside of the intent of the law, such maintenance fees and assessments are not specifically exempted in the law from being subject to such tax. Until such time as further cases or rulings are reported or legislative action is taken which clearly states whether or not such fees and assessments are subject to sales tax, we cannot render a clear opinion on the issue. However, until a legal or legislative determination is made which exempts the maintenance fees and assessments from sales tax, we suggest that the Association consider budgeting and collecting sufficient funds to pay such tax.

4. Zoning Ordinances and Statutes:

To our knowledge, the Crosswinds development is not in violation of any zoning or other ordinance or statute of the Town of Ellery, County of Chautauqua or State of New York. The property is zoned "Residential" which generally requires a minimum lot area per dwelling unit of 20,000 square feet. However, the variance which you obtained from the Zoning Board of

Crosswinds Development Corporation
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Appeals of the Town of Ellery permits the construction of dwelling units on the individual lots as laid out on the subdivision map for the development which has been approved by the Town of Ellery. A separate building permit is required for each dwelling unit to be constructed. Purchasers of lots should assure themselves that a building permit can be issued for their proposed home. In addition, prior to occupancy, the purchaser must obtain a Certificate of Compliance from the Crosswinds Development Corporation and a Certificate of Occupancy from the Town of Ellery.

You are authorized to use this opinion in your offering plan for the sale of lots in the Crosswinds Marina Community development together with interests in the Crosswinds Community Homeowners, Inc.

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

Very truly yours,

LAW OFFICES OF GEORGE R. GRASSER

By


George R. Grasser

MARINA

In conjunction with the Crosswinds Property, the Sponsor is constructing a marina (the "Marina") for the docking of approximately 35 boats up to approximately 25 feet in length. The Marina will also contain a launching ramp for boats. Lot Owners will have an easement which shall afford them access to the launching ramp. This Marina facility will be located immediately to the west of the Property and will be owned and maintained by the Sponsor. Access to the Marina property will be through the street within the Crosswinds subdivision and over Association Property from the public street to the Marina.

Pursuant to the Declaration, the owner of the Marina, initially the Sponsor, will afford Lot Owners the first opportunity to lease spaces in the Marina. If Lot Owners do not lease all the spaces in the Marina in the time provided for such leasing each year by the owner of the Marina, the owner may offer such spaces for lease to other parties. Lot Owners who have leased a boat slip in the immediately preceding year shall be given priority over Lot Owners who have not leased in the immediately preceding year if the number of Lot Owners responding within the time period for response prescribed by the Sponsor exceeds the number of slips available for rent. The Sponsor will grant to the Association the "right of first refusal" which will entitle the Association to meet, at its option, any bona fide offer acceptable to the Sponsor for the sale or lease of the Marina. (See Article XIII of Declaration in Part II of this Offering Plan.)

DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE OWNED AND MAINTAINED BY THE ASSOCIATION

The common areas and facilities to be owned and maintained by the Association total approximately 3.2 acres (see Site Plan in Part II of this Offering Plan). The improved common areas are more fully described in the Engineer's Report in Part II of this Offering Plan. The common areas include the following:

Open space areas - (i) on the north side of the entrance to the Property from State Route 430, (ii) two mall areas within the roadway at the entrance to the Property.

Areas to be improved - a parcel of land contiguous to the west side of State Route 430 on which will be located (i) a

parking area for boat trailers, (ii) a sewage treatment plant, (iii) a water treatment plant and (iv) a tennis court.

- a parcel of land at the northwest corner of the Property contiguous to Chautauqua Lake on which will be located (i) a gazebo type shelter, (ii) a concrete launching ramp for boats and (iii) a sand beach.
- a parking area for 10 cars located by the tennis court.
- a parking area for 15 cars located at the south-easterly end of the property.
- a parking area for 5 cars located near the beach.

IMPROVEMENTS

Parking area for boat trailers.

There will be a gravel parking area for 20 boat trailers.

Sewage Treatment Plant.

The plant is located at the easterly portion of the property along State Route 430.

The sewer distribution lines are PVC class SBR-26.

In order to enable the sewage system to properly function; each Unit will have to have a grinder pump, "Environment One" Model GP-212, to convey the flow of sewage to the sewage treatment facility. Purchasers are advised to confirm the cost of such grinder pump with their builder. The Sponsor estimates such cost to be approximately \$2,000. The pumps will be owned and maintained by the individual owners of the Unit they service.

Water Treatment Plant.

The plant is located along State Route 430. Water will be provided from two wells on the Property. The wells will be equipped with pit-less adapters conforming to the standards of the Chautauqua County Department of Health.

The booster pumps will be Enpo-Cornell 10 HP, 230 Volt, 1 phase with 54 PSI shut-off, (cap. 55 GPM at 50#) or equal.

The storage tanks will be fiberglass.

The 1000 gallon steel pressure tank will be certified for 120 PSIG test pressure. The wellhouse shall be precast concrete 10' x 10' x 15' with a 36" x 84" H.D. steel door, a 1/8 HP sump pump, 4" vent, two 150 watt light fixtures, two duplex wall outlets with ground fault protection and a 2000 BTU electric heater with a thermostat control. Stand-by power will be Kohler 5 KW natural gas with battery-electric starter, battery charger, residential silencer and manual transfer switch.

Tennis Court.

A regulation size doubles court. The paved area will be approximately 60' x 120' wholly or partially enclosed with a 10 foot high chain-link fence. Court surface will consist of 6" crushed stone base, 1-1/2" asphalt binder course, 1" top course, and colored sealer. Court surface will be pitched in single plane 1" per 10 feet to side for drainage (no crown). Painted lines 2" wide will indicate singles and doubles regulation lines, including service courts, back line, center mark and both sets of side lines. Court will be centered in paved area to provide minimum distances of 21 feet from back lines to edge and fence, and 12 feet from doubles court side lines to edge and fence. A steel cable reinforced nylon regulation net well be provided between two steel pipe posts. Posts will be set in concrete base 3 feet away from doubles side lines. One post will be provided with crank & ratchet for net tension adjustment. There will not be lighting for evening play.

Gazebo Shelter.

There will be a gazebo of 1276 square feet constructed of rough sawn cedarwood and all weather wolmanized wood. There will be no electric service and no heat. It will include a storage area for Association equipment such as tools. There will be approximately 400 square feet of deck area.

Beach.

There will be a sandy beach area approximately 100 feet long and 40 feet in depth.

Parking Areas.

There will be a total of 3 parking areas which together can accommodate up to 30 cars. They will include one area near the tennis court which will have 10 spaces, another area at the southeasterly end of the property containing 15 spaces and a third area near the beach containing 5 spaces.

**THE ASSOCIATION
Summary of Declaration**

Application of Declaration

Prior to the first closing of any Lot the Sponsor will file a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration" or the "Association Declaration") in the Office of the Chautauqua County Clerk. The full text of the Declaration is set forth in Part II of this Offering Plan. All 49 Lots will be covered by the Declaration.

The Declaration provides that its provisions shall run with the land and shall be enforceable by the Sponsor, the Association and the Owner of any Lot.

Any land or construction loan mortgage on any part of the Property as of the time of the recording of the Declaration will be subordinated to the provisions of the Declaration.

By accepting a deed, lease or other instrument conveying any interest in a Lot, the grantee, lessee, or other person accepting such interest covenants to observe, perform and be bound by the provisions of the Declaration, including the personal responsibility for the payment of all charges and Assessments which may become liens while such person owns the Lot. Lot purchasers automatically become Members of the Association when they purchase their Lot (e.g., if an Owner sells his Lot, the purchaser automatically becomes a member of the Association).

The Association will own, maintain and repair the Association Property; administer and enforce protective covenants, conditions, restrictions, charges and liens imposed on the Property; obtain and maintain common fire and casualty insurance on the buildings (i.e. the gazebo) of the Association, liability insurance on the Association Property and such other insurance as the Association may obtain in accordance with the provisions of the Declaration; and collect and disburse the Assessments and charges necessary to perform its functions. The Association may also levy fines or other penalties for the violation of the Declaration, By-Laws or rules and regulations of the Association.

All 49 Lots in the development will be covered by the Association Declaration. At a maximum (i.e. if the Sponsor sells all of the Lots) there will be 49 members of the Association.

The Declaration also allows any owner of lands outside of the Crosswinds development as initially subjected to the provisions of the Declaration, to add such lands to the scope of the Declaration and to subject such lands to the jurisdiction of the Association upon the approval in writing of the Association pursuant to a vote of the Lot Owners independent of the Sponsor. (See Article II of the Declaration in Part II of this Plan.)

Easements in Declaration

1. Easements of Owners.

Every Owner shall have a right of easement and enjoyment in Association Property.

This right and easement shall be in common with other Owners and subject to the rights of the Association to: (i) promulgate rules and regulations relating to the use, operation and maintenance of Association Property; (ii) grant easements or rights of way, with respect to Association Property, to utility companies, cable television companies or governmental entities; (iii) transfer Association Property upon the consent of Lot Owners as set forth in the Declaration; (iv) charge reasonable admission and other fees for the use of Association Property; (v) maintain conservation and drainage easement areas and pipes, wires, conduits and utility lines and equipment, and (vi) enter into agreements for the sharing of facilities with other associations, cooperatives or condominiums upon the consent of owners of at least two-thirds of all Lots. Such right and easement shall also be subject to the right of the Sponsor (a) until the completion of the construction, marketing and sale of all Lots on lands described in Schedule A in the Declaration as the same may be amended from time to time, to (i) have, grant and reserve easements and rights of way for access to, and utility lines for, and (b) the reservation of the Sponsor of an easement and right of way for ingress and egress to the Marina for the Sponsor and any person who has a legitimate reason to go to or from the Marina including those who dock boats or repair boats and those persons who visit other persons on such boats (see "Marina" on page of this Offering Plan); (ii) use the Association Property for a sales center and parking area for prospective purchasers of Lots; and (iii) use the Association Property for ingress and egress to the Property and Additional Property.

2. Easements of the Association.

The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have:

- a. an easement and right of access to any portion of the Property, including the Lots, to permit the maintenance, repair and replacement of any property or facilities, the maintenance of which is the responsibility of the Association; and
- b. an easement and right of access to each Lot or Unit for the maintenance, repair and replacement of any pipes, wires, conduits, drainage areas, security systems, utility lines and facilities and cable television lines and facilities located on any Lot or within any Unit and servicing any other Lot or Unit.

(See Article IV of the Declaration in Part II of this Plan.)

Duration of Declaration

The Declaration shall continue in full force and effect unless terminated in accordance with the provisions of the Declaration. (See Sections 11.07 and 11.10 of the Declaration in Part II of this Offering Plan.)

Restrictions in Declaration

1. Association Membership.

Only Lot Owners and the Sponsor (so long as the Sponsor owns at least one Lot) will be members in the Association.

2. Architectural Controls.

The initial construction of Units in the Property shall be under the control of the Sponsor. Plans for all initial construction, i.e. until a Certificate of Occupancy has been issued by the Town of Ellery, must be approved by the Sponsor. The Sponsor will issue a "Certificate of Compliance" which acknowledges such approval, provided the external design, location, etc. of the improvements as constructed are in accordance with the plans previously approved by the Sponsor.

After issuance of a Certificate of Compliance by the Sponsor on a Unit or other new improvement, enforcement of the architectural provisions of

the Declaration and control over any material change in use or any addition, modification or alteration of any improvement is the responsibility of the Association acting through its Architectural Standards Committee. The Architectural Standards Committee shall have three or more members appointed to two-year terms by the Board of Directors of the Association.

Once a Certificate of Compliance is issued by the Sponsor with respect to any Unit, the Owner of such Unit cannot change substantially the use of that Unit, or make an addition, modification or alteration to it which affects the outside appearance of the building or the land around it, without the consent of the Architectural Standards Committee. Plans describing the proposed change must be submitted to and approved by the Committee.

The Architectural Standards Committee may authorize its staff, subcommittees or individual members of the Committee to perform any or all of the functions of the Committee, subject however to review of the Committee itself.

Upon the request of any interested party, the Architectural Standards Committee shall issue a certificate stating whether as of the date of such certificate there are any violations of the Declaration respecting the exterior appearance, design, or maintenance of a particular Unit. A reasonable charge may be imposed for issuance of this certificate.

3. Commercial Vehicles.

Unless used in connection with the construction or sale of Lots or Units by the Sponsor or any builder, or with the construction of improvements to the Association Property, or with the maintenance of Association Property by the Association, or unless otherwise consented to by the Board of Directors of the Association, no commercial vehicles of a weight of two (2) tons or more and no unlicensed vehicles shall be permitted to remain on the Property overnight.

4. Selling, Leasing and Mortgaging of Units.

An Owner may sell or mortgage his Lot to anyone without restriction. If an Owner sells his Lot, the purchaser automatically becomes a member of the Association.

An Owner may lease or rent his Unit to any person. Any lease or rental agreement shall be in writing, shall be for the entire Unit and shall provide that the lessee or tenant shall comply in all respects with all of the terms and provisions of the Declaration, the By-Laws and rules and regulations, if any, of the Association. If a lessee or tenant is in violation of the Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Lot which such lessee or tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the lessee or tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of the Declaration. That Section gives the Board the right to enforce the provisions of the Declaration, By-Laws and rules and regulations by an action at law or in equity, and in addition or as an alternative to such action, impose monetary or non-monetary penalties against the Owner.

5. Covenants and Restrictions.

a. There are general prohibitions against the following:

(1) not keeping one's Lot and all Improvements ("Improvements" as defined in Section 1.01 of the Declaration include buildings, patios, swimming pools, clothes lines, antennas, fencing, curbing and trees and shrubbery more than two feet in height) thereon in good order and repair, including not keeping lawns mowed, seeded and watered;

(2) storage or accumulation out-of-doors of any lumber, metals, bulk materials,

rubbish, refuse, garbage, trash or other waste material (except for building materials during the reasonable course of construction or repair) other than in sanitary containers screened from adjacent and surrounding property except within 24 hours of a scheduled pick-up. (The Association may adopt reasonable rules relating to the size, shape, color and type of containers permitted;)

- (3) noxious or offensive activities;
- (4) outdoor drying or airing of any clothing or bedding;
- (5) above surface utilities.

b. After the issuance of a Certificate of Compliance for a Lot or other portion of the Property, the following are prohibited unless the consent of the Board of Directors of the Association has first been obtained:

- (1) keeping animals, birds or insects for other than domestic purposes, except birds in a cage, fish, not more than two dogs, cats or other household pets and subject to such reasonable rules and regulations which the Board of Directors may impose from time to time;
- (2) oil and mining operations;
- (3) occupying a temporary building, trailer, basement, tent, barn, shed, etc., temporarily or permanently as a dwelling;
- (4) use of a Lot or other portion of the Property for other than residential purposes and purposes incidental and accessory thereto;
- (5) the conducting of any wholesale or retail business except (i) the sale and development of the Property and (ii) the conducting of business by telephone;

- (6) the outside storage or parking of commercial or recreational vehicles, campers, bodies, boats and trailers for more than seven (7) consecutive days in any 30 day period;
- (7) the conducting of extensive outdoor work on any motor vehicles, boats or machines;
- (8) commercial vehicles of a weight of two tons or more;
- (9) unlicensed vehicles of any type;
- (10) operation of any snowmobile, motorcycle, all terrain vehicles or similar motor vehicle.

c. After the issuance of a Certificate of Compliance for a Lot or other portion of the Property, the following are prohibited unless the consent of the Architectural Committee of the Association has first been obtained:

- (1) signs or advertising devices, (except for temporary signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots or Improvements) including temporary signs advertising property for sale or rent, which signs shall be only for the purpose of indicating an open house or inspection and only during the actual time of such open house or inspection, which open house or inspection for any Lot or Unit shall be limited to not more than eight (8) hours per week;
- (2) removal, replacement or construction of any fence, wall or screen planting;
- (3) outside television and radio antennas;
- (4) removal of any tree having a diameter of four inches or more as measured from a point two feet above ground level, or any other tree designated by the Architectural Committee as "not removable".

Amendments to Declaration

The Declaration may be amended as follows:

1. By the Sponsor to correct omissions or errors which do not adversely modify substantial rights of any Owner during such time as the Sponsor owns any portion of the Property. (If the substantial rights of a Lot Owner are adversely modified, the written consent of such Lot Owner will be required.)
2. By the affirmative vote of the Owners of 67% or more of all Lots after a formal "Hearing" as provided for in the Declaration, except that so long as the Sponsor holds title to any lands which are under the Declaration (i.e. "Property") or which the Sponsor may bring under the Declaration without the consent of the Lot Owners, the written consent of the Sponsor will be required if the amendment adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

In addition, no amendment which substantially adversely affects the interest of any lending institution shall be effective if lending institutions which together hold first mortgages on one-third or more of the Lots; advise the Association in writing that they are opposed to such amendment, which opposition must not be unreasonable.

Creation, Management, Operation and Membership of the Association

Incorporation of Association

Crosswinds Community Homeowners, Inc. was incorporated on September 10, 1984, under the Not-For-Profit Corporation Law of the State of New York. It is a Type "A" corporation under the aforementioned law. The Certificate of Incorporation is set forth in Part II of this Offering Plan. The Declaration, which is also set forth in Part II of this Offering Plan, provides the framework and procedures by which the Association, upon conveyance of common properties to it by the Sponsor, will maintain and administer the lands and the facilities comprising the Association Property. The By-Laws which shall govern the operation of the Association are also included in Part II of this Offering Plan.

Services Provided by Association

The Association has been established to provide the following services:

1. Maintenance, including repair and replacement as necessary of the Association Property including but not necessarily limited to parking areas, grass areas, signs, street lights and standards, those portions of sewer, water and utility lines and facilities servicing two or more Lots and not maintained by any utility company or other entity and those areas not within the perimeter of Lots.
2. Obtaining fire and casualty insurance and liability insurance on the Association Property as well as other insurance coverages, to the extent the Board of Directors of the Association determine such insurance to be necessary or appropriate.
3. Supervision, by means of an Architectural Committee, of all exterior improvements on any portion of the Property for which a Certificate of Compliance has been issued by the Sponsor.
4. Collection of assessments to cover all of the above.
5. Enforcement of restrictive covenants and establishment of rules and regulations governing the use of the Property and the conduct of the Owners.

The Association may increase or decrease its maintenance responsibilities provided (i) such increase or decrease is approved in writing by the Owners of two-thirds (2/3) or more of all Lots other than the Sponsor and (ii) if such increase or decrease is proposed while the Sponsor holds title to any Lot on the Property, the written consent of the Sponsor will also be required.

