

Box 19

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

THIS DECLARATION made this 28th day of November, 1988 by JAMES GROUP, INC. a corporation organized and existing under the laws of the State of New York, having its principal offices at 849 Paul Road, Rochester, New York, 14624, hereinafter referred to as "Sponsor".

WITNESSETH

WHEREAS, the Sponsor is the owner of certain real property in the Town of Chili, Monroe County, New York, more particularly described in Schedule "A" annexed hereto and made a part hereof, and

WHEREAS, the Sponsor desires to develop as a residential subdivision with residential lots and dwelling units to be individually owned, with common walkways and green spaces (hereinafter "common areas") available for the benefit of said subdivision, and

WHEREAS, the Sponsor desires to provide for maintenance of said common areas and for the preservation of the values and amenities in said common areas by the creation of an association which shall be empowered to maintain and administer the common areas and which shall administer and enforce the covenants and restrictions and which shall collect and disburse the assessments and charges all as set forth herein, and

WHEREAS, the Sponsor has incorporated the Whispering Winds Homeowners Association, Inc. pursuant to the Not-for-Profit Corporation Laws of the State of New York for purposes of exercising the functions as set forth herein.

NOW THEREFORE, the Sponsor declares that the real property described in Schedule "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions for purposes of protecting the value and desirability of said real property and which shall run with the real property and be binding on all parties having any right, title or interest in the property, their heirs, successors and assignments and shall inure to the benefit of each owner.

RECORDED

1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Chili, County of Monroe, State of New York being part of Town Lot 6, Section 16 of the Fitzgerald Allotment, Township 2, First Range west of the Genesee River, and more particularly described as follows:

Commencing at a point in the northerly line of the Chili Avenue Extension, which point is 1560.10 feet easterly from the point of intersection of the northerly line of Chili Avenue Extension and the Town Lot line between the Town of Riga on the west and the Town of Chili on the east being the point and place of beginning; thence

1. N 1°-11'-51" E, a distance of 80 feet to an iron pipe; thence
2. N 88°-48'-09" W, a distance of 550 feet to an iron pipe; thence
3. N 1°-11'-51" E, a distance of 1052.96 feet to an iron pipe; thence
4. S 88°-57'-26" E, a distance of 100.65 feet to a concrete monument in the southerly line of the Western Expressway Interstate Route 490; thence
5. S 77°-41'-43" E, a distance of 305.88 feet to a concrete monument in the southerly line of the Western Expressway Interstate Route 490; thence
6. N 84°-41'-11" E, a distance of 1022.39 feet to a concrete monument which is in the southerly line of the Western Expressway Interstate Route 490; thence
7. Easterly along a curve having a radius of 8694.37, a distance of 302.32 feet to a point; thence
8. S 4°-57'-41" E, a distance of 120 feet to an iron pipe; thence
9. N 86°-49'-25" E, a distance of 352.60 feet to an iron pipe; thence
10. S 1°-11'-51" W, a distance of 721.19 feet to a point, which point is also the north corner of Lot B of the Whispering Winds Subdivision, Section 1A, as shown on a Map prepared by Frazer-Moser Associates, dated May 2, 1987, Drawing No. A7460-14; thence
11. S 56°-22'-58" W, along the north boundary line of Lot B a distance of 314.80 feet to a point; thence
12. S 84°-41'-13" W, a distance of 316.22 feet to a point, which point is the common boundary line of Lot A and Lot B of the aforesaid Section 1A of the Whispering Winds Subdivision; thence
13. Continuing on a bearing of S 84°-41'-13" W, a distance of 322.74 feet to a point, which point is the northwest corner of Lot A of the Whispering Wind Subdivision 1A; thence
14. S 25°-25'-22" E, along the westerly boundary line of Lot A, a distance of 692.38 feet to a point in the northerly line of New York State Route 33A; thence
15. Continuing along the north right of way line of New York State Route 33A, a distance of 597.64 feet to a point in the north right-of-way line of Chili Avenue Extension; thence
16. N 88°-16'-52" W, a distance of 378.60 feet to a point in the northerly line of the Chili Avenue Extension; thence
17. N 89°-02'-59" W, along the northerly line of Chili Avenue Extension, a distance of 35.08 feet to the point and place of beginning.

Property Address: 3940 Chili

ARTICLE ONE - DEFINITIONS

Section 1.01 Definitions

The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall have the following meanings:

1. Association shall mean and refer to the Whispering Winds Homeowners Association, Inc.

2. Common Areas shall mean and refer to the walkways and open green spaces in said subdivision for the common use and enjoyment of the homeowners, as those areas are set forth on the Subdivision Maps for the Whispering Winds Subdivision filed in the Monroe County Clerk's Office. Common Areas shall also include the permanent subdivision sign at the entrance to the Whispering Winds Subdivision.

3. Declaration shall mean and refer to this document of protective covenants, conditions, restrictions, easements, charges and liens as from time to time may be supplemented, extended or amended.

4. Eligible Holder of Lot Mortgages shall mean and refer to the holder, insurer or guarantor of any lien of mortgage given by a lot owner covering his lot which is 1) a purchase money mortgage or 2) any mortgage taken or acquired by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

5. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the properties, and which plot is identifiable as a separate parcel according to the Town of Chili tax records.

6. Member shall mean and refer to each holder of a membership interest in the Whispering Winds Homeowners Association, Inc.

7. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property.

8. Property shall mean and refer to all the properties as are subject to

this Declaration and such additions as may hereafter be brought within the jurisdiction of the Association.

9. Sponsor shall mean and refer to James Group, Inc.

ARTICLE TWO - PROPERTIES SUBJECT TO THIS DECLARATION

Section 2.01 Initial Property

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Chili, County of Monroe and State of New York and is more particularly described in Schedule "A" attached hereto and incorporated by reference herein, all of which property shall be referred to as initial property.

Section 2.02 Additional Property

The Sponsor, its successors and assigns shall have the right to bring additional property within the scheme of this Declaration. The additions of property authorized under this article shall be made by filing and recording a Supplemental Declaration with respect to additional property and which shall extend the scheme of protective covenants, conditions, restrictions, easements, charges and liens contained in this Declaration to said additional properties and shall thereby subject such additions to assessment for the just share of Association expenses. This Supplemental Declaration may contain complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any of the added properties.

ARTICLE THREE - PROPERTY RIGHTS

Section 3.01 Owner Rights

Every owner shall have a right and easement of enjoyment in and to common areas which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

1. The right of the Association pursuant to its bylaws to adopt rules and regulations governing the use of the common areas and facilities, and governing the

personal conduct of Association members and their guests and to establish penalties for infraction of said rules and regulations.

2. The right of the Association to suspend an owners voting rights during any period in which an assessment against his lot remains unpaid and for any infraction of the Association's published rules and regulations.

Section 3.02 Sponsor's Rights

NOTWITHSTANDING any other provisions herein contained the Sponsor shall have the right to use portions of the common elements for sales promotions including common areas and to erect and maintain on the common area advertising direction and signs for Sponsors sales and marketing.

ARTICLE FOUR - EASEMENTS

Section 4.01 Easements for Utilities

Sponsor reserves the right to grant easements, both temporary and permanent, to all public authorities and public and private utility companies over any part of the common areas described herein.

Section 4.02 Easement in Favor of the Sponsor

The Sponsor and any persons it may select shall have the right of ingress and egress over, upon and across the common areas, or any additional land which may be hereafter added to the property and the right to store materials thereon and make such other use thereof as may be reasonably necessary incident to construction development and sales of the homes, operation of the association and maintenance of the common areas and to perform any operations as in the sole opinion of the Sponsor may be reasonably required, convenient or incidental to the construction and sale of residences.

ARTICLE FIVE - ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 5.01 Formation

Pursuant to the Not-For-Profit Corporation Laws of the State of New York, the Sponsor has formed the Association to operate and maintain the common areas and to

enforce the protective covenants, conditions or restrictions set forth in this Declaration and in the certificate of incorporation and by-laws of the Association, and as they may be amended from time to time.

Section 5.02 Membership

Every owner of a lot subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 5.03 Voting

The Association shall have one (1) class of voting membership and each member including the Sponsor shall be entitled to no more than, nor less than, one (1) vote.