Insurance

The Board of Directors shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (1) fire and casualty insurance for the Association Property, (2) liability insurance for occurrences on Association Property, (3) officers' and directors' liability insurance covering the wrongful acts of officers and directors of the Association, (4) a fidelity

bond covering those who handle Association funds, and (5) workers' compensation insurance covering Association employees and those who perform work for the Association. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

Board of Directors of Association

The business and affairs of the Association shall initially be managed by a three (3) member Board of Directors designated by the Sponsor. Such Board shall initially meet not later than sixty (60) days after the first Lot closing, or such earlier time as the Board may elect. Within 30 days after title has been transferred to 10 Lots, a fourth person who must be a Lot Owner independent of the Sponsor shall be elected to the Board of Directors by those Lot Owners who are independent of the Sponsor. The fourth director shall serve for two years, or until his or her successor is elected by those Lot Owners who are independent of the Sponsor, at the first election of a five (5) member Board, whichever occurs first. If the fourth director's term expires prior to the first election of a five (5) member Board, the Lot Owners who are independent of the Sponsor shall elect a successor.

The first annual meeting of the Association shall be held between June 25 and September 5 after (i) title has been transferred to 25 Lots or (ii) two (2) years from the date of recording the Declaration, whichever occurs first. All Lot Owners then entitled to vote shall elect a new five (5) member Board at such first annual meeting, subject to the right of the Sponsor to appoint a minority of the Directors. (See page 35 of this Offering Plan.)

Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who may or may not be a member of the Board of Directors, and two or more other Lot Owners. Write in votes for persons other than those nominated shall be permitted.

Except for members designated or elected by the Sponsor, the term of office of the members of the Board of Directors shall normally be two years or until their successors are elected, except that at the aforementioned meeting of the Association held for the first election of a five (5) member Board (i.e. at the first annual meeting of the Association after title has been transferred to 25 Lots or after two (2) years from the date of recording of the Declaration, whichever first occurs), and subject to the right of the Sponsor, to appoint a minority of

Directors, the Lot Owners shall elect three (3) Directors for a two-year term and two (2) Directors for a one-year term. At the expiration of the initial term of office of each member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. (See Article V of the By-Laws.)

Except for the initial three (3) Directors designated by the Sponsor, at least one Director shall be a Lot Owner independent of the Sponsor and the number of Directors may be changed by amendment to the By-Laws of the Association. All members of the Board of Directors (other than the Sponsor's designees) shall be Lot Owners or spouses of Lot Owners, partners or employees of a partnership owning a Lot, or shareholders, officers, directors, employees or agents of corporate Lot Owners.

Subject to the limitations set forth in the following paragraph, at any regular or special meeting of the Members, any member of the Board elected by the Lot Owners may be removed (i) without cause, by the affirmative vote of not less than two-thirds (2/3) of all Lot Owners other than the Sponsor and (ii) with cause, by the affirmative vote of not less than a majority of all Lot Owners other than the Sponsor, and a successor may then and there or thereafter be elected to fill the vacancy thus created. Members of the Board of Directors appointed by the Sponsor may be removed without cause only by the Sponsor and with cause by the affirmative vote of not less than a majority of all Lot Owners other than the Sponsor, but their successor shall be appointed by the Sponsor. Any member of the Board of Directors whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting.

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.

The Board may make voting regulations consistent with the Declaration, By-Laws, Certificate of Incorporation and applicable laws. No regulations have yet been promulgated.

The names of the initial board members, their business addresses and their relationship to the Sponsor are as follows: Lawrence Blond, 27600 Chagrin Boulevard, Cleveland, Ohio 44122, president of the Sponsor; Marsha Blond, 28200 Belgrove Road, Cleveland, Ohio 44124, wife of Lawrence Blond, and Irwin J. Dinn, Esq., Suite 217, 3659 South Green Road, Beachwood, Ohio 44122, counsel to the Sponsor.

Amendments to Association By-Laws

The By-Laws may be amended by approval of a majority of a quorum of Lot Owners present at a meeting in person or by proxy, provided that prior to the date for the canvass of the vote on such amendment the Association has not received written notification of opposition to the change from either (i) Owners of more than 33% of the Lots or (ii) mortgagees of more than 50% of the Lots on which there are mortgages as shown on the records of the Association. So long as the Sponsor holds title to any Lot on the Property, Sections 3.01 ("Membership in the Association"), 3.02 ("Right of Sponsor to Assign"), 5.01 ("Number and Qualification of Directors"), 5.03 ("Election and Term"), 5.04 ("Vacancies") and 11.01 ("Alteration, Repeal or Amendment") of the By-Laws cannot be amended without the consent of the Sponsor. (See Article XI of the By-Laws in Part II of this Plan.)

Assessments

Each Lot Owner, by becoming a Lot Owner, shall be deemed to covenant and agree to pay to the Association: (i) annual assessments or charges for the repair, maintenance, and operation of Association Property ("Maintenance Assessments") and (ii) special assessments for capital improvements and repairs ("Special Assessments"), Maintenance Assessments and Special Assessments being together herein referred to as "Assessments." (See Definitions on pages 5 and 6 of this Plan.) Owners of Lots which are not improved with dwelling Units shall pay an Assessment equal to one-half of the amount paid by Lots improved with dwelling Units. If a Unit is constructed on a Lot, the Assessment shall increase to a full Assessment effective the first day of the month following the month in which the certificate of occupancy for such Unit was issued by the Town of Ellery or the Unit was first used as a residence, whichever first occurs.

Unless the Board of Directors of the Association determines otherwise, Maintenance Assessments shall be payable annually. In determining the amount of the Assessment, the Board of Directors shall take into account the status of dwellings under construction on Lots and project the completion dates and subsequent commencement of full Assessments for such Lots. Assessments shall commence on the day of recording of the Association Declaration or on such date thereafter as determined by the Sponsor. Until such time of commencement the Sponsor shall be responsible for all Association operation and maintenance expenses. There are no special provisions as to how Maintenance Assessments can

be increased or decreased. Special Assessments for the construction (rather than the reconstruction or replacement) of any capital improvement to Association Property or for an amount in excess of 20% of the then current amount of the annual Maintenance Assessment require the affirmative vote of Owners of not less than two-thirds (2/3) of all Lots voting in person or by proxy at a meeting duly called for such purpose. The basis for Maintenance and Special Assessments can be changed (from the current provision that all Assessments shall be the same for all Lots with Units and one-half of such amount for all Lots which do not have Units) after a "Hearing" as provided in the Declaration by obtaining the written consent of Owners of not less than two-thirds (2/3) of all Lots, voting in person or by proxy, written notice of which change shall be sent to all Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any Lot or Unit on the Property or Additional Property (whether or not subject to the Declaration), any change in the basis of Assessments which adversely affects a substantial right or interest of the Sponsor with respect to unsold Lots shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, (ii) no such change shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the initial date set for voting on the proposed change, that they are opposed to such changes, which opposition must not be unreasonable. Any change in the basis of Assessments shall be equitable and non-discriminatory.

All Maintenance and Special Assessments become a lien and charge against the Lot and shall also be a personal obligation of the Owner at the time the Assessment falls due. If an Assessment or installment thereof is not paid within 10 days of the due date, the Association may impose a late charge and, if the Assessment or installment thereof is not paid within 30 days of the due date, the Association may collect interest on the amount due at such legally permissible rate as the Board of Directors may set from time to time, accelerate remaining installments, if any, bring legal action against the Owner personally obligated to pay the Assessment, and/or foreclose a lien against the Lot. The cost of such proceedings including reasonable attorneys' fees, shall be added to the amount of such Assessments. The waiver of the use or enjoyment of the Association Property or the abandonment of a Lot shall not be grounds for exemption from the obligation to pay Assessments. In no event may voting rights be suspended for non-payment of any

Assessments. Owners with unpaid Assessments may, at the direction of the Board of Directors of the Association, be precluded from using Association Property.

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

Working Capital and Reserves

Within 60 days of the transfer of title to the first Lot, the Sponsor will deposit the amount of \$4,900 with the Association as working capital, such amount to be reimbursed to the Sponsor by each Lot purchaser paying the Sponsor \$100 at the closing of such purchaser's Lot. While the Sponsor is in control of the Association such working capital fund shall not be used to reduce projected Association Assessments. The Board of Directors of the Association shall budget for reserves for the maintenance, repair and replacement of the sewer and water lines and facilities which the Association owns and has the responsibility to maintain and may budget for reserves for the maintenance, repair or replacement of Association Property (e.g., parking lots, tennis court, gazebo, etc.) The initial budget of the Association for its projected first year of operation provides for such reserves. The Sponsor is of the opinion that such reserves, if continued to be collected by the Association at the same rate in future years as projected in the Association's initial budget, will be sufficient to cover future capital expenditures, but no assurance is given to that effect. Neither the New York State Department of Law nor any other governmental agency has passed on the adequacy of the reserves or working capital provided for herein.

Sponsor's Control of Association Board of Directors

Notwithstanding any other provision of the Declaration, By-Laws or this Offering Plan, the Sponsor shall have the right to control the Board of Directors of the Association until the election of Directors at the first annual meeting after the earlier of (i) two (2) years after the date of recording of the Declaration, or (ii) the transfer of title to 25 Lots. Whenever the Sponsor shall at the time of any election of Directors own

20 or more Lots, the Sponsor shall have the right to appoint two (2) of the five (5) members of the Board of Directors. Whenever the Sponsor shall at the time of any election of Directors own at least 5 but less than 20 Lots, the Sponsor shall have the right to appoint one (1) of the five (5) members of the Board of Directors. (See Section 5.03 of the By-Laws).

The Declaration provides that so long as the Sponsor holds title to 10% or more of the Lots subject to the Declaration, the Board of Directors may not, without the Sponsor's written consent (which consent shall not be unreasonably withheld), (i) except for any necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the 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 bears to the total amount of such initial budget of estimated expenses (except for the special reserve or "sinking" fund for the sewage and water treatment facilities); (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for services or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. (See Section 3.08 of the Declaration in Part II of this Offering Plan.)

Mortgage Loans on Association Property

While the Sponsor is in control of the Board of Directors, no mortgage loans will be placed on the Association Property without the consent of the Owners of at least 51% of those Lots owned by parties independent of the Sponsor.

Financial Statements

The Association must furnish each Lot Owner with an annual statement of the financial affairs of the Association which statement may be in the form of an audit or review, except that, if at least two-thirds of the Lot Owners independent of the Sponsor provide the Association written authorization for an audit, the Association shall have an audit undertaken.

Sponsor's Assessment Obligation

After the commencement of Association Assessments, the Sponsor will be obligated for Assessments (Maintenance and Special) to the same extent as any other Lot Owner.

LOCAL GOVERNMENT APPROVALS

On June 13, 1984 the Town of Ellery Zoning Board of Appeals granted a variance for the development of up to 52 subdivision lots on the Property.

The New York State Department of Environmental Conservation has granted a permit for (i) the excavation of sediment from Chautauqua Lake to create a navigation channel for Marina access, (ii) the installation of rock shoreline protection along the opening to the Marina and (iii) the entrenchment of the sanitary sewer outfall pipe adjacent to the navigation channel.

The Association has received a State Pollutant Discharge Elimination System (SPDES) permit from the New York State Department of Environmental Conservation for the discharge of domestic waste into Chautauqua Lake after extended aeration treatment.

The Sponsor has been advised by the New York State Department of Environmental Conservation that (1) the Sponsor's water system design will be acceptable to the Division of Water Agency, and to the New York State Department of Public Service provided "that a second water well is installed by June 1, 1985 and that the booster pump for the system is appropriately sized" and (2) the New York State Department of Health will endorse the project "once the water quality and quantity of the wells is determined to be satisfactory." Department of Health recommendation of approval is required before the Department of Environmental Conservation can issue the required water supply permit. The Sponsor has completed the installation of the second water well required by the Department of Environmental Conservation.

RIGHTS AND OBLIGATIONS OF THE SPONSOR

1. Construction

The Sponsor will complete construction of all common area improvements. The Sponsor projects that the common areas (including the landscaping) will be completed (except the tennis court which is projected for completion in 1986) and dedicated

to the Association, weather permitting, simultaneously with the completion of the first home, which is expected to be some time in the summer of 1985.

The construction of improvements to be dedicated to the Association will be financed from funds borrowed as needed from time to time from the Chase Lincoln First Bank, N.A., 2-8 East Third Street, Jamestown, New York 14701. The Sponsor has a written agreement with Chase Lincoln First Bank, N.A. for the borrowing of such funds.

The following are conditions placed on the availability of the construction financing by the lender:

- (i) All construction must be completed by September 30, 1985.
- (ii) Prior to any advances being made on the construction loan, the lender must be provided with agreements of the various subcontractors, architects or engineers working on the project that they will continue to perform for the Sponsor, if for any reason the lender assumes the Sponsor's responsibilities under the plan.
- (iii) A statement from a professional engineer that all improvements will comply with all applicable laws, regulations and ordinances when completed. If, at any time during the construction period the undistributed proceeds of the loan are deemed insufficient to complete construction work on the improvements, the Sponsor must deposit sufficient funds to cover such deficiency.

With respect to the Association Property, the Sponsor reserves the right to make changes or substitutions of equipment or materials or modifications of design from those as set forth in this Offering Plan, provided any such changes are not of lesser quality or design.

The Sponsor agrees to pay for the authorized and proper work involved in the construction, and conveyance of all Association Property that the Sponsor is obligated to complete under this Offering Plan and agrees to cause all mechanics' liens with respect to such construction to be promptly discharged or bonded.

The Sponsor will record the Crosswinds Declaration and will convey those lands and facilities designed for common use

to the Association prior to the closing of any Lot. Such property will be released from the provisions of any land or construction loan mortgage at or prior to the time of such conveyance.

The Sponsor will complete construction of all facilities, e.g., street, sewer lines and water lines, vital to the health and safety of the Lot Owners prior to the occupancy of the first homes.

The Sponsor has no obligation to defend any suits or proceedings arising out of its acts or omissions, nor does it have any obligation to indemnify the Board of Directors. The cost of defending such suits or proceedings, if any arise, could be an additional expense to the Association, possibly resulting in increased Association assessments to the Lot Owners.

The Sponsor will deliver to the Board of Directors a set of any available "as built" plans covering the construction of Association Property, including the sewage treatment plant, the water treatment plant, sewer and water lines, boat trailer storage area and gazebo and a representation that the plans are in substantial compliance with the terms of this Offering Plan. If the improvements to the common areas as constructed are not in substantial compliance with the terms of this Offering Plan, this Offering Plan will be amended and the Sponsor will offer Lot purchasers the right of rescission.

No bond or other security has been furnished to secure the Sponsor's obligations, including the Sponsor's obligation to complete construction of Association Property. Although the Sponsor does not anticipate any difficulty in completing construction of Association Property and anticipates completion and conveyance to the Association of all common land and improvements (except the tennis court) prior to the first occupancy of a home, the Sponsor gives no assurance that the projected common areas or facilities will be completed and conveyed to the Association if the Sponsor encounters financial difficulty.

The Sponsor cannot dissolve or liquidate until all of its obligations under the Plan have been completed.

2. Right to Use Property

With respect to Association Property, the Sponsor or any builder, with the consent of the Sponsor, shall have the right so long as the Sponsor or any builder holds title to any Lot on the Property to:

- a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, and security system lines, including, but not necessarily limited to, water, gas, electric, cable television, telephone, sewer and security to service any Lot, Association Property or property of the Sponsor, including the Marina.
- b. connect with and make use of utility lines, wires, pipes, conduits and related facilities located on Association Property for the benefit of any Lot, Association Property or property of the Sponsor, including the Marina.
- c. use the Association Property for ingress and egress to the Property and any property of the Sponsor; (Note: the easement to the Marina shall be permanent.)
- d. operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces.

All easements, rights-of-way and other rights reserved in the Declaration shall, unless otherwise provided, be permanent, shall "run with the land" and shall be binding upon and for the benefit of the Association, the Sponsor, builders and their successors and assigns. With respect to its exercise of the rights reserved to it, the Sponsor agrees to repair any resulting damages from such exercise within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs. There are no restrictions on the extent to which the Sponsor can interfere with the Lot Owners' use of Association Property, so long as it is acting within the scope of the above provisions.

3. Title Insurance

Title to the Association Property will be insured at closing by a title company authorized to do business in the State of New York. The amount of the policies will be the same as the value of such Property as will be set forth in this Offering Plan. This policy will be furnished to the Association at the Sponsor's sole cost and expense.

4. Mortgages on Association Property to be Subordinated to Declaration

The Sponsor will, at or prior to the transfer of title to any Lot, obtain a subordination of any mortgage on the Property to the Declaration.

5. Obligation for Assessments

The Sponsor will be obligated for all Association operation and maintenance expenses until the commencement of Lot Assessments. The Sponsor will be obligated for all Assessments on Lots which it owns. (Lots not improved with Units pay 50% of the Assessments payable by Lots improved with Units.)

6. Certifications of Engineer or Architect as to Completion of Amenities for Each Phase of Development

With respect to the sewer and water treatment facilities and lines to be constructed, the Sponsor will, prior to the conveyance of such facilities and lines to the Association, include a certification by an engineer or architect licensed or registered in the State of New York that such facilities have, in fact, been constructed in accordance with applicable local government specifications, and the provisions of this Offering Plan, and indicating the date of completion. In lieu of such completion, the Sponsor will post a bond, escrow funds or provide other adequate security, in an amount not less than the amount which a licensed engineer shall determine to be necessary, to complete such construction to the required specifications.

TRUST FUNDS

The Sponsor is responsible for complying with the escrow and trust fund provisions of Sections 352-e(2)(b) and 352-h of the New York General Business Law. Pursuant to Section 71-2 of the New York Lien Law, any builder constructing a home for a purchaser is responsible to escrow or bond the purchaser's initial deposit until completion of the home.

Until closing, the Sponsor will:

1. place in a special segregated escrow account, within five (5) business days after receipt, the deposit for a Lot purchase received from a builder or other purchaser of a Lot and within ten (10) business days after such deposit has been made advise the purchaser in writing:

- (i) that such funds have been deposited;
- (ii) the title of the account;
- (iii) the name and address of the lending institution where such funds have been deposited (the Sponsor has initially selected Chase Lincoln First Bank, N.A., 2-8 East Third Street, Jamestown, New York 14701, as depository); and
- (iv) the name, address and telephone number of the attorney whose signature shall be required to withdraw any of such funds.