Section 5.04 Election of Directors

The nomination and election of directors and the filling of vacancies on the Board of Directors shall be governed by the by-laws of the Association.

Section 5.05 Powers and Duties of the Board of Directors

The powers and duties of the Board of Directors shall be as set forth in the by-laws of the Association.

Section 5.06 Indemnification of Officers and Directors

Every director and officer of the Association shall be and is hereby indemnified by the Association against any expenses or liabilities, including counsel fees reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party or in which such officer or director may become involved by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time when such expenses are incurred except in the case where the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties.

ARTICLE SIX - ASSESSMENTS

Section 6.01 Creation of a Lien and Personal Obligation of Assessment

Each lot owner, by accepting a deed therefor, whether or not such deed or any

other instrument pursuant to which title is obtained so expressly provides, shall be deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges for maintenance and operation of common areas. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common areas.

2. Special assessments.

The assessments shall be fixed, established and collected from time to time as hereinafter provided. Each assessment together with such interests 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 each owner of such lot at the time the assessment falls due.

The Sponsor will be obligated for association charges including supplemental charges on all unsold lots.

Section 6.02 Purpose of Maintenance Assessment

The maintenance assessment shall be used to fund maintenance, preservation, operation and improvement of common areas and for the promotion of the safety and welfare of the members of the Association. The assessment funds shall be used for management, legal and accounting fees, maintenance, repair and replacement of the common areas. This assessment shall also include a reserve fund for periodic maintenance, repair and replacement of improvements to the common area which the Association is obligated to maintain.

Section 6.03 Commencement and Notice of Assessment

Assessments shall commence on the day in which the first lot is transferred from the Sponsor to an owner or on such other date as may be determined by the Sponsor. The first assessment shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors. Thereafter, assessments shall be fixed on a full year basis. The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assess-

ment period. The assessment shall be due and payable on a yearly basis unless the Board of Directors establishes other periods for payment.

Section 6.04 Basis for Maintenance Assessment

The annual maintenance assessment shall be assessed equally among all lot owners. The following items shall be considered common expenses and shall be included in the maintenance assessment for all lots: maintenance and operation, reserves (including walkway resurfacing and sealing, subdivision sign repair and maintenance, management, legal and accounting and miscellaneous.

Section 6.05 Change in Basis of Assessments

The Association may change the basis of determining the maintenance assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of members voting in person or by proxy in a meeting called for this purpose. Written notice of the meeting for this purpose shall be given at least thirty (30) days in advance to all voting members. No change in the basis of maintenance assessments which adversely affects the interest of the Sponsor with respect to unsold lots shall be valid except with the specific consent of the Sponsor in writing for a period of five (5) years from the date of the first home conveyance or within 120 days after the Sponsor has sold 75% of the lots then subject to the declaration, whichever period shall occur first. A written certification of any such change shall be executed by the Board of Directors and recorded in the Monroe County Clerk's Office.

Section 6.06 Reserve Fund

A reserve fund shall be established from funds collected in the monthly assessment from lot owners. While the Sponsor is in control of the Board of Directors, the reserve fund shall not be used to reduce projected Association charges. Neither the Department of Law nor any other Government agency has passed upon the adequacy of the reserve fund established by the Sponsor.

Section 6.07 Special Assessments

In addition to the annual maintenance assessment, the Association may levy a special assessment for any purpose deemed necessary by the Board of Directors. For any special assessment in excess of twenty percent (20%) of the then current amount of

annual maintenance assessment, consent of two-thirds (2/3) of the total votes of the owners shall be required. A meeting of the Association members shall be called at least thirty (30) days in advance for the purpose of voting on special assessments.

Section 6.08 Non-payment of Assessment

If an assessment or installment is not paid on the due date, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with interest thereon and costs of collection, shall there upon become a continuing lien on the property and shall bind such property in the hands of the then owner and such owner's heirs, devisees, personal representatives, successors and assigns.

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

Any assessment not paid within thirty (30) days after the due date 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.