The funds are not required to be placed in an interest bearing account. However, any interest earned on such deposits shall remain the property of the purchaser, except that if the purchaser defaults, interest on any deposits shall belong to the Sponsor to the extent such interest plus the portion of the deposit retained as liquidated damages by the Sponsor or builder, as the case may be, does not exceed 33-1/3% of the purchase price of the Lot. Such funds shall be held in escrow until the closing of the Lot, except that, if the improvements to the common areas as described in this Offering Plan, are not completed at the time of such closing, the Sponsor will retain in escrow an amount equal to the cost to complete such uncompleted improvements divided by the number of Lots.

The signature of Irwin J. Dinn, Esq. or any other member of the law firm of Klein, Dinn & Hochman, Suite 217, 3659 South Green Road, Beechwood, Ohio 44122 (see "Attorneys" on page 44 of this Offering Plan) shall be required to withdraw any of such funds.

OR

- 2. post with the Lot purchaser a bond or contract of indemnity, issued by a surety company licensed in New York State, guaranteeing the return of such deposit and deliver a copy of such bond or contract of indemnity within 10 business days after receipt of the initial advance. (If such bond or

bond or contract of indemnity is furnished after the funds have been deposited in a trust account as provided in subparagraph 1 above, the monies covered by the bond or contract of indemnity will no longer be required to be maintained in the trust account.) If the Sponsor elects to post a bond or contract of indemnity in lieu of holding Lot purchasers' deposits in an escrow account, such election will be disclosed by a duly filed amendment to this Offering Plan.

The escrow account, bond or contract of indemnity shall remain in effect until (i) the performance of the obligations of the Sponsor under the purchase agreement between the Sponsor and builder or other Lot purchaser, including the completion of the common areas and facilities and transfer of title to the Lot to the builder or other Lot purchaser, or (ii) a default of the purchaser excusing the performance of the Sponsor, or (iii) the release or discharge of the liability of the Sponsor by a refund to the builder or other Lot purchaser. Until such time any deposit in escrow shall remain the property of the builder or other Lot purchaser.

MANAGEMENT AGREEMENT

Because of the minimal scope of the Association's property and maintenance responsibilities, the Sponsor has not arranged for professional management services and no provision is made for management services in the estimate of income and expenses included in this Offering Plan. Accordingly, members of the Association will be required to assume the obligations of preparing the Association's budget, collecting assessments, supervising the performance of Association employees, checking the performance of independent contractors retained by the Association and obtaining and maintaining appropriate insurance coverages.

IDENTITY OF PARTIES

Sponsor

Crosswinds Marina Community is the first venture of the Sponsor. The Sponsor is an Ohio corporation with its office at 27600 Chagrin Boulevard, Cleveland, Ohio 44122. The Sponsor is wholly owned by Lawrence E. Blond, its president and the only shareholder, director or officer of the corporation actively involved in the Crosswinds Marina Community Development.

Mr. Blond's primary occupation is as a realtor. His realty office is at 27600 Chagrin Boulevard, Cleveland, Ohio 44122. The telephone number of the Sponsor is (216) 292-4800. As the Sponsor and the principal of the Sponsor is located in the State of Ohio, the New York Secretary of State has been designated to receive service of process. Neither the Sponsor nor Lawrence E. Blond have previously been involved in the offering of cooperative interests in real estate (i.e. condominiums, cooperatives, interests in a homeowners' association) in the State of New York.

Attorneys

George R. Grasser, Esq. of the Law Offices of George R. Grasser, 3350 Marine Midland Center, Buffalo, New York 14203 (Telephone: (716) 854-1016), New York, counsel to the Sponsor, prepared this Offering Plan.

Irwin J. Dinn, Esq. of the firm of Klein, Dinn & Hochman, Suite 217, 3659 South Green Road, Beachwood, Ohio 44122 is general counsel to the Sponsor and will represent Sponsor in the sale of individual Lots.

Engineer

David R. Hoops, P.E., P.S., 14098 Rock Creek Road, Chardon, Ohio 44024 (216) 449-4005. Mr. Hoops has not been involved as the engineer for any other offering of cooperative interest in real estate (i.e. condominiums, cooperatives, interests in a homeowners' association) in the State of New York.

REPORTS TO MEMBERS

It is the obligation of the Association to give all its members annually:

- (i) promptly after the end of the fiscal year, a full and correct statement of the financial affairs of the Association prepared by a public accountant or certified public accountant, including either (i) an audited balance sheet and an audited financial statement of operation for the preceding year, or (ii) a balance sheet and a review of operations, whichever the Board of Directors of the Association deems appropriate, a review taking into account the cost of same, the complexity and volume of the Association's financial affairs and such other factors the Board of Directors deems

relevant. Mortgagees of Lots who have requested the same shall also receive copies of the financial statements. Notwithstanding the above, (i) an audit, at the expense of the Association shall be required if authorized in writing by at least two-thirds (2/3) of all Lot Owners independent of the Sponsor and (ii) any Unit Owner or mortgage holder shall be entitled to obtain an audited statement at such Unit Owner's or mortgagee's own expense.

- (ii) not less than ten (10) days or more than thirty (30) days before the date of the Annual (or any Special) Meeting, notice of the Annual Meeting.

DOCUMENTS ON FILE

In accordance with Part 22 of the New York State Attorney General's regulations, copies of this Offering Plan and all exhibits or documents referred to herein shall be available for inspection by prospective purchasers and by any person who shall have purchased securities offered by this Plan or who shall have participated in the offering of such securities, at the Law Offices of George R. Grasser, New York counsel to the Sponsor, 3350 Marine Midland Center, Buffalo, New York 14203, and shall remain available for inspection for a period of six (6) years.

GENERAL

A. No Pending Litigation.

There are no lawsuits or other proceedings now pending, or any judgments outstanding, either against the Sponsor or the Association or any person or persons which may materially affect this offering, the Property, Sponsor's capacity to perform all of its obligations under this Offering Plan, or the operation of the Association.

B. Prior Offerings.

As of the date of initial presentation of this Offering Plan, neither the Sponsor nor any representative or agent of the Sponsor has solicited or received funds or made any offering or binding agreement with respect to Lots or interests in the Association, except the following:

The Sponsor, without distributing to purchasers an offering plan or prospectus filed with the New York State Department of Law, entered into contracts for the sale of four (4) Lots in the Crosswinds subdivision together with a membership interest in the Association. The Sponsor has agreed, with respect to such sales to offer each of such purchasers the opportunity, within thirty (30) days from the date of receipt of a copy of this Offering Plan, to rescind their purchase and obtain a full refund of all monies paid.

C. No Discrimination.

Neither the Sponsor nor any selling agent will discriminate against any person on any basis prohibited by civil rights laws.

DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS - CROSSWINDS
AND GRANT OF LEASE RIGHTS AND RIGHT OF FIRST
REFUSAL WITH RESPECT TO LANDS IMPROVED WITH MARINA
(THE CROSSWINDS DECLARATION)

MADE BY: CROSSWINDS DEVELOPMENT CORPORATION
27600 Chagrin Boulevard
Cleveland, Ohio 44122

DATED: _____

IRWIN J. DINN, ESQ.
Klein, Dinn & Hochman
Counsel to the Sponsor
Suite 217
3659 South Green Road
Beachwood, Ohio 44122

LAW OFFICES OF
GEORGE R. GRASSER
Special Counsel to the Sponsor
3350 Marine Midland Center
Buffalo, New York 14203

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - CROSSWINDS
AND GRANT OF LEASE RIGHTS AND RIGHT OF FIRST
REFUSAL WITH RESPECT TO LANDS IMPROVED WITH MARINA

(THE CROSSWINDS DECLARATION)

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - CROSSWINDS
AND GRANT OF LEASE RIGHTS AND RIGHT OF FIRST
REFUSAL WITH RESPECT TO LANDS IMPROVED WITH MARINA

(THE CROSSWINDS DECLARATION)

THIS DECLARATION, made this day of ,
1985, by CROSSWINDS DEVELOPMENT CORPORATION, an Ohio corporation
having an office at 27600 Chagrin Boulevard, Cleveland,
Ohio 44122, being referred to hereinafter as "the Sponsor."

WITNESSETH

WHEREAS, the Sponsor is the owner of the real property
described in Article II of this Declaration which the Sponsor
desires to develop into a residential community known or to be
known as "Crosswinds" with open spaces and other common facili-
ties for the benefit of said community; and

WHEREAS, the Sponsor desires to provide for the pre-
servation of the values and amenities in said community and for
the maintenance of said open spaces and other common facilities;
and, to this end, desires to subject the real property described
in Article II to the covenants, conditions, restrictions, ease-
ments, charges and liens, hereinafter set forth, each and all of
which is and are for the benefit of said property and each owner
thereof; and

WHEREAS, the Sponsor desires that some of such real
property be subdivided into lots upon which are or will be
constructed residential dwelling units, which lots and units
will be individually owned and the Sponsor desires that the open
spaces and other common facilities (excluding the Marina which
shall be owned by the Sponsor) shall remain available for the
benefit of all members of the community; and

WHEREAS, the Sponsor has deemed it desirable, for the
efficient preservation of the values and amenities in said com-
munity to create an agency to which should be delegated and
assigned the powers of maintaining and administering the com-
munity property and facilities and administering and enforcing
the covenants and restrictions and collecting and disbursing the
assessments and charges hereinafter created; and

WHEREAS, the Sponsor has incorporated CROSSWINDS COMMUNITY HOMEOWNERS, INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions; and

WHEREAS, the Sponsor desires that those who live in the Crosswinds community shall have the first right to lease boat docks or slips on lands retained by the Sponsor and which the Sponsor intends to improve with a Marina; and

WHEREAS, the Sponsor desires that, should the lands improved with the Marina be contracted for sale or lease at any time, the agency or association having the powers of maintaining and administering the community property and facilities shall have a "right of first refusal," i.e. the right to purchase or lease such lands on the same terms and conditions as such other offer acceptable to the seller.

NOW THEREFORE, the Sponsor, for itself, its successors and assigns, declares that the real property described in Section 2.01 hereof and such additional property as may be brought under the scope of this Declaration from time to time as permitted by Section 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "Association" shall mean and refer to the CROSSWINDS COMMUNITY HOMEOWNERS, INC.
- B. "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.
- C. "Builder" shall mean and refer to any person, partnership, corporation or other entity which undertakes the construction of a dwelling unit on a Lot, whether or not the Lot was purchased from the Sponsor.

- D. "Certificate of Compliance" shall mean and refer to the document issued by the Sponsor with respect to a Lot or other portion of the Property acknowledging that the initial development thereof has been completed to the satisfaction of the Sponsor in accordance with the requirement of this Declaration for issuance of such Certificate.
- E. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Crosswinds, as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- F. "Improvement" shall mean and refer to any thing or device (other than trees and shrubbery less than 2 feet high), the placement of which upon the Property may affect the appearance of the Property including, by way of illustration and not of limitation, any building, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall, trees and shrubbery more than 2 feet in height, signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent improvement to the Property.
- G. "Lot" shall mean and refer to any portion of the Property shown as a separate lot upon any subdivision map recorded or filed in the Chautauqua County Clerk's Office.
- H. "Lot Owner" - The Owner (as such term is defined below) of a "Lot" (as such term is defined above).
- I. "Marina" - The lands described in Schedule B attached which are or will be improved with a Marina, the ownership to which will initially be retained by the Sponsor.
- J. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest of any Lot.

- K. "Property" shall mean and refer to all land and the Improvements thereon as are subject to this Declaration and any streets within the Crosswinds community.
- L. "Sponsor" shall mean and refer to Crosswinds Development Corporation, its successors and assigns.
- M. "Unit" shall mean and refer to each completed dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Ellery) situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

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 Ellery, County of Chautauqua and State of New York, all of which property shall be hereinafter referred to as the "Property." The property initially subject to this Declaration is described in Schedule A attached hereto.

Section 2.02. Additional Property. The Owner of other lands, ("Additional Property"), i.e. in addition to the lands described in Schedule A, who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of the Lot Owners independent of the Sponsor as provided in its By-Laws and (ii) an amendment to this Declaration.

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

Nothing contained in this Declaration or in any recorded or unrecorded plan, map, picture, drawing, brochure or other representation of a plan or development shall be construed as requiring the Sponsor or the Association to subject to the provisions of this Declaration any other lands now or hereafter owned by them regardless of whether or not such lands are subjected to an agreement containing provisions similar to those contained in this Declaration.

Section 2.03. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed Crosswinds Community Homeowners, Inc. (the "Association"), to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the 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 Lot Owners and the Sponsor. All Lot Owners shall,

upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Lot Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting Rights. The voting rights of Lot Owner members of the Association shall be as provided in the By-Laws of the Association.

Section 3.04. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its members, in regard to proof of membership in the Association, Lot ownership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.05. Selection of Directors. The appointment or nomination and election of Directors the filling of vacancies on the Board of Directors and the removal of Directors shall be governed by the By-Laws of the Association.

Section 3.06. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.07. 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, judgments, decrees, fines, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves

such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled. Funds to cover the above expenses, including fees of counsel, may be advanced by the Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that the recipient is not entitled to indemnification hereunder.

Section 3.08. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to 10% or more of the Lots subject to this Declaration, the Board of Directors may not, without the Sponsor's written consent, which consent will not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) 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 for the Association; 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 services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any lands subject to this Declaration, this Section shall not be amended without the written consent of the Sponsor.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property, with or without Improvements thereon, for the use and

enjoyment of the Owners. The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property." The Sponsor may retain the fee title to certain tracts of land designated or intended to be used as Association Property until such time as Improvements have been completed thereon or until such time as, in the opinion of the Sponsor, the Association is able to maintain the same.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Owner (and such Owner's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Sponsor as set forth in Sections 4.04 and 4.05 herein. Every Owner shall also have an easement to docks and launching ramp on the Marina as described in Section 12.03 of this Declaration. All such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01 hereof.

Every Owner shall have an easement for ingress and egress by vehicle or on foot as described in Section 4.06 hereof and the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Owner for ingress and egress.

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

- a. to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Owners;
- b. to grant easements or rights of way, with or without consideration, to any public or private utility corporation, coaxial company cable or similar entity, governmental agency or political subdivision;

- c. to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Owners) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of the Owners of two-thirds (2/3) of all Lot Owners other than the Sponsor who shall vote by written ballot which shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than 30 days nor more than 50 days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable.

- d. to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of the Owners of two-thirds (2/3) of of all Lot Owners voting upon written ballot which shall be sent to every Lot Owner not less than 10 days nor more than 60 days in advance of the date or initial date of the canvass thereof.

With respect to any street owned or dedicated to the Town of Ellery the Association shall have such easement, right and obligations with respect to those portions of such streets which run through, or are immediately adjacent to, lands covered by this Declaration, as may be agreed to between the Town of Ellery and the Sponsor to: (i) lay, install, maintain, repair, replace or renew underground electric cables, conduits, gas transmission pipes, sewer pipes, water pipes, security system and television cables; (ii) plant, maintain, replace and water lawns and plantings and maintain, repair or replace decorative entrance structures and area identification signs on the

entrance area to the Property; and (iii) enter upon the mall areas within the roadway at the entrance to the Property to plant, maintain, replace and water lawns and decorative plants.

Section 4.04. Rights of Sponsor. With respect to Association Property and in addition to the rights reserved in Section 4.05 below and the easements reserved in Section 4.10 below, so long as the Sponsor holds title to any lands covered by this Declaration, the Sponsor shall have the right to:

- a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, including, but not necessarily limited to, water, gas, electric, cable television telephone and sewer to service any Additional Property as referred to in Section 2.02 of this Declaration;
- b. connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Additional Property added pursuant to Section 2.02 of this Declaration;
- c. use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration) and any Additional Property added pursuant to Section 2.02 of this Declaration;
- d. operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and
- e. grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of any Additional Property added pursuant to Section 2.02 of this Declaration.

The easements, rights-of-way and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor and their successors and assigns. With respect to its exercise of the above rights, the Sponsor agrees to repair any damages resulting from its use within a reasonable time after the completion of development or

when such rights are no longer needed, whichever first occurs. This Section shall not be amended without the written consent of the Sponsor.

Section 4.05. Association's Utility and Conduit Easement. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Lot and Unit for maintenance, repair or replacement of any pipes, wires, coaxial cables, security system lines, conduits, drainage areas or public utility lines located on any Lot or within any Unit and servicing two or more Lots. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot, or Lots of such Owner or Owners to secure the payment thereof.

Section 4.06. Common Access Easement. The Sponsor and all Owners and their guests and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.07. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards. Any material increase or decrease in the maintenance responsibilities of the Association shall require the consent of the Owners of not less than two-thirds (2/3) of all Lots other than the Sponsor. If the Sponsor holds title to 10% or more of the Lots at the time such increase or decrease is voted upon, the consent of the Sponsor will also be required.

Section 4.08. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives.

Section 4.09. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10. Easements Reserved to Sponsor. Easements are reserved herein over all Property covered by this Declaration for the benefit of lands retained by the Sponsor (including the "Marina") for the following purposes:

- a. ingress and egress over roadways; and
- b. use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer, cable television and security. This easement shall not include the right to consume any water, gas or electricity for which one or more individual Owners are billed directly without the consent of the individual Owners affected.
- c. access to the Marina and the parking of vehicles of those who use the Marina, including those who own boats in the Marina or who otherwise have a legitimate reason to go to or from the Marina including those persons who dock boats or repair boats and those persons who visit other persons on such boats.

The Owner of 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.

Section 4.11. 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 Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall

be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

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

Section 4.12. Association's Easement and Right of Access for Maintenance, Repair and Replacement. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible to maintain, repair or replace as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association. The Association shall also have the easement and right as set forth in Section 4.03 above with respect to lands within the bounds of streets conveyed or dedicated to the Town of Ellery.