The Association may bring an action at law against the owner who is personally obligated to pay the assessment or foreclose the lien against the property including interest, costs and reasonable attorneys fees of any such action. Each lot owner, by his acceptance of the deed to a lot, hereby expressly grants Whispering Winds Homeowners Association, Inc. the right and power to bring all actions against such owner personally for the collection of each charge as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property and such owner hereby expressly grants the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all lot owners. The Association, acting on behalf of the lot owners shall have the power to bid for an interest foreclosed upon a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No

owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot. Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall under no circumstances entitle any lot owner to withhold or fail to pay the assessments due to the Association for the lot or lots owned by such owner.

Section 6.09 Right to Maintain Surplus

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balances remaining. The Association is not obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and achievement of the purposes of the Association.

Section 6.10 Subordination of the Lien to Mortgages

Lien of the assessments provided for herein, and fees, late charges, fines or interest levied by the Association shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect the assessment lien, however the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6.11 Subordination of Mortgage

The mortgage for any land or construction loan for any part of the Whispering Winds Subdivision shall be made subordinate to the Declaration or shall include a covenant insuring that the Association and/or the lot owner's undisturbed use of the premises for the purposes described herein in the event of foreclosure. Subordination to mortgage, to the extent permitted by law, the lien of the Association for maintenance assessments or other charges, fees, late charges or fines levied by the Association on or after the date of recording of the first mortgage on any lot shall be subordinate to said first mortgage lien.

ARTICLE SEVEN - MAINTENANCE

Section 7.01 Maintenance by the Association

The Association shall be responsible for all maintenance and or repair and or replacement to the improvements on the common areas. Such costs shall be funded from the maintenance assessments.

Section 7.02 Quality and Frequency of Maintenance and Repairs

All maintenance, repair and replacements whether or not performed by the Association shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and values of the property. The Association may establish reasonable schedules and regulations for maintenance, repair or replacement which schedules and regulations shall take into account the useful life of the common areas.

Section 7.03 Easement and Access for Repairs

The Association, its employees, contractors and agents is hereby given an easement over, upon and across that portion of the owners property as described in Schedule B attached hereto and made a part hereof, which describes the common areas, in order to carry on its functions, as provided for in this Article.

ARTICLE EIGHT - USE RESTRICTION

Section 8.01 Use Restriction

No commercial or business activity shall be permitted upon the properties and all owners shall be bound by the by-laws and rules and regulations, a copy of which is annexed hereto and made a part hereof.

ARTICLE NINE - INSURANCE AND CASUALTY DAMAGE

Section 9.01 Insurance

The individual lot owners shall be responsible for obtaining and maintaining in force and effect a policy of insurance in an amount which they determine to be appropriate or relevant to cover fire and casualty insurance on their property,

including liability insurance. The Association shall obtain and maintain liability insurance to cover the common areas as described herein.

Section 9.02 Condemnation

In the event of condemnation awards for losses to, or a taking of, common areas a distribution cannot be made by the Association in any way which conflicts with the right of any first mortgagee of any lot pursuant to the mortgage on said lot.

The Association shall represent, or appoint any Agent to represent lot owners in any condemnation proceeding regarding common areas or in negotiations, settlements and agreements with the condemning authority for the acquisition of the common areas, or parts thereof.

Proceeds or awards of settlement shall be payable to the Association or trustee of the Association for the use and benefit of Association members and their mortgagees as their interests may appear.

ARTICLE TEN - OTHER RESTRICTIONS

Section 10.01

All homesites in said subdivision shall be known as residential homesites only and shall not be used to any other purpose other than the erection and maintenance of a private detached dwelling for a single family not to exceed 2-1/2 stories in height, and a private garage for not more than two (2) cars. The private garage must be attached to or built into the residence. The term attached shall be construed to mean any kind of attachment, whether by common wall, so-called breezeway, a roofed porch, etc.

Section 10.02

No homesite shall be resubdivided into smaller homesites, but the homesites may be resubdivided into larger ones.

Section 10.03

No commercial trade, professional, manufacturing or mercantile business shall be conducted on the premises herein, nor anything be done thereon which may be or become a nuisance to the neighborhood. No public buildings shall be permitted on any homesite.

Section 10.04

No trailer, motor home, boat, tent, shack, barn or other structure shall be used for the purpose of a second residence on any homesite. No homesite or portion thereof shall be used for the purpose of outside storage of unused vehicles, junk or other abandoned equipment. No basement or substantially uncompleted structure shall be used as a residence.