Section 4.13. Hearing Procedures. Where the Board of Directors is required in accordance with the provisions of the Declaration to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.13 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Owners in accordance with Section 12.02 of this Declaration. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The

Hearing will be held on the Property or in a place reasonably accessible to the Property. All Owners and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a proposal, a Hearing is required pursuant to more than one section of the Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

Section 4.14. Acquisition, Conveyance, Improvement and Changes in Use of Association Facilities. Subject to the limitations set forth in this Section, the Board of Directors of the Association, on such terms and conditions as it deems appropriate, may authorize:

1. the acquisition, through purchase, gift, lease or any combination thereof, of land or Improvements or any combination thereof, as Association Property (subject to the obligation of the Board of Directors to accept a conveyance from the Sponsor as set forth in Section 4.01 hereof);
2. the transfer, conveyance, donation, lease or other disposition of any Association Property;
3. the construction of, or the making of additions, modifications or alterations to, or the demolition of, improvements to Association Property;
4. the material change in the use of any Association Property (including, without limitation, construction of improvements so as to convert passive recreational or open space to active recreational use).

Upon the affirmative vote of the Board of Directors proposing any of the above, the Board of Directors shall hold a Hearing on the Proposal in accordance with the Hearing Procedures set forth in Section 4.13 hereof.

Not less than 15 nor more than 45 days after the Hearing the Board of Directors shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three-fourths of

the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall not be in violation of the zoning laws or any other laws, ordinances, rules or regulations of the Town of Ellery or any other governmental authority.

If a proposed acquisition of land or Improvements or the construction, addition, modification, alteration to, or the demolition of Association Property, will result in the imposition of a Special Assessment as provided in Section 5.07 of this Declaration, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 4.13 hereof, and the provisions of Section 5.07, prior to finally authorizing such action.

Prior to:

- (1) the making of an addition, modification or alteration to Association Property; or
- (2) the demolition of any improvement on Association Property; or
- (3) the authorizing of a material change in use of Association Property;

the Board of Directors shall obtain the approval of the Architectural Committee as provided in Article VIII hereof.

Notwithstanding the provisions of this Section, the decision of the Board with respect to any proposal may not be contrary to the position of Owners of 51% or more of the Lots, expressed in a written petition or petitions signed by such Owners and delivered to the Board prior to its scheduled vote in the proposal.

Section 4.15. Damage Resulting from Use of Easement.
Any damage to any Lot or other portion of the Property or to any Improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement granted or reserved herein, shall be promptly (except as provided in Section 4.04 above) repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, at the cost and expense of such person or entity (except as provided in Section 4.05 above), so that any such damage will be restored or replaced to the condition in which it existed immediately prior to the damage.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

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

- a. annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments") and for services performed by the Association; and
- b. special assessments for capital improvements ("Special Assessments");

together hereinafter being referred to as "Assessments."

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

Section 5.02. Purpose of Maintenance Assessment. The purpose of Maintenance Assessments shall be to fund the maintenance, preservation, operation, improvement and replacement of the Association Property including, but not limited to, the maintenance and operation of the fresh water treatment plant and the sewage treatment plant and their respective service lines (excluding that portion of such lines servicing only one Unit or Lot from the point of "tap in" to the Unit), recreational areas and facilities, the promotion of the recreation, safety and welfare of the Lot Owners of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Association Property, and the Association's officers, directors, Lot Owners and employees, obtained pursuant to Article IX of this Declaration, and for such other needs as may arise. As provided in Section 4.07 of this Declaration, any material increase or decrease in the maintenance responsibilities of the Association shall require the consent of the Owners of not less

than two-thirds (2/3) of all Lots other than the Sponsor, as well as the Sponsor, if the Sponsor holds title to 10% or more of the Lots at the time such increase or decrease is voted upon. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the date of recording of the Declaration or on such date thereafter as determined by the Sponsor except that until Assessments commence the Sponsor will be responsible for all expenses incurred in the operation and maintenance of Association Property. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period, subject to the Assessment on a Lot increasing from a one-half Assessment (see Section 5.04 below) to a full Assessment if such Lot becomes improved with a Unit, such increase to be effective the first day of the month following the earlier of (i) the issuance of a certificate of occupancy for such Unit by the Town of Ellery or (ii) the use of such Unit as a residence. The Assessments shall be due and payable annually unless the Board of Directors establishes installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Lot Owner. Should the Board of Directors determine at any time that the Assessments for any reason, including non-payment thereof by Lot Owners, are insufficient to fully fund the then current year's expenditures, the Board may assess additional amounts on a pro rata basis to all Lot Owners.

Section 5.04. Liability of Lot Owner and Basis of Assessments. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot improved with a Unit shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, and the Owner of each Lot not improved with a Unit shall be liable for the payment of Maintenance Assessments and Special Assessments, if any, equal to one-half (1/2) of such full Assessment amount.

Dividing the number of Lots improved with Units and one-half (1/2) of the number of Lots not improved with Units into the total amount which the Board of Directors shall deem to

be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot improved with a Unit. Lots not improved with a Unit shall be assessed at one-half of such amount, subject to an increase, if a Unit is constructed thereon, as provided in Section 5.03 above. In determining the amount of the annual Assessment, the Board of Directors of the Association shall take into account the status of dwellings under construction on Lots and project the completion dates and subsequent commencement of full Assessments for such Lots.

Section 5.05. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Lot Owners excluding the Sponsor, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any Lot, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor or any Builder with respect to unsold lots or dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Chautauqua as an amendment to this Declaration.

Any change in the basis of Assessments shall be equitable and non-discriminatory within the following classifications: (i) Lots containing Units and (ii) Lots which do not contain Units.

Section 5.06. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to Lots which the Association

has the responsibility to maintain, including the necessary fixtures and personal property related thereto. Before levying such a Special Assessment the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.13 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall, (i) for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, obtain the consent of two-thirds (2/3) of the total votes of Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting; (ii) for any other Special Assessment whether for the full amount proposed or for a lesser amount, obtain the approval of not less than three-fourths of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Lot Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.07. Non-Payment of Assessment. If an Assessment, or installment payment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the Lot which shall bind the Lot in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to such lien, the then Owner of the Lot may be held personally liable for the payment thereof (including interest, penalties and costs of collection). Subject to the conclusive and binding effect of an assessment certificate issued as provided in Section 5.10 below, the grantee of a voluntary conveyance of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against such Lot prior to the time of conveyance without prejudice to the grantee's right of recovery therefor from the grantor. The lien for any past due Assessment may be memorialized by the filing in the Chautauqua County Clerk's Office of a certificate of lien against the Lot and/or the Owner of the Lot. Such certificate shall be sufficient security notice for Assessments due and payable after such filing. The failure to file such certificate shall have no effect on the existence of the lien, or on the right of the Association to file a lien in the future or to collect Assessments owing for a Lot.

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

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

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

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

Section 5.08. Notice of Default. The Board of Directors, when giving notice to a Lot 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 holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any

such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written demand of the Owner or lessee of a Lot, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of a Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender, on the Lot on which such certificate has been furnished.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Lot from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association, may borrow funds from any recognized lending institution or from the Sponsor, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion of the Board of Directors acting in its absolute discretion, except that (i) any member of the Board of Directors who has been elected or appointed by the Sponsor shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a

majority of those Directors not elected or appointed by the Sponsor, (ii) any consent of the Sponsor as required by Section 3.08 of this Declaration must be obtained, and (iii) any borrowing in excess of \$25,000.00 (which amount shall increase January 1 of each year by 5% over the previous year's amount) shall require the prior approval of the Lot Owners of at least 50% of the Lots excluding Lots owned by the Sponsor.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
 - (2) establish sinking funds and/or other security deposits;
 - (3) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
 - (4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
 - (5) provide for the custody and safeguarding of all funds received by it.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to Association Property, including, but not limited to, the maintenance and operation of the recreational areas and facilities, shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of (i) pipes, wires, conduits and public utility lines servicing more than one Lot or between the common distribution line and the "tap in" to the individual Lot and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) and (ii) drainage facilities (except landscape maintenance of such facilities which is the responsibility of the Owner of the Lot or other portion of the Property on which such facilities are located) shall also be the responsibility of, and an expense of, the Association.

Except for pipes, wires, conduits and public utility lines servicing more than one Lot or from the "tap" to the individual Lot and the common distribution line, as provided above, all maintenance, repair or replacement with respect to the Lots and Units is the responsibility and shall be made at the cost and expense of the respective Owner(s).

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

The Association (and its employees, contractors and agents) shall have an easement and right of access for maintenance and repairs as set forth in Sections 4.03 and 4.12 of this Declaration.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair or replacement necessary to preserve the appearance and value of Association Property or property which the Association is obligated to maintain, repair or replace, made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of an Owner (including (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) or the

Sponsor shall be made at the cost and expense of such Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association shall keep all Association Property in good working order, condition and repair, in a clean, neat and safe condition and in conformity with all applicable laws, ordinances and regulations. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of the property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such property.

ARTICLE VII

INITIAL DEVELOPMENT OF PROPERTY

Section 7.01. Control of Sponsor. The initial construction of any Improvements on a Lot or other portion of the Property and the initial use of any such portion of the Property shall be under the exclusive control of the Sponsor until the initial development of such portion of the Property has been completed to the satisfaction of the Sponsor as evidenced by issuance of a Certificate of Compliance pursuant to Section 7.03 hereof. After issuance of a Certificate of Compliance with respect to a Lot or other portion of the Property, control of all further development or construction on said Lot or other portion of the Property and the use thereof shall be the responsibility of the Association, as set forth in Article VIII below.

Section 7.02. Submission of Plans for Initial Development. No Improvements shall be initially made to or constructed on any Lot or other portion of the Property unless and until plans for such Improvements, in such detail as the Sponsor may require, have been approved by the Sponsor as to their proposed

use, external design and location of the Improvements. In addition all plans and proposed Improvements shall comply with the applicable zoning, building, health and other laws, codes and ordinances and all permits and approvals, if any, required by governmental agencies for such development shall be obtained. No such development shall be commenced except in accordance with such approved plans or a modification thereof similarly approved. The Sponsor may impose such other requirements with respect to the construction of such initial Improvements or such other development of such Lot or other portion of the Property, as the Sponsor deems appropriate, provided such requirements do not conflict with the provisions of this Declaration, applicable zoning and building codes, or any other applicable laws, codes or ordinances.

Section 7.03. Certificate of Compliance. Upon completion of the initial Improvements on a Lot or any other portion of the Property to the satisfaction of the Sponsor, in accordance with the approved plans, this Declaration (including Section 10.20 hereof) and such other requirements as the Sponsor may have imposed, the Sponsor shall issue a Certificate of Compliance identifying such Improvements, and stating generally that such Improvements or development have been satisfactorily completed. Any Certificate of Compliance issued in accordance with the provisions of this Section 7.03 shall be prima facie evidence of the facts stated therein as of the date thereof and, as to any purchaser, lessee, or mortgagee or other encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Improvements on the Lot or other portion of the Property as of the date thereof, and the use or uses described therein, comply with all the requirements of this Article VII, and with all other requirements of this Declaration. Prior to actual completion of certain Improvements, the Sponsor may issue temporary Certificates of Compliance under such circumstances and on such terms and conditions as it deems appropriate.

Section 7.04. Liability of the Sponsor. Except to the extent specifically provided in Section 7.03 above with respect to issuance of a Certificate of Compliance, no action taken by the Sponsor or any officer, employee or agent of the Sponsor pursuant to this Article VII 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 the Property, or any Lot or other portion thereof. All claims, demands, or other causes of actions arising out of any such action (including issuance of a Certificate of Compliance) by the Sponsor shall be deemed to be hereby waived.

The Sponsor shall not be liable for any damages to anyone submitting plans to it for approval or to any Owner or any other person, by reason of mistakes in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval of such plans. Every person or other entity which submits plans to the Sponsor for approval, agrees, by submission of such plans, that no action or suit will be brought against the Sponsor in connection with such submission.

Section 7.05. Consent of Sponsor Necessary to Amend this Article VII. Notwithstanding any other provision of the Declaration, any amendment to this Article VII which alters or abridges the rights or authority of the Sponsor shall not be valid without the consent in writing of the Sponsor. This Section shall not be amended without the specific written consent of the Sponsor, which consent shall not be unreasonably withheld.

ARTICLE VIII

CONTROL AFTER ISSUANCE OF CERTIFICATE OF COMPLIANCE

Section 8.01. Control by Association. After issuance of a Certificate of Compliance with respect to a Lot or any other portion of the Property, enforcement of the Declaration with respect to control over any change in use or any additions, modifications, or alterations to any Improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee, as provided in Section 8.02 below.

Section 8.02. Composition and Function of Architectural Standards Committee. The Architectural Standards Committee (the "Architectural Committee") shall be a permanent committee of the Association and shall approve all proposed additions, modifications or alterations to any Improvements or any proposed change in the use of a Lot or any other portion of the Property (including Association Property) after issuance of a Certificate of Compliance with respect thereto. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three or more persons (as determined by the Board of Directors from time to time). The Committee members shall be designated by the Board of Directors of the Association

for terms of two (2) years, but shall be subject to removal, with or without cause by the affirmative vote of not less than three-fourths (3/4) of the members of the Board of Directors. All Committee members shall be Lot Owners or principals, partners, officers, directors or employees of the Sponsor.

Section 8.03. Submission of Plans to Architectural Committee. After issuance of a Certificate of Compliance with respect to a Lot or any portion of the Property, no addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the Improvements located thereon, nor shall the use thereof as designated in the Certificate of Compliance be changed, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 8.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 8.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed Improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness of any proposed Improvements;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. the failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules or regulation;

- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 8.05. Approval of Architectural Committee.

Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 8.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any) and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or other portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans to not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or other portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or other portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or other portion of the Property.

Section 8.06. Written Notification of Disapproval.

In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 8.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 8.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee

approving or disapproving any plans with 35 days after submission thereof, said applicant may notify the Committee in writing of that fact. The plans shall be deemed approved by the Committee unless notice to the contrary is given by the Committee not later than the later of:

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

Section 8.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to Improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 8.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees or individual members of the Architectural Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Committee.

Section 8.10. Records of Meetings and Regulations. The Architectural Committee shall keep minutes of meetings and maintain records of all votes taken at meetings. The Architectural Committee shall make such records and current copies of its rules and regulations available at reasonable places and times for inspection by any person.

Section 8.11. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, sub-committee, employee or agent thereof, shall entitle any person

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

ARTICLE IX

INSURANCE

Section 9.01. Required Purchase of Insurance. The Association shall obtain and maintain the following insurance:

- a. Insurance for all improvements and personal property comprising Association Property against loss or damage by fire and other hazards now or hereafter embraced by "extended coverage, vandalism and malicious mischief," in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Such insurance may have a deductible clause in a reasonable amount, and shall be obtained by the Association for the benefit of the Sponsor, the Association, each of the Lot Owners, and the holders of mortgages upon the ownership interests of the Lot Owners, as their interests may appear.
- b. Insurance for all of the improvements and personal property comprised in the Association Property against loss or damage by explosion of pressure vessels and pressure pipes installed in, on or about the Association Property, without a co-insurance clause so long as available, in such amount as the Board of Directors of the Association shall deem desirable.
- c. Insurance against liability for personal injury or property damage arising from or relating to

the Association Property initially in an amount of at least Five Hundred Thousand Dollars (\$500,000.00) single limit as respects both bodily injury and property damage, with an umbrella policy initially in an amount of at least One Million Dollars (\$1,000,000.00); such insurance to protect the Sponsor, the Owners, the occupants, the Association and its agents and employees, the managing agent, if any, of the Association and its agents and employees, the members of the Association's Board of Directors and the holders of mortgages on the Lots.

- d. A fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board of Directors or the Lot Owners in such amount as the Board of Directors shall deem desirable. The premium for such fidelity bond shall be an expense of the Association. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be cancelled for nonpayment of any premiums or otherwise substantially modified without 30 days' prior written notice to all holders of first mortgages of record.
- e. Workers' compensation insurance covering any employee of the Association and those who perform work for the Association.

The Board of Directors shall not be liable for failure to obtain any of the above coverages or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available, in the opinion of the Board of Directors, only at demonstrably unreasonable cost.

Section 9.02. Optional Purchases of Insurance. The Association may obtain such other insurance as it deems desirable.

Section 9.03. General Provisions Regarding Insurance. The Board of Directors is required to make every reasonable effort to secure insurance policies that will provide for the following: (i) a waiver of subrogation by the insurer as to any

claims against the Association, the Board of Directors, its managing agent, if any, and the Owners; (ii) that the master policy on the improvements and personal property comprising the Association Property cannot be cancelled, invalidated or suspended on account of any one or more individual Owners; (iii) that the master policy on the improvements and personal property comprising the Association Property cannot be cancelled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized managing agent or any employee of the managing agent, without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its managing agent, if any, or any Owner or mortgagee; (iv) that any "other insurance" clause in such master policy exclude the policies of individual Owners of Lots from consideration; and (v) that the coverage of any policy shall not be terminated for nonpayment of premiums without at least 10 days' written notice to each holder of a first mortgage upon a Lot of which such carrier or carriers have written notice.

Section 9.04. Repair and Reconstruction. Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary. Repairs or reconstruction, as used in this Section, means repairing or restoring such property to substantially the same condition in which it existed prior to the fire or other casualty.

Except as may otherwise be provided in the By-Laws of the Association, if the damage or destruction to Association Property, for which the proceeds are paid, is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board, without a vote of the Owners, may either (i) levy a special Assessment against all Owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction, (additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction); or (ii) appropriate such excess from the contingency fund or such other fund as may have been established for the purpose of providing for the maintenance, repair and replacement of the Association Property damaged or destroyed. If the cost to repair or reconstruct is less than

the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the maintenance fund or contingency fund as the Board of Directors, in its sole discretion, may determine.

The Association shall restore or cause to be restored all damage to or destruction of the Association Property substantially as such Association Property existed immediately before the damage or destruction.

After any damage to or destruction of a Lot, the Owner of the Lot shall restore, or cause to be restored, such Lot including all improvements and betterments made thereto by the Owner substantially as such Lot existed immediately prior to the damage or destruction, and shall complete such restoration within six (6) months after the damage or destruction.

ARTICLE X

GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Maintenance. After issuance of a Certificate of Compliance with respect to a Lot or other portion of the Property, the Owner thereof shall keep the Lot or other portion of the Property and all Improvements thereon in compliance with all applicable State and local laws and ordinances and with the provisions of this Declaration and of any rules and regulations of the Association adopted pursuant to this Declaration, and in good order and repair, including, but not limited to, seeding, watering and mowing all lawns, pruning and cutting all trees and shrubbery, and painting or other appropriate external care of all buildings and other Improvements, all in a manner and with such frequency as is consistent with good property management.

Section 10.02. Advertising and Signs. After issuance of a Certificate of Compliance with respect to a Parcel of any portion of the Property (except for temporary signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots or Improvements) no additional sign or other advertising device of any nature shall be placed for display to the public view on such Lot or other portion of Property (including temporary signs advertising property for sale or rent) except with the consent of the Architectural Committee and only to indicate an open house or inspection

and only during the actual time of such open house or inspection and within 30 minutes before and after the actual time of such open house or inspection, which open house or inspection for any Lot or Unit shall be limited to not more than eight (8) hours per week.

Section 10.03. Animals, Birds and Insects. No animals or birds shall be kept or maintained on any Lot or other portion of the Property other than for domestic purposes, except birds in a cage, fish, not more than two dogs, cats or other household pets and subject to such reasonable rules and regulations which the Board of Directors of the Association may impose from time to time governing the care and conduct of such animals or birds.

Section 10.04. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall be maintained by the Owner of said Lot or other portion of the Property and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said Lot or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.05. Garbage and Refuse Disposal. Except for building materials during the reasonable course of construction or repair of any approved Improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any Lot or other portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property so as to provide access to persons making such pick-up. The Sponsor, with respect to Lots or other portions of the Property for which Certificates of Compliance have not been issued, and the Association, with respect to Lots or other portions of the Property for which Certificates of Compliance have been issued, may, in their discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition and in such location that they are not readily visible from adjoining Lots.

Section 10.06. No Above Surface Utilities. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property.

Section 10.07. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 10.08. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except soil borings in connection with the improvement of said portion of the Property) and no derrick or other structure designed for use in boring for oil or natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Sponsor prior to the issuance of a Certificate of Compliance, and the Board of Directors thereafter.

Section 10.09. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Sponsor prior to issuance of a Certificate of Compliance with respect thereto, and by the Board of Directors thereafter.

Section 10.10. Television and Radio Antennas. No television, radio or other communication antenna shall be erected on any Lot or other portion of the Property, (i) outside or (ii) inside, if it emanates or creates radio, television or other communication system interference with a communication system being used on any other Lot.

Section 10.11. Residential Use Only. Except as provided in Section 10.12 below, no Lot or other portion of the Property shall be used for other than residential purposes and purposes incidental and accessory thereto except that, with the consent of the Sponsor given prior to the issuance of a Certificate of Compliance for such Lot or other portion of the Property by the Sponsor or Builder to a purchaser for occupancy, such Lot or other portion of the Property may be used for a model home and/or real estate office.

Section 10.12. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except (i) by the Sponsor or any Builder in conjunction with the initial construction, development, lease and sale of Lots and Units and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.13. Outside Storage. After issuance of a Certificate of Compliance with respect to a Lot or other portion of the Property, there shall be no outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers for no more than seven (7) consecutive days in any 30 day period, except as may be otherwise permitted by the Association's Board of Directors, e.g., in the boat trailer storage area subject to the limitations of the Board of Directors.

Section 10.14. Maintenance and Repair Work. Except with the written consent of the Association's Board of Directors or in conjunction with the initial construction of a Unit, or with emergency repairs, (i) no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on any Lot or other portion of the Property, (ii) no maintenance or repair work shall be done on any Lot which unreasonably disturbs the occupants of other Lots, and (iii) no exterior maintenance or repair work (except emergency repairs) shall be performed on Sundays between July 1 and September 5 of each year.

All maintenance and repair work shall be performed reasonably promptly (weather permitting), properly and in a good, workmanlike manner, using first-class materials of equivalent or better quality than those originally installed or incorporated into the Unit or other Improvements on the Owner's Lot, using competent and qualified labor.

Section 10.15. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots or Units by the Sponsor or by any Builder or with the maintenance, repair or replacement of the Property, or unless otherwise consented to by the Board of Directors, the following shall not be permitted to remain overnight on the Property:

- a. commercial vehicles of a weight of two (2) tons or more;
- b. unlicensed motor vehicles of any type.

Section 10.16. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Architectural Committee.

Section 10.17. Trees and Other Natural Features. Prior to issuance of a Certificate of Compliance no trees shall be removed from any Lot or portion of the Property except with the permission of the Sponsor. After issuance of a Certificate of Compliance with respect to a Lot or other portion of the Property, except as provided below, and except in the event of an emergency, no tree having a diameter of four (4) inches or more, as measured from a point two feet above ground level, nor any other tree or shrub planted in compliance with the plans approved by the Sponsor pursuant to Article VII hereof, shall be removed from such Lot or other portion of the Property without the permission of the Architectural Committee. The Architectural Committee in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.18. Snowmobiles, Motorcycles, All Terrain Vehicles. No snowmobile, motorcycle, all terrain vehicle or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Board of Directors of the Association.

Section 10.19. One Single-Family House per Lot. Each Lot shall be used for one (1) single-family dwelling unit only containing a living area, exclusive of garage, porch, deck, basement and breezeway area, of not less than 1,000 square feet.

Section 10.20. Roadway and Lot to be Kept Clear of Mud and Debris During Construction. Each Owner shall be required to keep his Lot and the roadway on which the Lot abuts reasonably

clear of any accumulation of mud and debris occasioned by any construction undertaken on such Lot. The Sponsor and the Association shall have the right, if such accumulation has not been removed after three (3) days' notice to the Lot Owner, to remove said mud or debris and to recover the cost thereof from the Lot Owner including, if necessary, the cleaning and flushing of sewers, flush basins and catch basins. In addition to being the personal obligation of the Owner, any such costs, if expended by the Association, shall be a charge and continuing lien on such Lot and shall be collectible in the same manner as Assessments under Article V of this Declaration.

ARTICLE XI

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Except as provided in the last sentence of this Section 11.01, each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property. The provisions of this Declaration as they apply to street dedicated to or deeded to the Town of Ellery shall not be enforceable against the Town of Ellery.

Section 11.02. Enforceability.

- a. Actions at Law or Suits in Equity. The provisions of the 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 the Declaration, any

beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

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

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. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot of such Owner.

Section 11.05. Inspection and Entry Rights. Any agent of the Association (or its Architectural Committee) thereafter, may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the Improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other Improvements thereon comply with this Declaration, or with rules and regulations issued pursuant hereto, or for the purpose of inspecting and/or designating certain trees in accordance with Section 10.17 of this Declaration. Neither the Sponsor, the Association (nor the Architectural Committee of the Association) nor any agent directed or authorized by any of them shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if after issuance of a Certificate of Compliance with respect to a Unit or other Improvement on a Lot, the Architectural Committee of the Association determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, (see Sections 10.01 and 10.04 of this Declaration) or if trash or other waste material has been allowed to accumulate outdoors, (see Section 10.05 of this Declaration), the Association shall notify the Owner of the Lot who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, the Association may take such remedial action at the expense of the Owner and/or impose a penalty or fine on the Owner in accordance with Section 11.02 of this Declaration. Any alteration or demolition of a constructed improvement may only be undertaken pursuant to a judicial ruling or direction.

Section 11.06. Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees. The Association shall be notified by the Owner of each Lot or other portion of the Property or by such Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.07. Amending or Rescinding. The Sponsor, during the time it shall own any of the lands described in Schedules A and B to this Declaration, may make amendments to

this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Owner without such Owner's written consent.

Except as otherwise specifically provided for herein, including Sections 5.06, 7.05 and the above portion of this Section 11.07, the Board of Directors on its own initiative, or pursuant to a written petition signed by Owners of not less than 12 Lots or Owners of 25 percent of the Lots owned by persons independent of the Sponsor, may propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 4.13 herein for the purpose of considering such proposed amendment. Notice shall be given as pursuant to such Section 4.13.

Not less than 30 nor more than 45 days after the Hearing, the Owners shall vote on the proposed amendment. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of Owners of 67% or more of the total number of Lots shall be required for approval of a proposed amendment; provided, however, that so long as the Sponsor holds title to any lands covered by this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

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

Section 11.08. Owner Responsible for Tenants. Any lease of a Unit shall be in writing, shall be for not less than the entire Unit, and shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Lot on which is situate the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.09. When Amendment or Rescission Becomes Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Chautauqua. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. Duration. Except as otherwise provided for herein, this Declaration shall continue with full force and effect (unless terminated by an amendment to this Section 11.10 pursuant to Section 11.07 herein). Between June 1, 2025 and October 1, 2025 (and each 10 years thereafter that the Declaration continues in effect) the Board of Directors of the Association shall hold a Hearing in accordance with Section 4.13 herein for purpose of considering the termination of the Declaration.

Not less than 30 nor more than 45 days after the Hearing, the Members shall vote on the proposed termination. Notice of such vote, containing the date, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Lot Owners not less than 14 days prior to the date or dates set for the canvass thereof.

Not less than a majority of the total number of Lot Owners shall be required for termination.

Any approved termination to the Declaration shall become effective only when an instrument describing such termination has been duly recorded in the Office of the Clerk of the County of Chautauqua and upon such recording shall be binding from the date of such recording on all of the Property

unless otherwise specifically provided in such termination. Such instrument need not contain the written consent of the required number of Lot Owners but shall contain a certification by the Board of Directors that the consents required for such termination have been received and filed by the Board.

Section 11.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

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

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

Section 11.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.13. 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 11.14. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is

unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII

MARINA

Section 12.01. Marina and Lot Owners' Right to Lease.

The Sponsor is the Owner of lands identified on the filed subdivision map of the Property as the "Marina", which lands are identified in Schedule B to this Declaration. Each year the Sponsor shall afford all Lot Owners the opportunity to lease a boat slip in the Marina on a "first come, first served" basis at such rental fees as the Sponsor, as the owner of the Marina, shall establish from time to time.

Any boat slips not leased by Lot Owners within the time period permitted for such leasing by the Sponsor, may be leased to persons who are not Lot Owners. Lot Owners who leased a boat slip in the immediately preceding year shall be given priority over Lot Owners who have not leased in the immediately preceding year if the number of Lot Owners responding during the period prescribed by the Sponsor exceeds the number of slips available for rent.

Section 12.02. Right of First Refusal to Association to Purchase Marina.

If the Sponsor receives a bona fide offer for the Marina from a prospective purchaser or lessee, and if it is desirous of accepting such offer, it shall give the Association written notice thereof together with an executed copy of such offer and the terms thereof. Such notice shall be sent by registered or certified mail to the Association at the most recent address of the Association as known to the Sponsor, and to at least one member of the Board of Directors of the Association, if such Director and the address of such Director be known to the Sponsor.

The Association shall have the right to purchase or lease the Marina upon the same terms and conditions as set forth in the offer received by the Sponsor, provided written notice of such election to purchase or lease and a down payment or deposit matching the down payment or deposit in this offer, is provided to the Sponsor during the sixty (60) day period immediately following delivery of the notice to the Association of the bona fide offer acceptable to the Sponsor.

In the event the Sponsor shall attempt to sell or lease the Marina without affording the Association the right of

first refusal as provided herein, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

In no case shall this right of first refusal affect the right of the Sponsor (i) to lease individual boat slips in the Marina for use by individual boat owners or to sell individual boat slips (e.g., a marina condominium), and (ii) subject the premises or any portion thereof to a mortgage or any other security instrument.

The failure of or refusal by the Association to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when the Sponsor receives any subsequent bona fide offer from a prospective purchaser or tenant.

This right of first refusal shall remain in effect so long as the premises are owned by the Sponsor or any person or persons or entity succeeding to the interest of the Sponsor by any means other than a purchase, the terms of which were offered to the Association pursuant to this grant and until such time this right shall be a covenant running with the land and shall be binding upon the Sponsor and its successor and assigns.

The following shall not be subject to this right of first refusal, but this right shall remain in effect as to the transferee except as may otherwise be provided herein:

- (1) A transfer of ownership to the individual principals of the Sponsor or to a corporation or other entity, 50% or more of which is owned or controlled by the individual principals of the Sponsor as of the date of this Declaration.
- (2) Any sale under the foreclosure of a mortgage or other lien or indebtedness made in good faith and for value, including the delivery of a deed in lieu of such foreclosure. The purchaser at such sale, or the grantee under deed in lieu of foreclosure, shall be thereupon and thereafter subject to the provisions of this grant of the right of first refusal. If the purchaser or grantee shall be the then holder of the first mortgage on the property or a portion thereof, or its nominee, the said holder or nominee may thereafter sell and convey the property or portion thereof free and clear of the right of first refusal, but its grantee shall thereupon and

thereafter be subject to all of the provisions of this grant.

Section 12.03. Easement for Access to Marina and Boat Launching Ramp and For Use of Boat Launching Ramp. Each Lot Owner shall have an easement over such area of the Marina property as identified on Schedule B to this Declaration as necessary: (i) for ingress and egress in conjunction with any right such Lot Owner shall have contracted for to use a dock or slip in the Marina, and (ii) for ingress and egress and the use of the boat launching ramp constructed on the Marina. Such easement shall be subject to such reasonable rules and regulations as the owner of the Marina may impose from time to time so as to afford reasonable access to the docks and boat launching ramp to those entitled to use such facilities.

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. Notice. Any notice required to be sent to the Sponsor or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Sponsor, Owner or mortgagee on the records of the Sponsor or the Association, whichever is sending such notice, at the time of such mailing, except that notices sent to Owners between June 15 and September 15 of each year shall be sent also to the address of the Lot owned by such Owner.

Section 13.03. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall

refer to the board of directors, trustees or other governing board of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the Association, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 13.04. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

CROSSWINDS DEVELOPMENT CORPORATION

By: _____

CROSSWINDS COMMUNITY HOMEOWNERS, INC.

By: _____

SCHEDULE A

DESCRIPTION OF CROSSWINDS PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellery, County of Chautauqua, State of New York, being part of Lot 10, Town 3, Range 13 of the Holland Land Company's Survey and more particularly shown on a map filed in the Chautauqua County Clerk's Office on _____, 1985, Cabinet # _____, Section ____, Map # _____.

EXCEPTING THEREFROM, a parcel of land bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellery, County of Chautauqua, State of New York, being part of Lot 10, Town 3, Range 13 of the Holland Land Company's Survey and more particularly described as follows:

Commencing at the southwest corner of subdivision lot no. 39 as shown on map filed in the Chautauqua County Clerk's Office on _____, 1985, Cabinet # _____, Section _____, Map # _____;

running thence

North 88°31'35" West 104.10 feet;

thence North 12°16'30" West 104.60 feet;

thence North 12°29'00" West 108.81 feet;

thence North 8°08'30" West 109.21 feet;

thence North 52°05'30" East 36.17 feet;

thence North $0^{\circ}22'30''$ West 55.67 feet;

thence North $81^{\circ}37'59''$ East 118.18 feet

to the northwest corner of subdivision lot no. 33 as shown on the above referenced map; thence southerly along the west lines of subdivision lots no. 33, 34, 35, 36, 37, 38 and 39 as shown on the above referenced map to the point or place of beginning, said parcel being approximately 1.3697 acres.

SCHEDULE B

MARINA PROPERTY

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellery, County of Chautauqua, State of New York, being part of Lot 10, Town 3, Range 13 of the Holland Land Company's Survey and more particularly described as follows:

Commencing at the southwest corner of subdivision lot no. 39 as shown on map filed in the Chautauqua County Clerk's Office on _____, 1985, Cabinet # _____, Section ____, Map # _____; running thence

North $88^{\circ}31'35''$ West 104.10 feet;

thence North $12^{\circ}16'30''$ West 104.60 feet;

thence North $12^{\circ}29'00''$ West 108.81 feet;

thence North $8^{\circ}08'30''$ West 109.21 feet;

thence North $52^{\circ}05'30''$ East 36.17 feet;

thence North $0^{\circ}22'30''$ West 55.67 feet;

thence North $81^{\circ}37'59''$ East 118.18 feet

to the northwest corner of subdivision lot no. 33 as shown on the above referenced map; thence southerly along the west lines of subdivision lots nos. 33, 34, 35, 36, 37, 38 and 39 as shown on

the above referenced map to the point or place of beginning,
said parcel being approximately 1.3697 acres.

CERTIFICATE OF INCORPORATION
OF
CROSSWINDS COMMUNITY HOMEOWNERS, INC.
~~UNDER~~ SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, acting as incorporators of a corporation under the New York Not-for-Profit Corporation Law, do hereby adopt the following certificate of incorporation for such corporation:

ARTICLE I

The name of the corporation is CROSSWINDS COMMUNITY HOMEOWNERS, INC.

ARTICLE II

This corporation is not organized for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to, or inure to the benefit of its members, trustees or officers except to the extent permitted under the Not-for-Profit Corporation Law.

ARTICLE III

The purpose for which the corporation is organized is: To promote and protect the interests of the residents of a development known as CROSSWINDS, particularly the health, safety and welfare of the community; to obtain and own land; to build and maintain facilities for recreational, cultural and community use in general; to enforce all covenants, easements, restrictions and agreements within this community, and do any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof, but not for pecuniary profit or financial

gain of its members, trustees or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

ARTICLE IV

The corporation shall be a Type A corporation under Section 201 of the Not-for-Profit Corporation Law.

ARTICLE V

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

ARTICLE VI

The activities of CROSSWINDS COMMUNITY HOMEOWNERS, INC., are principally to be conducted in the County of Chautauqua and State of New York.

ARTICLE VII

The number of trustees constituting the initial board of trustees of the corporation is three (3), and the names and addresses of the persons who are to serve as the initial trustees are:

Name	Address
Lawrence Blond	24700 Chagrin Boulevard Beachwood, Ohio 44122
Marsha Blond	24700 Chagrin Boulevard Beachwood, Ohio 44122
Irwin J. Dinn	33 Public Square Building Cleveland, Ohio 44113

ARTICLE VIII

The duration of this corporation is to be perpetual.

ARTICLE IX

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 15 South Erie Street, Mayville, New York 14757.

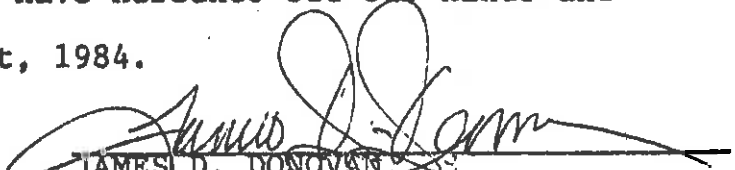
ARTICLE X

The name and address of the registered agent of the corporation upon whom process against the corporation may be served is DeMambro, Donovan & Rice of 15 South Erie Street, Village of Mayville, County of Chautauqua, and State of New York.