Section 10.05

No structure shall be moved onto any homesite unless it complies with the existing restrictions on the tract and has received the approval of the subdividers or the subdividers' agent authorized in writing to make such approval.

Section 10.06

No sign, billboard or advertising structure of any kind, except the permanent subdivision sign, may be erected or maintained on any of the homesites provided, however, an advertising sign, no more than eight (8) square feet in size, may be used for the sole purpose of advertising the property for sale.

This restriction shall not apply to any signs erected by or for the Sponsor in connection with any promotion or sales of lots offered by the Sponsor until such time as all lots offered by the Sponsor are sold and closed.

In addition, there shall be allowed one subdivision sign to be erected by the developer on Lot R-1 in Section 1 or within the bounds of the Association property. This subdivision sign shall be maintained at the expense of the Homeowners Association. Said maintenance shall include, but not be limited to, structural maintenance of the sign and landscaping.

In order to preserve the aesthetic value of the properties comprising the Whispering Winds Subdivision and the Town of Chili, the Town of Chili shall be entitled to give the Homeowners Association of said subdivision, a notice in writing of any disrepair of the permanent subdivision sign. The Homeowner's Association shall have sixty (60) days, weather permitting, in which to make any repairs as stated in said notice. In the event that repairs are not made within sixty (60) days of notice, the

Town of Chili may make any necessary repairs and assess the Homeowner's Association for the costs of repairs made. Said assessment is to be a continuing lien on the common areas of the Homeowners Association.

The Town of Chili is hereby granted a perpetual easement over Lot R-1 or the common areas as applicable for the purposes of making any necessary repairs of the permanent subdivision sign.

The above covenant and restrictions are to run with the land and shall be binding on all parties and all persons claiming thereunder.

Section 10.07

No licensed or unlicensed recreational vehicles, motor homes, boats, storage trailers or trucks with storage cabs or unlicensed standard vehicles will be left in the driveway of any yard. All such vehicles will be stored in the garage. No vehicles used for commercial purposes shall be parked within the limits of the subdivision.

Section 10.08

No wire link or wood fence shall be placed upon any homesite within twenty feet (20') of the property line except immediately surrounding any inground pool as may be required by the rules of the Monroe County Department of Health. Fences are restricted to four feet (4') in height. No fences shall be placed on any homesite front yard area.

All fences are to be kept in good repair at all times, and any other fences erected on any homesite shall be in compliance with the zoning requirements of the Town of Chili.

Section 10.09

Any inground pool will be permitted with a fence which shall be in compliance with the zoning requirements of the Town of Chili and Rules of the Monroe County Department of Health. Above ground pools, including any surrounding deck, shall be located no closer than ^{ten} ~~twenty~~-five feet (25') to any side lot line and ^{ten} ~~twenty~~ feet (20') from the rear lot line. The pool must be located directly behind the house.

On corner lots any pools shall be located, as nearly as possible, directly

behind the house. In addition, at least four feet (4') of ornamental shrubbery shall be utilized in order to shade any such pools from the view of the street.

Section 10.10

Dwelling shall be erected or placed in accordance with the subdivision map filed in the Monroe County Clerk's Office and in accordance with the requirements of the Town of Chili.

Section 10.11

Trash receptacles, garbage containers and/or miscellaneous trash will remain in the garage until a reasonable time prior to collection at which time they may be set at the curb in front of each residence.

Section 10.12

No exterior laundry lines shall be erected more than thirty feet (30') from the rear of the residence, and shall be located directly behind the house so as not to be visible from the street.

Section 10.13

The Declarant reserves the right to grant easements for installation and maintenance of public utility improvements, including cable T.V., storm and sanitary drainage facilities, on any homesite in said subdivision to the responsible utility, authority, corporation or municipality and also reserves the right to dedicate all highways and required easements in said subdivision to the Town of Chili.

The Declarant further reserves the right to install storm water drainage facilities along the rear or side lot lines of any homesite, ten feet (10') in width, following transfer of any lot, to remedy surface water drainage conditions.

Section 10.14

These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them.

Section 10.15

If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person or persons owning any other homesites in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either to prevent him or them from so doing or to recover damages and attorneys fees for such violations.