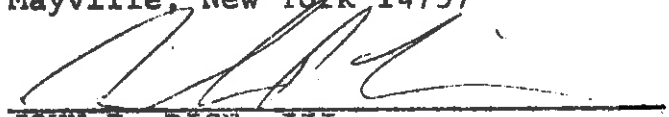
ARTICLE XI

There is no requirement under the New York Not-for-Profit Corporation Law or any other statute of the State of New York that any approval or consent be required before filing of this certificate of incorporation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 22nd day of August, 1984.



JAMES D. DONOVAN,
15 South Erie Street
Mayville, New York 14757



JOHN P. RICE, III
15 South Erie Street
Mayville, New York 14757

STATE OF NEW YORK)
) ss.
COUNTY OF CHAUTAUQUA)

On this 22nd day of August, Nineteen Hundred and Eighty-Four, before me, the subscriber, personally appeared JAMES D. DONOVAN, to me personally known and known to me to be the same person described in and who executed the within Instrument, and he acknowledged to me that he executed the same.

Benny S. Kaus
Notary Public

STATE OF NEW YORK)
) ss.
COUNTY OF CHAUTAUQUA)

On this 22nd day of August, Nineteen Hundred and Eighty-Four, before me, the subscriber, personally appeared JOHN P. RICE, III, to me personally known and known to me to be the same person described in and who executed the within Instrument, and he acknowledged to me that he executed the same.

Benny S. Kaus
Notary Public

BY-LAWS
OF
CROSSWINDS COMMUNITY HOMEOWNERS, INC.

SPONSOR: CROSSWINDS DEVELOPMENT CORPORATION
27600 Chagrin Boulevard
Cleveland, Ohio 44122

DATED: _____

IRWIN J. DINN, ESQ.
Klein, Dinn & Hochman
Counsel to the Sponsor
Suite 217
3659 South Green Road
Beachwood, Ohio 44122

LAW OFFICES OF
GEORGE R. GRASSER
Special Counsel to the
Sponsor
3350 Marine Midland Center
Buffalo, New York 14203

BY-LAWS OF
CROSSWINDS COMMUNITY HOMEOWNERS, INC.

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BY-LAWS
OF
CROSSWINDS COMMUNITY HOMEOWNERS, INC.

ARTICLE I.
NAME AND LOCATION

Section 1.01. Name and Location: The name of the corporation is the Crosswinds Community Homeowners, Inc., hereinafter referred to as the "Association." The principal office of the corporation shall be at 15 South Erie Street, Mayville, New York 14757 or at such other place as may be subsequently designated by the Board of Directors of the corporation.

ARTICLE II
DEFINITIONS

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

Section 2.01. Declaration: The document entitled "Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens - "Crosswinds" imposed by the Sponsor on the "Property," as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.02. Lot: Any portion of the Property under the scope of the Declaration (with the exception of Association Property as defined in the Declaration) and (i) identified as a separate parcel on the tax records of the Town of Ellery or (ii) shown as a separate lot on any recorded or filed subdivision map.

Section 2.03. Lot Owner: The holder of record title, whether one or more persons or entities, of the fee interest in any Lot, whether or not such holder actually resides on such Lot.

Section 2.04. Property: All lands which are subject to the Declaration and improvements thereon.

Section 2.05. Sponsor: Crosswinds Development Corporation, its successors and assigns.

ARTICLE III
MEMBERS

Section 3.01. Membership in the Association: The Members of the Association shall be only Lot Owners and the Sponsor.

Section 3.02. Right of Sponsor to Assign: The Sponsor may, subject to a duly filed amendment to the offering plan which has been filed with the New York State Department of Law for the offering of interests in the Association and the written consent of the Owners of not less than two-thirds (2/3) of all Lots other than the Sponsor, 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, except automatically with the transfer of title to a Lot.

Section 3.03. Voting Rights: Each Lot Owner shall have one (1) vote for each Lot owned. Notwithstanding anything to the contrary which may be contained in the Declaration, if an institutional first mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot or Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Owner of the Lot contrary to the position of such mortgage lender shall not be counted in such canvass. Any Lot Owner who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Lot Owner's voting rights be suspended for non-payment of assessments.

Section 3.04. Voting Regulations: The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Lot Owners, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot 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 3.05. Corporate or Partnership Lot Owners: Any votes of a corporate member may be cast by an appropriate officer of such corporation. Any vote of a partnership member may be cast by a general partner of such partnership.

Section 3.06. Joint or Common Ownership: If a Lot is owned by more than one person, as joint tenants, tenants by the entirety or as tenants in common, the persons owning such Lot shall attempt to reach agreement as to the matter voted upon and cast their vote for their Lot. If no agreement is reached, each of such persons may exercise the portion of the vote for such Lot that is equivalent to such person's portion of ownership in such Lot.

Section 3.07. Absentee Ballots and Proxy Voting: On any matter submitted to the Lot Owners for vote, other than the election of Directors of the Association, any Lot Owner entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Lot Owner intends to vote and that the Lot Owner votes for or against the same. Lot Owners unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the secretary of the Association. The person appointed as proxy need not be a Lot Owner. Designation by a Lot Owner or Owners of a proxy to vote or to act on his, her or their behalf shall be made in writing to the Board, shall be filed with the Secretary of the Association. Any such proxy shall be revocable at any time by actual notice to the Board of Directors by the Lot Owner or Lot Owners making such proxy. Notice to the Board of Directors in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.

ARTICLE IV MEETINGS OF MEMBERS

Section 4.01. Annual Meeting: The first annual meeting of the Association shall be held between June 25 and September 5 after (i) the Sponsor has transferred title to 25 Lots or (ii) two (2) years after the recording of the Declaration, whichever first occurs. Thereafter, there shall be an Annual Meeting of the Lot Owners on the first Saturday of the month in which the first annual meeting was held or on such other date and time and at such place convenient to the Lot Owners as shall

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

Section 4.02. Special Meetings: Special Meetings of the Lot Owners may be called at any time by the President or by the Board of Directors, or at the request in writing of the Sponsor or at the request of Lot Owners not less than the lesser of 25% of the Lots owned by persons other than the Sponsor or twelve (12) Lots.

Section 4.03. Notice of Meetings: Not less than seven (7) days or more than 60 days before the date of any Annual or Special Meeting of Lot Owners, the Association shall give to each Lot Owner entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose of purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Lot Owner personally. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Lot Owner at his or her permanent post office address as it appears on the records of the Association. If the notice for a Special Meeting is not given within 10 days after a valid request for such Special Meeting was received by the Board of Directors, the person requesting such meeting may fix the date, time and place of such meeting and give notice thereof to all Lot Owners. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person without protesting, at or prior to the commencement of the meeting, the lack of proper notice, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Lot Owners, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum: Except as may otherwise be provided in these By-Laws, the presence in person or by proxy of

Lot Owners having 20% of the total authorized votes of all Lot Owners shall constitute a quorum at any meeting of Lot Owners. If any meeting of Lot Owners cannot be held because a quorum is not present, a majority of the Lot Owners who are present at such meeting, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present in person or by proxy. The quorum required in each reconvened meeting shall be one-half of the quorum required for the previous meeting. The act of two-thirds (2/3) of the Lot Owners present at a meeting at which a quorum was present shall be the act of the Lot Owners unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

Section 4.05. Waiver and Consent: Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Lot 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. Actions Without a Meeting: All actions, except removal of a Director, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of, and in a writing or writings signed by members having the percentage of voting power required to take such action if it had been taken at a meeting. Such writings shall be filed with the Secretary of the Association. A copy of such action when so approved shall be mailed promptly to all members of the Association.

Section 4.07. Order of Business at Meeting: The order of business at all regular meetings of members of the Association shall be as follows:

- (1) Calling of meeting to order;
- (2) Proof of notice of meeting or waiver of notice;
- (3) Reading of minutes of preceding meeting;
- (4) Reports of officers;
- (5) Reports of committees;
- (6) Election of inspectors of election;
- (7) Election of Directors;

- (8) Unfinished and/or old business;
- (9) New business;
- (10) Adjournment.

**ARTICLE V
BOARD OF DIRECTORS**

Section 5.01. Number and Qualification of Directors:
The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three (3) persons designated by the Sponsor. Within 30 days after title has been transferred to 10 Lots, a fourth (4th) person who must be a Lot Owner independent of the Sponsor shall be elected to the Board by those Lot Owners independent of the Sponsor. Such fourth (4th) Board member shall serve for two (2) years or until the first annual meeting of the Association, whichever first occurs. Successors to these Board members shall be elected by the Lot Owners at the first annual meeting of the Association held pursuant to Section 4.01 of these By-Laws. If the fourth (4th) Board member's term expires prior to the first annual meeting of the Association, the Lot Owners who are independent of the Sponsor shall elect his or her successor. Commencing with the election at the first annual meeting, the Board of Directors shall be composed of five (5) persons. All elected Directors shall be (i) Lot Owners, (ii) spouses of Lot Owners, (iii) members or employees of a partnership Lot Owner, (iv) officers, directors, shareholders, employees or agents of a corporate Lot Owner or (v) designees of the Sponsor.

Section 5.02. Nominations: Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who may or may not be a Director, and two (2) or more other Lot Owners. Nominations may also be made from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least 30 days prior to each Annual Meeting of the Lot Owners and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations 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.

Section 5.03. Election and Term: Except for members of the Board of Directors initially appointed by the Sponsor,

who shall serve until the first annual meeting of the Association as provided in Section 4.01 of these By-Laws or until replaced by the Sponsor, whichever first occurs, the term of office of members of the Board of Directors shall be fixed at two (2) years, except that the term of office of the two (2) persons elected as members of the Board of Directors receiving the lowest number of votes at the first annual meeting of the Association shall be fixed at one (1) year. Successors shall be elected to serve for terms of two (2) years. Tie votes shall be decided by a runoff election unless all parties tying agree to a drawing of lots. Voting shall be by secret written ballot which shall:

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

The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Notwithstanding any contrary provision of these By-Laws, the Declaration and/or the Offering Plan:

- (1) the Sponsor may not cast its votes to elect a majority of the Board of Directors at any election after the earlier of (a) three years from the date of transfer of the first Lot or (b) the transfer of title to 50% of the Lots;
- (2) whenever the Sponsor at the time of an election of the Board of Directors shall own 20 or more Lots, the Sponsor shall have the right to appoint two (2) of the five (5) members of the Board of Directors;
- (3) whenever the Sponsor at the time of an election shall own at least 5 but less than 20 Lots, the Sponsor shall have the right to appoint one (1) of the five (5) members of the Board of Directors; and
- (4) whenever the Sponsor at the time of an election of the Board of Directors owns less than five (5) Lots it shall have no right to appoint any members of the Board of Directors.

Section 5.04. Vacancies: Except for (i) Directors appointed by the Sponsor, who shall be replaced by the Sponsor and (ii) Directors elected by the Lot Owners other than the Sponsor, who shall be replaced by the majority vote of the remaining Directors similarly elected, or, if none, by a special election by Lot Owners other than the Sponsor, any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Lot Owners of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Lot Owners or until a successor is elected and qualifies.

Section 5.05. Removal: Subject to the limitations as provided in this Section 5.05, at any regular or special meeting of Lot Owners, any one or more of the members of the Board of Directors elected by the Lot Owners may be removed with cause by the affirmative vote of Owners of not less than a majority of the Lots not owned by the Sponsor, or without cause by the affirmative vote of Owners of not less than two-thirds of the Lots not owned by the Sponsor, and a successor may then and there or thereafter be elected by the Lot Owners other than the Sponsor to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting. Members of the Board of Directors appointed by the Sponsor may be removed without cause only by the Sponsor, and thereafter replaced by the Sponsor. Members of the Board of Directors elected or appointed by the Sponsor may be removed with cause by the affirmative vote of not less than a majority of all Lot Owners other than the Sponsor, but their successor shall be appointed by the Sponsor. In addition, the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position (i) shall be absent from three (3) consecutive meetings or (ii) is physically incapacitated or has been judicially determined to be of unsound mind.

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

performance of such Director's duties. A Director who serves the Association in any other capacity, however, may receive compensation therefor.

Section 5.07. Organization Meeting: Immediately after each annual meeting of Lot Owners, the newly elected Directors and those Directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting of Directors need not be given.

Section 5.08. Regular Meetings: Regular meetings of the Board of Directors shall be held without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors.

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 Directors after not less than two (2) days notice to each Director which notice shall state the time, date and purpose of such meeting. Such notice may be given in any manner that the Director receiving it may have a reasonable opportunity to attend the meeting. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver or notice of such Special Meeting.

Section 5.10. Meetings to be Open to Lot Owners. All meetings of the Board of Directors shall be open to all Lot Owners.

Section 5.11. Quorum and Voting: Unless otherwise provided in the Declaration, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, or by the By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote of those Directors present, 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 at the meeting which might have been transacted as originally called.

Section 5.12. Regulations. The Board of Directors may establish such regulations consistent with these By-Laws and the Declaration as they deem appropriate for the government of its action.

Section 5.13. Action Without a Meeting. Any action, except the removal of officers, required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be, and provided further that such written consent is filed with the minutes of proceedings of the Board or committee.

Section 5.14. Powers and Duties: The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to the following:

- a. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Lot Owners by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration;
- b. Determine, levy and collect the maintenance assessments, special assessments and other charges as provided for in the Declaration for (i) the maintenance, care and preservation and operation of the Association Property, and (ii) the services which the Association provides to the Lot Owners;
- c. Procure and maintain as it is obligated to obtain by the Declaration or as it otherwise deems appropriate (i) adequate liability insurance covering the Association, its directors, officers, agents and employees and (ii) adequate hazard insurance on the Association's Property and (iii) any other insurance, e.g., officers' and

director's liability insurance, workers' compensation insurance, a fidelity bond covering those handling Association funds and "umbrella" catastrophe coverage;

- d. Subject to the provisions of the Declaration, repair, restore or alter the Association Property after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
- e. Adopt and publish rules and regulations governing the use of the Property, and the personal conduct of the Lot Owners and their guests thereon, and establish penalties for infractions thereof;
- f. Collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin, or seek damages from or impose penalties on Lot Owners for violations of the provisions of the Declaration or of any rules or regulations of the Association;
- g. Pay all taxes owing by the Association;
- h. Suspend the voting rights of a Lot Owner, after notice and hearing, for a period not to exceed 30 days for infractions of published rules or regulations, provided that in no event shall the Board of Directors suspend the voting rights of a Lot Owner for nonpayment of assessments to the Association;
- i. Purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer and dispose of property of any description or any interest therein;
- j. Keep a complete record of its actions and the corporate affairs of the Association and present a statement thereof to the Lot Owners at the annual meeting of Lot Owners, or at any special meeting of Lot Owners when such a statement is requested in writing by not less than 20% of the Lot Owners other than the Sponsor, or 10 Lots;

- k. Issue, or cause to be issued, as provided in the Declaration, "Assessment Certificates" setting forth the status of payment of assessments for any Lot and architectural approvals for additions, modifications or alterations to improvements on Lots;
- l. Supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- m. Maintain, repair and replace as necessary all Association Property or for which the Association has maintenance responsibilities under the Declaration;
- n. Enter into contracts;
- o. Borrow money as permitted by Section 5.12 of the Declaration;
- p. Employ a managing agent and such other persons or firms to perform such duties and services as the Board of Directors may authorize.

ARTICLE VI OFFICERS

Section 6.01. Officers: The officers of the Association shall be the President one or more Vice Presidents, (the number thereof to be determined by the Board of Directors), the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The President and any Vice-President who succeeds to the office of President shall be members of the Board of Directors. The Board of Directors may appoint such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. No officer of the Association shall receive compensation for services as an officer.

Section 6.02. Election and Appointment of Officers. The elective officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each

new Board of Directors and shall hold office at the pleasure of the Board of Directors. Appointive officers shall be appointed at such time and shall hold their office for such terms as the Board of Directors shall determine from time to time.

Section 6.03. Term and Vacancies: Each elective officer shall hold office until the next organizational meeting of the Board of Directors following the annual meeting of Lot Owners and until their successors are chosen and qualified, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.04. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor to such office may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

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 Lot Owners, and of Directors, and shall perform such other duties and functions as may be assigned to him or her by the Board. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

Section 6.06. Vice President: The Vice Presidents shall perform such duties as are conferred upon them by these By-Laws or as may from time to time be assigned to them by the Board or the President. At the request of the President, or in his absence or disability, the Vice President designated by the President (or in the absence of such designation, the Vice President designated by the Board) shall perform all the duties of the President, and when so acting, shall have all the power of the President. The authority of Vice Presidents to sign in the name of the Association all contracts, notes and other instruments, shall be coordinate with like authority of the President.

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 records of the Association, shall keep records of the Lot Owners of the Association and the mortgagees of dwelling units on the Property, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

Section 6.08. Treasurer: The Treasurer shall have general supervision of all finances; shall receive and have charge of all money, bills, notes, documents and similar property belonging to the Association, and shall do with the same as may from time to time be required by the Board. He or she shall cause to be kept adequate and correct accounts of the business transactions of the Association, including accounts of its assets, liabilities, receipts, expenditures, profits and losses, together with such other account as may be required, and upon the expiration of his or her term of office shall turn over to the successor Treasurer or to the Board all property, books, documents and money of the Association in his or her hands; and shall perform such other duties as from time to time may be assigned to him or her by the Board.

Section 6.09. Other Officers: The Board of Directors may appoint such assistant and subordinate officers as it may deem desirable. Each such officer shall hold office during the pleasure of the Board, and perform such duties as the Board may prescribe. The Board may, from time to time, authorize any officer to appoint and remove subordinate officers and to prescribe their authority and duties.

Section 6.10. Delegation of Authority and Duties; Control of Officers. In the absence of any officer of the Association, or for any other reason the Board of Directors may deem sufficient, the Board may delegate the power or duties, or any of them, of such officers, to any other officer or to any Director or the managing agent. In addition, the Board is authorized generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

Section 6.11. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.

ARTICLE VII COMMITTEES

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

All actions by any such committee shall be reported to the Board of Directors at its meeting next succeeding such actions. Such actions shall be subject to control, revision and alteration by the Board of Directors provided that no rights of any third parties shall be prejudiced by any such control, revision or alteration.

Section 7.02. Committees of Lot Owners: In addition to the Architectural Standards Committee created pursuant to, and which shall have the duties and functions as set forth in the Declaration, there shall be the Nominating Committee, which shall have the duties as set forth in Section 5.02 of these By-Laws, and such other committees of Lot Owners with such duties as the Board of Directors may determine from time to time, e.g., Maintenance and Grounds Committee, Finance Committee, Documents and Rules Committee, Conservation Committee and Welcome Committee. Each committee shall consist of a chairman and two (2) or more members and need not include a member of the Board of Directors.

Section 7.03. Rules and Records: Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. Each committee shall keep such records and accounts of its proceedings and transactions as it deems appropriate.

ARTICLE VIII FINANCES AND RECORDS

Section 8.01. Checks: All checks, drafts, and orders for the payment of money, notes and other evidences of indebted-

ness, issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President, or Treasurer and counter signed by one Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

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

Section 8.03. Annual Reports: There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year prepared by a public or certified public accountant and including a certificate signed by a public or certified public accountant to the effect that the financial statement presents fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as specified therein. Such report shall be distributed to all Lot Owners and to all mortgagees of Lots who have requested the same, promptly after the end of each fiscal year. Taking into consideration the cost of an audit vs. a review, the complexity and volume of the Association's financial affairs and such other factors the Board of Directors deems relevant, the Board of Directors of the Association shall determine each year whether such statement shall be in the form of an audit or review, except that (i) an audit, at the expense of the Association shall be required if authorized in writing by at least two-thirds (2/3) of all Lot Owners independent of the Sponsor and (ii) any Unit Owner or mortgage holder shall be entitled to obtain an audited statement at such Lot Owner's or mortgagee's own expense. In addition an audit, rather than a review, may be required if requested in writing (i) by Lot Owners of 50% or more of the Lots, in which event such audit will be at the expense of the Association, and (ii) by any mortgagee of a Lot in which event such audit will be at the expense of such mortgagee.

Section 8.04. Record Keeping: The Board of Directors or the managing agent retained by the Board of Directors shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meetings of the Board of Directors, minutes of the meetings of Lot Owners, and financial records and books of account of the Association, including a

chronological listing of receipts and expenditures, as well as a separate account for each Lot which, among other things, shall contain the amount of each maintenance assessment, special assessment and other charges, if any, against such Lot, the dates when installments of assessments are due, the amounts paid thereon, and the balance remaining unpaid. Upon 10 days notice to the Board of Directors, any Lot Owner shall be furnished a statement of account for such Owner's Lot setting forth the amount of assessments for such Lot and the payment status of such assessments and of any other charges owing to the Association by such Lot Owner.

Section 8.05. 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.

Section 8.06. Books, Records and Legal Documents Available for Inspection: The Board of Directors shall make available for inspection upon reasonable notice and during normal business hours, to existing and prospective Lot Owners, tenants, title insurers, mortgagees, mortgage insurers and mortgage guarantors, current copies of the Declaration, By-Laws, Certificate of Incorporation, rules and regulations, budget, schedule of assessments, balance sheet and any other books, records and financial statements of the Association. The Board of Directors may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

ARTICLE IX GENERAL POWERS OF THE ASSOCIATION

Section 9.01. Common Expenses. The Association, for the benefit of all the Lot Owners, shall pay for out of Association funds as common expenses, the following:

- a. Utilities and Related Facilities. The cost of operating and maintaining, repairing and/or replacement of the fresh water plant and the sewage disposal plant, the cost of electricity,

telephone, heat, power or any other necessary utility service, if any, for the Association Property, and the cost of maintaining and/or repairing and/or replacing common gas, water, hot and cold water lines, waste removal and any utilities which costs are not otherwise directly charged or separately metered to individual Owners. In the event any utility service for a Lot is paid by the Association of a kind or nature not furnished to all Lot Owners, the Association shall charge monthly to the Owner of such Lot an estimated cost for such usage. However, the Association may discontinue payments of such utility service at any time, in which case each Owner shall be responsible for direct payment of his share of such expense as shall be determined by the Board of Directors of the Association. The Association shall have the right to levy additional assessments against any Lot Owner to reimburse it for excessive use of any utility service by such Lot Owner in such amounts as shall be determined by the Board of Directors.

- b. Casualty Insurance. Premiums for all insurance obtained as required or permitted by the Declaration for fire insurance, with extended coverage, vandalism and malicious mischief endorsements as provided for in the Declaration, the amount of which insurance shall be reviewed annually.
- c. Wages and Fees for Services. The fees for services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Association, and legal, accounting or other services or expenses necessary or proper in the conduct of the affairs of the Association or the enforcement or interpretation of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association.
- d. Care of Association Property. The cost of landscaping, gardening, security, snow removal, painting, cleaning, decorating, refurbishing,

maintenance, repair, replacement and rehabilitation of the property of the Association including the fresh water plant and the sewage disposal plant and their common service lines, and any marina hereafter owned by the Association, as required by the Declaration or determined to be appropriate by the Board of Directors from time to time.

- e. Certain Maintenance of Lots. The cost of the reasonable maintenance and repair of any Lot or improvement thereon if such maintenance or repair is necessary, in the discretion of the Board of Directors, for public safety or to protect the Association Property, and the Owner of such Lot has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity thereof delivered by the Association to such Lot Owner; provided that the Association shall levy a special assessment against such Lot Owner for the cost of such maintenance or repair.
- f. Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Crosswinds Community or any part thereof which may in the opinion of the Association constitute a lien against the entire Crosswinds Community or any part thereof, rather than solely against the interests therein of any particular Lot Owner; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating thereto. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging such lien, and any costs incurred by the Association by reason of such lien shall be specially assessed against such Lot Owner or Lot Owners.
- g. Additional Expenses. The cost of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, or other expenses which the Association is required or permitted to secure or pay for

pursuant to the terms of the Declaration, these By-Laws, or by law or which in the opinion of the Board of Directors shall be necessary or proper for the maintenance and operation of the Association Property to preserve the Property as a first class community.

Section 9.02. Capital Additions, Alterations and Improvements. Notwithstanding anything in these By-Laws or in the Declaration which authorizes expenditures no single expenditure shall be made by the Board of Directors for any additions, alterations or improvements (as distinguished from maintenance, repair or replacement) of Association Property exceeding in total cost \$2,500.00 (which amount shall increase January 1 of each year after the year in which the Declaration is filed by 5% above the amount for the immediately previous year) nor shall annual expenditures aggregating in excess of \$15,000.00 (which amount shall increase January 1 of each year after the year in which the Declaration is filed by 5% above the amount for the immediately previous year) be made, without in each case having the prior approval of a majority of all Lot Owners who shall be present in person or by proxy at an annual or a special meeting duly held for such purpose. If such approval is obtained, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all Lot Owners for the cost thereof as a common expense. The limitations on expenditures by the Board contained in this Section shall in no event apply to repair of Association Property due to casualty loss, emergency repairs immediately necessary for the preservation and safety of Association Property, for the safety of persons or to avoid suspension of any necessary services.

Section 9.03. No Active Business to be Conducted for Profit. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Lot Owners or any of them.

Section 9.04. Miscellaneous Income. The Association may own or enter into agreements for the lease of washing machines, dryers, vending machines and other facilities solely for the convenience of the Lot Owners. In the event such items create a profit, these funds shall be added to the Association's general fund. All monies received for the rental of or for the use of any Association Property, shall also be added to the

Association's general fund. The above enumerated items of income and any other monies received other than through Assessments shall be used to defray the items of common expense.

Section 9.05. Special Services. The Association may arrange for the providing of any special services and facilities for the benefit of such Lot Owners and/or occupants of Lots as may desire to pay for the same including, without limitation, cleaning, educational or medical facilities. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to participating Lot Owners, or paid from the maintenance fund and levied as a special assessment against such participating Lot Owners.

Section 9.06. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through the Board of Directors or officers of the Association, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Board of Directors shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 9.07. Acquisition, Lease, Sale or Exchange of Real Property. Whenever the Board of Directors determines to acquire, lease, sell or exchange real property or any interest therein the Board shall submit such acquisition, sale, lease or exchange to the vote of the Lot Owners, and, upon the affirmative vote of the Owners of 75% or more of the Lots present in person or by proxy at an annual meeting or a special meeting duly held for such purpose, the Board of Directors may proceed with such acquisition, sale, lease, sale or exchange, in the name of the Association and on behalf of all Lot Owners, and the costs and expenses incident thereto shall constitute part of the common expenses of the Association.

ARTICLE X CORPORATE SEAL OPTIONAL

Section 10.01. Corporate Seal Optional: If decided by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

ARTICLE XI
AMENDMENTS

Section 11.01. Alteration, Repeal or Amendment: These By-Laws may be modified, altered, repealed, amended or added to at any regular or special meeting of the Lot Owners provided that:

- a. a notice of the meeting containing a full statement of the proposed modification, alteration, repeal, amendment or addition has been sent to all Lot Owners and mortgagees of Lots as listed on the records of the Association, not less than 10 nor more than 40 days prior to the date or initial date set for the canvass of the vote thereon; and
- b. two-thirds (2/3) or more of the Lot Owners present at the meeting in person or by proxy approve the change; and
- c. prior to the date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from either (i) Owners of more than 33% of all Lots or (ii) mortgagees of more than 50% of Lots on which there are mortgages as shown on the records of the Association.

So long as the Sponsor holds title to lands described in Schedules A and B to the Declaration (whether or not subject to the Declaration), Sections 3.01, 3.02, 3.03, 5.01, 5.03, 5.04 and 11.01 shall not be amended without the consent of the Sponsor.

Section 11.02. Form of Amendment Proposals. No By-Laws shall be modified, altered, amended or added to by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be modified, altered, amended or added to, new words shall be inserted in the text underlined, or italicized, and words to be deleted shall be lined through. If the proposed change is so extensive that the above procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and interlining as indicators of words added or deleted, but a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Law. See Section _____ of By-Laws for present text."

Section 11.03. Nonmaterial Errors or Omissions. Nonmaterial errors or omissions in the By-Law amendment process shall not invalidate an otherwise properly promulgated amendment.

Section 11.04. Effective Date of Amendment. An amendment to these By-Laws shall be effective in accordance with the terms of its adoption.

ARTICLE XII MISCELLANEOUS

Section 12.01. Notices: All notices hereunder shall be in writing and delivered personally or sent by mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, (i) if to go to the Board of Directors, or to the Association, to any member of the Board of Directors or to the Secretary of the Association (if the Secretary is not a member of the Board) (ii) if to go to a Lot Owner to such permanent address of such Lot Owner as appears on the books of the Association (iii) if to go to a mortgagee, to the address of such mortgage as appears on the books of the Association, and (iv) to a devisee or personal representative of a deceased Lot Owner to the address of such devisee or personal representative as appears on the records of the Court wherein the estate of such deceased Lot Owner is being administered. 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 the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 12.02. Conflict with Certificate of Incorporation or with Declaration: In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 12.03. No Waiver for Failure to Enforce: No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 12.04. Gender: The use of the masculine gender in these By-Laws 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 12.05. Captions: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 12.06. Severability: Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability or effect of the balance of these By-Laws shall not be impaired or affected in any manner.



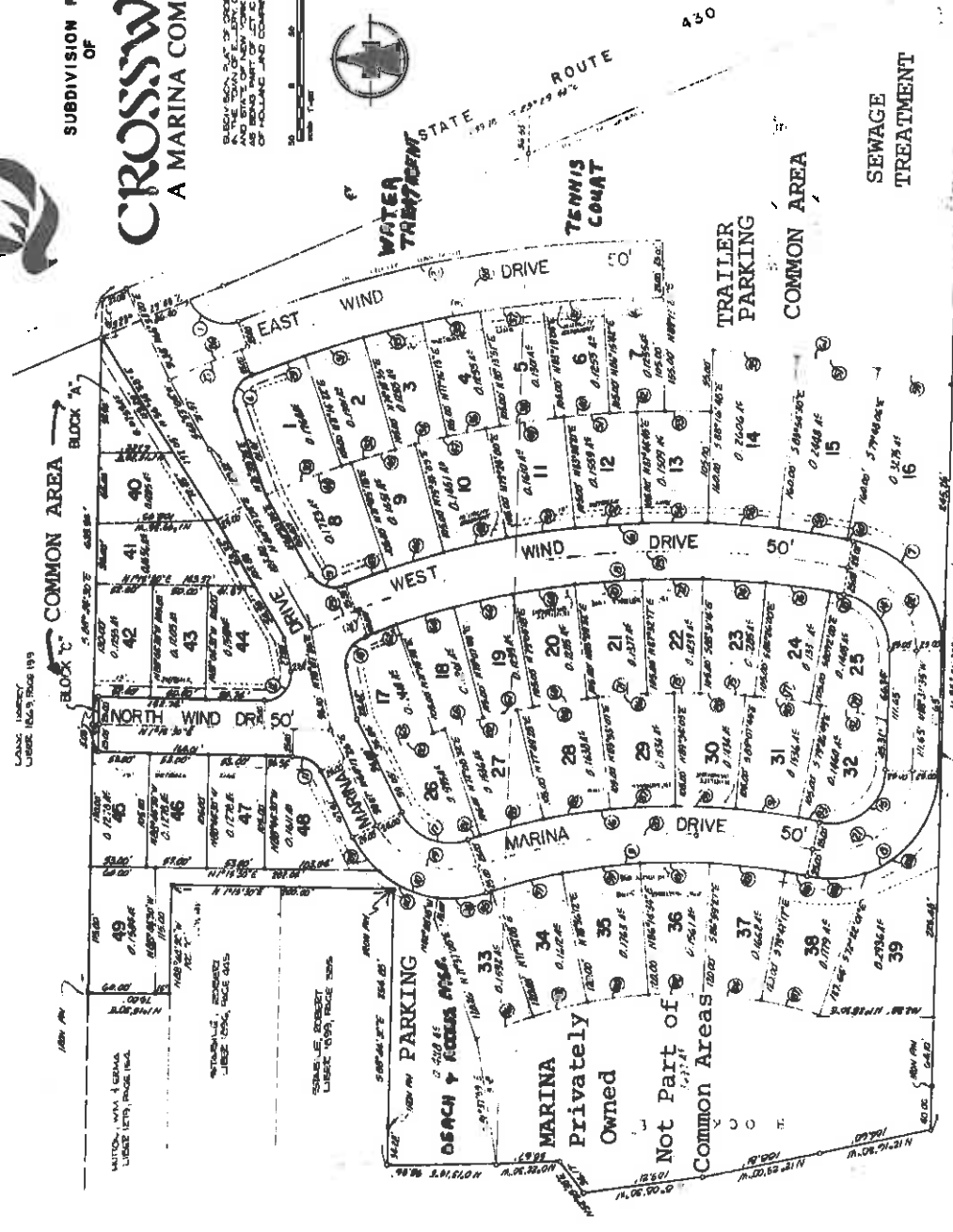
SUBDIVISION PLAT
OF

CROSSWINDS

A MARINA COMMUNITY

BY AN ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF DALLAS COUNTY, TEXAS, APPROVED AND PASSED AT A REGULAR MEETING OF SAID BOARD OF COUNTY COMMISSIONERS HELD AT THE COURTHOUSE, DALLAS, TEXAS, ON OCTOBER 2, 1995.

1995 OCTOBER 02 10:00 AM



L A K E C H A U T A U Q U A

RECORD COPY FILED IN THE PUBLIC RECORDS OF DALLAS COUNTY, TEXAS, ON OCTOBER 2, 1995, AT 10:00 AM. BY THE COUNTY CLERK, DALLAS COUNTY, TEXAS.

ROADWAYS TO BE DEDICATED TO THE TOWN OF ELLERY
ALL AREAS EXCLUDING ROADWAYS, SUBDIVISION LOTS &
MARINA WILL BE OWNED & MAINTAINED BY THE HOME
OWNERS ASSOCIATION.

COMMON AREA
SOUTH GILBERT & MOSEY
LIBERTY, TEXAS 75042

SEWAGE TREATMENT

430

STATE ROUTE

TENNIS COURT

TRAILER PARKING COMMON AREA

WIND DRIVE

WEST WIND DRIVE

EAST WIND DRIVE

NORTH WIND DRIVE

MARINA DRIVE

COMMON AREA

COMMON AREA

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**CROSSWINDS RESIDENTIAL DEVELOPMENT
ELLERY, NEW YORK**

138

Dewittville

Dewittville Bay

SCALE 1"=2,000'

**CROSSWINDS
PROJECT LOCATION**

Chedwak

Comp Newatah

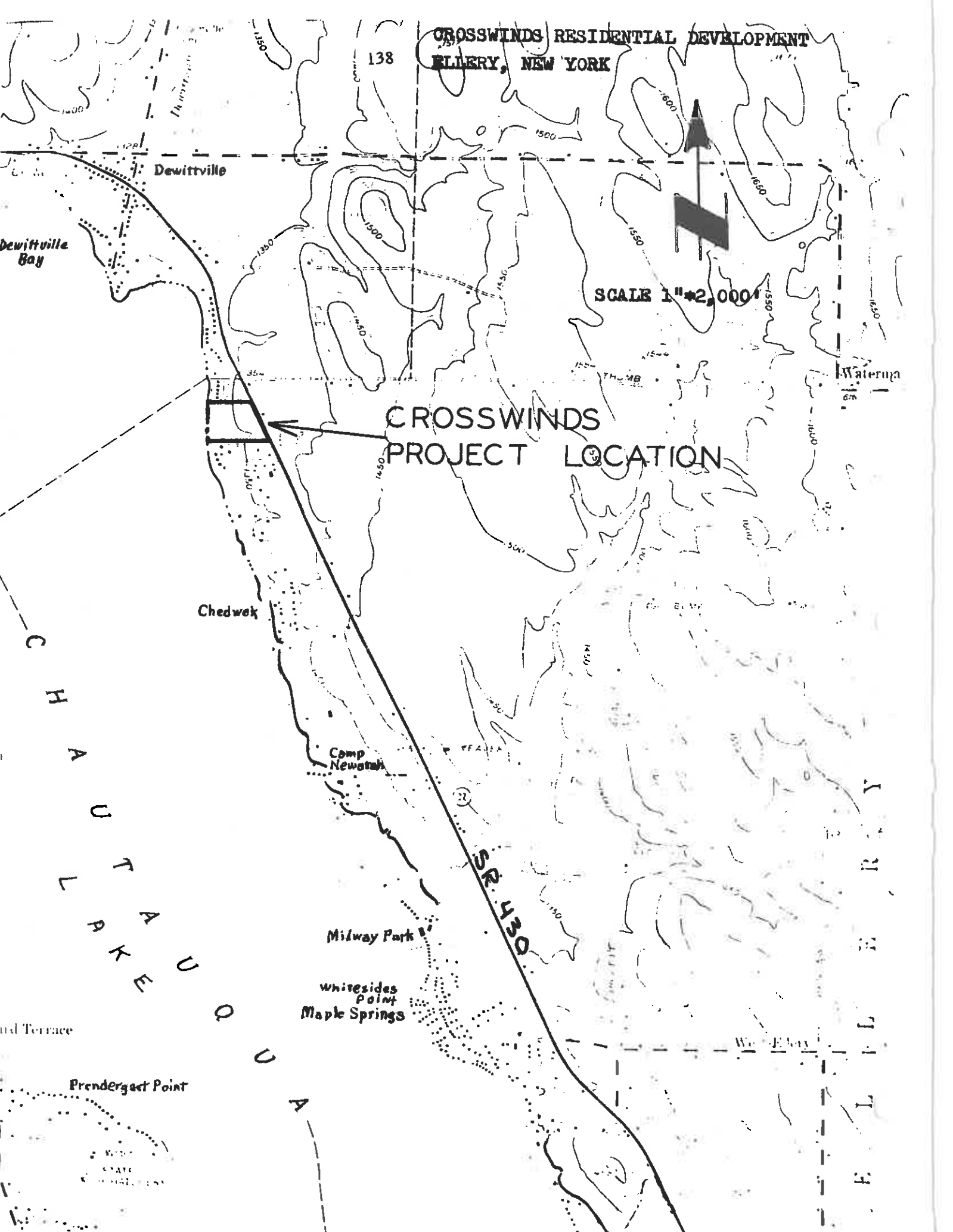
Milway Park

Whitesides Point
Maple Springs

Prendergast Point

and Terrace

STATE
UNIVERSITY



the cleaning and flushing of sewers, flush basins and catch basins, and (ii) install in such home a grinder pump, in accordance with the specifications provided by the Seller, to pump sewage from their home into the common sewage system.