Section 10.16

The invalidation of one of these restrictive covenants by judgment or court order or by common consent shall in no way affect any of the other provisions and they shall remain in full force and effect.

ARTICLE ELEVEN - GENERAL COVENANTS AND RESTRICTIONS**Section 11.01 Enforcement**

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

Section 11.02 Severability

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way effect the other provisions which shall remain in full force and effect.

Section 11.03 Declaration Runs With the Land

Each person or entity acquiring an interest in a lot or other portions of the property of Whispering Winds Subdivision, whether by deed, lease or any other instrument, covenants and agrees for himself, his heirs, successors and assigns to observe, perform and be bound by the provisions of the declaration including personal responsibility for the payment of all charges which may become liens against his

property and which become due while he is the owner thereof and also covenants to incorporate this declaration by reference in any deed, lease or other instrument for the transferring and interest in such lot or other portion of the property.

Section 11.04 Amendment

Unless otherwise specifically provided, this declaration may be amended or recinded upon the consent, in writing, of the owners of not less than two-thirds (2/3) of all the lots which are subject to this declaration. In addition, the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages, shall be required to add or amend any material provisions of the Declaration of the project, which establish, provide for, govern or regulate any of the following:

- a. Voting;
- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the common area;
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the common area;
- f. Responsibility for maintenance and repair of the common area;
- g. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the subdivision;
- h. Boundaries of any lot;
- i. The interests in the common area;
- j. Convertibility of lots into common areas or of common area into lots;
- k. Imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer or otherwise convey his or her lot;
- l. Any provisions which are for the express benefit of eligible mortgage holders.

Until five (5) years from the date of the first home conveyance or within 120 days after the Sponsor has sold 75% of the lots subject to this declaration, whichever period occurs first, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor. The owner of every lot shall receive written notice of every proposed amendment or recission to this declaration

at least thirty (30) days prior to the date set for voting on said amendment or rescision. Any amendment to the declaration must be recorded in the Monroe County Clerk's Office and shall not become effective until the date of recording. The provisions of this declaration shall unless amended or rescinded continue with full force and effect against both the property and the owners for a period of not less than twenty (20) years from the date this declaration is recorded and shall then be automatically and without further notice extended for successive periods of ten (10) years.

Section 11.05 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 this Declaration nor the intent of any provision hereof. Any notice required to be sent to the Sponsor, owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address to the person who appears as the Sponsor, owner or mortgagee on the records of the Association at the time of such mailing period.

Section 11.06 Right Reserved to Impose Additional Protective Covenants

The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 11.07 Provisions Relating to Mortgagees

Any eligible holder of any lot mortgage at its request is entitled to timely written notification of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the common area or any lot on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder.

B. Any delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such eligible holder, which remains uncured for a period of sixty (60) days.

C. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as follows:

1. Any restoration or repair of the common area after a partial condemnation shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

2. Any election to terminate the legal status of the Association after a substantial taking in condemnation of the common area must require the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

3. Unless the formula for reallocation of interests in the common area after a partial condemnation is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common area resulting from a partial condemnation may be effected without the prior approval of eligible holders holding mortgages on all remaining lots whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining lots subject to eligible holder mortgages.

4. When professional management has been previously required by any eligible mortgage holder, whether such entity became an eligible mortgage holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of owners of lots to which at least two-thirds (2/3) of the votes in the Association are allocated and the approval of eligible holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

IN WITNESS WHEREOF, the undersigned being the Sponsor herein has hereunto set his hand and seal this 28th day of NOVEMBER, 1988.

JAMES GROUP, INC.

BY: James J. Valerio Pres
JAMES J. VALERIO, PRESIDENT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 28th day of NOVEMBER, 1988, before me personally came JAMES J. VALERIO to me personally known, who, being by me duly sworn did depose and say that he resides in Chili, New York, that he is the President of JAMES GROUP, INC., the corporation described in, and which executed the within Instrument; that ~~he knows the seal of said corporation, that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation;~~ and that he signed his name thereto by like order. jnh

David J. Gutmann

Notary Public

DAVID J. GUTMANN

NOTARY PUBLIC, State of N.Y., Monroe Co.

My Commission Expires 8/31/89