14. SELLER'S OBLIGATIONS. Seller represents that prior to closing, or subsequently, as the case may be, the following will be available to Purchaser at no additional cost to Purchaser:

- a. The roadways to afford ingress and egress from Route 430 as shown on the map of the Crosswinds Community subdivision referred to above will be completed and dedicated to the Town of Ellery.
- b. Underground water, sewer, electric, gas and telephone lines to the premises.
- c. Other common areas and facilities as set forth in the Site Plan included in the Offering Plan shall be completed as soon as practicable, as reasonably dictated by the development of the Crosswinds Community after which time all such common areas and facilities shall be deeded to the Crosswinds Community Homeowners, Inc., save and except for the Marina which shall be retained by Seller, as set forth in the Crosswinds Declaration.

15. CLOSING. The closing shall take place at 10 a.m.

at:

check
which

the Office of the Chautauqua County Clerk

the Office of Irwin J. Dinn, Esq., attorney for
the Seller

or at such other time and place as shall be mutually agreed upon, on at least ten (10) days written notice from Seller to Purchaser provided (i) the sewer and water plants as described in the Offering Plan have been completed, (ii) sufficient paving exists to allow ingress and egress to the premises for construction of a dwelling thereon, and (iii) nothing remains to be done to the land in order for Purchaser to obtain a building permit.

16. REPRESENTATIONS. All the terms, covenants, provisions, conditions and agreements hereinabove set forth or provided for shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, distributees, executors,

administrators, successors and assigns. Any inconsistencies between this purchase agreement and the Offering Plan shall be resolved in favor of the Offering Plan.

17. ASSIGNMENT. This purchase agreement may not be assigned by Purchaser without Seller's written consent. Any assignment by Seller must be disclosed by a duly filed amendment to the Offering Plan.

18. CAPTIONS. The captions in this purchase agreement are for convenience and reference only and in no way define, limit or describe the scope of this purchase agreement or the intent to any provision thereof.

IF THIS OFFER is not accepted by Purchaser in writing on or before _____, the deposit on account shall be returned to Purchaser and this offer shall thereupon be void.

The Purchaser acknowledges receipt of a copy of this offer.

Date: _____
Purchaser

Purchaser's Phone No. _____
Purchaser

ACCEPTANCE

The undersigned, herein called the Seller, hereby accepts the above offer and agrees to sell and convey said premises at the price and upon the terms set forth, and consents herewith to the retention of the deposit as provided above, and also acknowledges receipt of a copy of this purchase agreement.

Date: _____

SPONSOR'S CERTIFICATION

**Re: Crosswinds Community Subdivision
Route 430
Town of Ellery, New York**

THE UNDERSIGNED, being duly sworn, depose and say that:

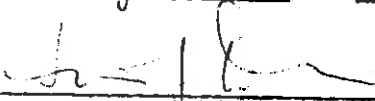
- 1. We are Sponsor and the principal of the Sponsor of the homeowners' association offering plan for the captioned property.**
- 2. We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 22 and such other laws and regulations as may be applicable.**
- 3. We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan for the homeowners' association does, and that all documents submitted hereafter by us which amend or supplement the offering plan for the homeowners' association will:**
 - a. set forth the detailed terms of the transaction and be complete, current and accurate;**
 - b. afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;**
 - c. not omit any material fact;**
 - d. not contain any untrue statement of a material fact;**
 - e. not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;**

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

g. not contain any representation or statement which is false, which we: (1) knew the truth; (2) with reasonable effort could have known the truth; (3) made no reasonable effort to ascertain the truth, or (4) did not have knowledge concerning the representations or statement made.

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

Subscribed and sworn to before me this 29 day of April, 1985.

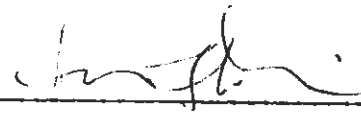


IRWIN J. DINN
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.



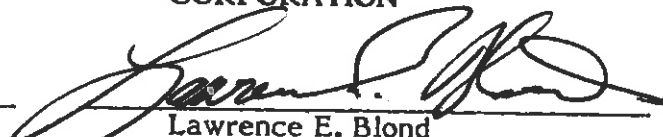
Lawrence E. Blond

Subscribed and sworn to before me this 29 day of April, 1985.



IRWIN J. DINN
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 R. C.

CROSSWINDS DEVELOPMENT CORPORATION



Lawrence E. Blond

ENGINEER'S CERTIFICATION REGARDING
PROPERTY TO BE OWNED BY CROSSWINDS COMMUNITY HOMEOWNERS, INC.

DAVID R. HOOPS, P.E., P.S., being a licensed professional engineer in the State of New York, certifies as follows:

Crosswinds Development Corporation, the sponsor of the offering of interests in the Crosswinds Community Homeowners, Inc. ("Association") retained me to prepare a report describing the property to be owned by the Association when constructed (the "Report"). I prepared the Report dated June 3, 1985, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on such Report.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to this Report.

I have read the entire Report and have investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. I certify that the Report does:

- (i) set forth in narrative form the significant elements of the property to be owned by the Association as it will exist upon completion of construction and is in accordance with the plans and specifications I have examined;
- (ii) in my opinion, afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property to be owned by the Association as it will exist upon the completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

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

I further certify that I am not owned or controlled by and I have no beneficial interest in the sponsor and that my compensation for preparing the Report is not contingent on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property to be owned by the Association.

David R. Hoops
David R. Hoops

Subscribed and sworn to before me this 6th day of June, 1985.

George R. Grasser

GEORGE R. GRASSER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1986



NY LP 0117

RE: Crosswinds Community
Homeowners, Inc.

The Sponsor of the homeowners association offering plan for the captioned property retained the undersigned to review Schedule A containing projections of income and expenses for the first year of operation as a homeowners association. The experience of Edward J. Zabel, Jr., President of the firm, includes:

Former Purchasing Agent for Ransom Oaks Planned Community in Amherst, New York, responsible for the preparation of cost estimates and project budgets.

Property Managing Agent for the following condominium and homeowner associations: 188 units in Charlesgate Village Association, Inc.; 82 units in Forest Edge Cluster Association; 64 units in the Evergreens Homeowners Association; 98 units in Harrogate Square Condominium; 52 units in Stoneledge Condominium; 52 units in Williamsville Towers Condominium; 11 units in Briarwoods Townhome Association, Inc.; 24 units in the Condos on the Boardwalk; 16 units in Coventry Gardens Condominium; all located in Amherst New York. 30 units in West Ferry Village Townhouse Association; 58 units in 800 West Ferry Condominium; 30 units in Harbour Pointe Village Homeowners Association, Inc.; 30 units in St. Mary's Square Condominium, all located in Buffalo, New York. 16 units in Villa Park Condominium; 30 units in Wellington Square Condominium; both located in Cheektowaga, New York. 92 units in Bell Tower Village Condominium located in Lancaster, New York; and as Property Manager for 289 units in the Oakbrook Condominium in Williamsville, NY.

EDWARD J. ZABEL, JR., INC.
Property Management



Mr. Zabel is a member of the Community Association Institute (CAI) and has served as President and Treasurer of the Board of Directors of the Western New York Chapter.

He is a member and formerly served on the Board of Directors of the Niagara Frontier Builders Association (NFBA) affiliated with the New York State Builders Association and the National Association of Home Builders.

He has been designated by the National Association of Home Builders, as a Registered Apartment Manager (RAM).

He is licensed to sell real estate in the State of New York, having held such a license for 18 years.

He has also been engaged in the residential and light commercial contracting business.

The undersigned understands that he is responsible for complying with Article 23A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to Schedule A.

The undersigned has reviewed the Schedule and investigated the facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. The undersigned also has relied on his experience in managing residential property.

The undersigned certifies that the projections in Schedule A appear reasonable and adequate under existing circumstances, and the projected income will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

The undersigned certifies that the Schedule:

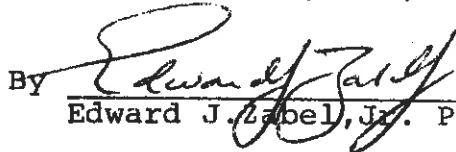
- (i) sets forth in detail the terms of the transaction as it relates to the Schedule and is complete, current and accurate;
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;

- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where he:
 - (a) knew the truth;
 - (b) with reasonable effort, could have known the truth;
 - (c) made no reasonable effort to ascertain the truth; or
 - (d) did not have knowledge concerning the representation or statement made.

The undersigned further certifies that he is not owned or controlled by the sponsor. He understands that a copy of this certification is intended to be incorporated into the offering plan.


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

EDWARD J. ZABEL, JR., INC.

BY 
Edward J. Zabel, Jr. Pres.

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On the 4th day of June 1985, before me personally came EDWARD J. ZABEL, JR., to me known, who, being by me duly sworn, did depose and say that he resides at 381 Bauman Road, Williamsville, New York 14221; that he is the President of Edward J. Zabel, Jr., Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors.


ELIZABETH ANNE ZABEL # 815175
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1986

CROSSWINDS LOT PURCHASE AGREEMENT

THIS AGREEMENT made the _____ day of _____, 19____, by and between CROSSWINDS DEVELOPMENT CORPORATION, an Ohio corporation having its office at 27600 Chagrin Boulevard, Cleveland Ohio 44122, hereinafter called "Seller" and _____, residing at _____, hereinafter called "Purchaser".

WITNESSETH:

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

1. LEGAL DESCRIPTION. Those certain premises located in the Town of Ellery, County of Chautauqua and State of New York, and more particularly described as Subdivision Lot No. _____ on map filed in the Chautauqua County Clerk's Office under Cover No. _____ (the "Premises") and together with an interest in the Crosswinds Community Homeowners, Inc. (the "Association") with the benefits and burdens which accompany such interest, including the obligation for the payment of a pro rata share of the costs of maintenance, repair and replacement of lands and the improvements thereon owned by the Association. Together with and including all improvements thereon and all rights of Seller in and to any and all streets, easements and rights of way appurtenant thereto.

2. SUBJECT, however, to the following; Purchaser agrees to accept title to the premises subject to: restrictive covenants of record provided the same have not been violated, unless the enforcement of said covenants has been barred by Section 2001 of the New York Real Property Actions and Proceedings Law; water lines, sanitary sewer, drainage, gas, electrical and telephone easements of record provided the improvements do not encroach upon the easements; and the Crosswinds Declaration (hereinafter referred to as the "Declaration"), and the By-Laws of the Association, both of which are included in the Offering Plan (the "Offering Plan") for the Crosswinds Community Homeowners, Inc.

check
which

Purchaser acknowledges having received the Offering Plan at least three (3) business days prior to the date of this Agreement.

Purchaser shall have ten (10) days from the date of this Agreement to rescind this Agreement by written notice to Seller sent by certified mail return receipt requested.

The Offering Plan is incorporated herein by reference and made a part of this Purchase Agreement with the same force and effect as if set forth in full herein. If Purchaser is a builder and is purchasing the premises for the purpose of constructing a home thereon and selling the same, Purchaser agrees to furnish the buyer of such home with a copy of the Offering Plan at least three (3) business days prior to the execution of any sale contract for such home or, if such Offering Plan is not furnished to purchaser at least three (3) days prior to the execution of the sale contract, to afford the purchaser ten (10) days to rescind such contract. Purchaser hereby agrees to be bound by the Declaration, By-Laws, and any Rules and Regulations of the Association as the same may be amended from time to time. Purchaser acknowledges that Purchaser is purchasing an interest in the Association, and that except as stated in this purchase agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any representations or other statements of any kind or nature made by Seller or otherwise. The provisions of this Paragraph 2 shall survive delivery of the deed.

3. PRICE. Purchaser shall pay to Seller for said premises the sum of \$ _____ payable as follows:

Upon signing this instrument as an initial deposit on account, subject to collection if by check \$ _____

Upon acceptance of this offer by the Seller as an additional deposit on account \$ _____

Upon delivery of the deed as hereinafter provided in cash or certified check the sum of \$ _____

4. ADJUSTMENTS AT CLOSING. There shall be prorated and adjusted as of date of delivery of deed: taxes computed on a fiscal year basis (including all items in the current County tax bill, excepting returned school taxes and any assessments for local improvements).

5. SEARCH AND SURVEY. Seller, at Seller's expense, shall furnish and deliver to Purchaser or Purchaser's attorney, at least fifteen (15) days prior to the date of closing, a fully

guaranteed tax and title search (the first certificate of which covers only the premises), and a survey, made by a land surveyor duly licensed by the State of New York, showing the premises as a vacant lot, which survey will be dated subsequent to June 1, 1985. The cost of locating any improvements constructed by or on behalf of the Purchaser shall be borne by the Purchaser.

6. DEED. At the time of closing herein, Seller shall tender to Purchaser a warranty deed with lien covenant conveying goods and marketable title in fee simple and clear of all encumbrances except as otherwise provided herein.

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

8. COSTS. Seller shall pay for the continuation of said title search to the time for closing and for the required Real Estate Transfer Tax Stamps to be affixed to the deed. Purchaser shall pay for any fees incurred in recording of the deed and any costs associated with any mortgage obtained by Purchaser.

9. OBJECTION TO TITLE. If Purchaser shall raise objection to Seller's title to the premises which, if valid, would render the title unmarketable and which title insurance does not insure against, Seller shall have the right to cancel this purchase agreement by giving written notice of such cancellation to Purchaser and shall repay to Purchaser the deposit made hereunder whereupon all liability by reason of this contract shall cease; provided, however, if Seller shall be able, within a reasonable length of time, to cure the objection or if thereafter either party secures a commitment for fee title insurance at standard rates to insure against the objection raised or title insurance acceptable to Purchaser, Seller shall pay the cost thereof and in such even this purchase agreement shall remain and continue in full force and effect.

10. PURCHASER'S FAILURE TO TAKE TITLE. Upon the Purchaser's failure to take title as herein provided, Seller may declare this purchase agreement to be null and void and the amount paid hereunder shall belong to Seller, in addition to which the Purchaser shall pay to Seller reasonable attorney's fees and court costs, if incurred to enforce Seller's remedies, all of which shall be liquidated damages and all of which shall not exceed 15% of the purchase price as set forth in Paragraph 2 of this sale purchase agreement or Seller may bring such other legal proceedings as will enforce its rights hereunder. Prior to this

purchase agreement becoming null and void or Seller bringing other legal proceedings to enforce its rights, Seller shall send written notice to Purchaser affording Purchaser not less than 30 days to cure Purchaser's failure.

11. **MONIES TO BE HELD IN TRUST.** Pursuant to Sections 352e(2)(b) and 352-h of the New York General Business Law, to assure the return of Purchaser's deposits in the event this purchase agreement is terminated for reasons other than Purchaser's default, Seller will place all such deposits in a special segregated escrow account in the Chase-Lincoln First Bank, N.A., 2-8 East Third Street, Jamestown, New York, 14701, until closing. Except in the event of Purchaser's default, any interest earned on such funds shall be credited to Purchaser.

The signature of Irwin J. Dinn, Esq. or any other member of the law firm of Klein, Dinn & Hochman, Suite 217, 3659 South Green Road, Beachwood, Ohio 44122, attorneys for the Seller, shall be required to withdraw any of such funds.

The provisions of this Section No. 11 shall survive delivery of the deed.

12. **CERTIFICATE OF COMPLIANCE.** Purchaser acknowledges that the Declaration provides that no improvements shall be made or constructed on the premises unless and until plans for such improvements, in such detail as Seller may require, have been approved by Seller as to their proposed use and external design and that Seller will issue a "Certificate of Compliance" upon completion of any improvements constructed in accordance with any plans approved by Seller.

13. **CONSTRUCTION SUBJECT TO APPROVAL OF SELLER.** Purchaser acknowledges that Purchaser is aware that the Declaration requires each owner of a subdivision lot in the Crosswinds development to (i) have the design, materials, finish, colors, height and location of any improvement to be constructed on a lot to be submitted to the Seller for approval prior to construction and (ii) build in accordance with such approval.

Purchaser also acknowledges that the Declaration requires those lot owners constructing homes to keep (i) the roadways of the subdivision free and clear of any accumulation of mud and debris occasioned by such construction or site work on or about their lots and that if such roadways are not kept clear, the Seller shall have the right, after three (3) days' notice to such lot owner, to remove such mud and debris and to charge the lot owner with the reasonable cost of such removal, including, if necessary,