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COUNTY OF MONROE

COUNTY CLERK'S OFFICE RECORDING PAGE \*

Patricia L. McCarthy - County Clerk  
Carolee A. Conklin - Deputy County Clerk

TR. NO. 89128093100  
 BOOK 7626 PAGE 236  
 REEL FR  
 NO. PAGES 26  
 05/08/89 AT 09:31:00  
 MONROE COUNTY CLERK

MORTGAGE TAX

Serial # \_\_\_\_\_  
 City/Town \$ \_\_\_\_\_  
 S.M.A. \$ \_\_\_\_\_  
 Trans. Auth. \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_  
 \_\_\_\_\_  
 PAID AT RECORDING

TRANSFER TAX

Transfer Tax # \_\_\_\_\_  
 Amount \$ \_\_\_\_\_  
 \_\_\_\_\_  
 PAID AT RECORDING

RETURNED TO:

Bx 19

STATE OF NEW YORK  
 MONROE COUNTY, SS.

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RECORDED ON 05/08/89  
 TIME 09:31:00  
 BOOK 7626 PAGE 236  
 REEL FR  
 OF

DEED  
 AND EXAMINED  
 PATRICIA L. MCCARTHY  
 MONROE COUNTY CLERK

\* THIS RECORDING PAGE IS PART OF A LEGALLY RECORDED INSTRUMENT. PLEASE DO NOT REMOVE FROM DOCUMENT.

BY-LAWS OF WHISPERING WINDS HOMEOWNERS ASSOCIATION, INC.

ARTICLE ONE - PLAN OF HOME OWNERSHIP

Section 1-01. Home Lot Ownership

The common area to be owned by the WHISPERING WINDS HOMEOWNERS ASSOCIATION, INC., Town of Chili, Monroe County, State of New York (hereinafter called the "PROPERTY") has been submitted to the provisions of a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (hereinafter referred to as the "Declaration") recorded in the Office of the County Clerk, Monroe County, and shall hereinafter be known as "WHISPERING WINDS HOMEOWNERS ASSOCIATION, INC." hereinafter referred to as the "Association".

Section 1-02. Applicability of By-Laws

The provisions of these By-Laws are applicable to the property of the Association and to the use and occupancy thereof. The term "PROPERTY" as used herein includes only the walkways and open green spaces and all easements, rights, and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of the said Declaration.

Section 1-03. Applicability to Persons

All present and future owners, lessees, and mortgagees, their employees, and any other person who may use the facilities of the property in any manner shall be subject to these By-Laws, the Declaration, and rules and regulations pertaining to the use and operation of the Association Property.

Acquisition, rental or occupancy of any lot on the property shall be sufficient to signify acceptance and ratification of the provisions of the aforementioned instruments, and on agreement to comply therewith.

Box 9  
L.S.K.

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OFFICE OF  
CLERK OF  
COUNTY

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MAY 9 A 231

RECORDED

Section 1-04. Membership in the Association

The members of the Association shall be the record owners of a fee or undivided fee interest in any of the lots within the Property, provided that any person or entity holding such interest merely as security for the performance of any obligation shall not be a member. The Association shall have one (1) class of members.

James Group, Inc. (hereinafter called "Sponsor"), may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 1-05. Office

The office of the Association and of the Board of Directors shall be located at WHISPERING WINDS HOMEOWNERS ASSOCIATION, INC., 849 Paul Road, Rochester, New York.

## ARTICLE TWO - BOARD OF DIRECTORS

Section 2-01. Number and Qualifications

The affairs of the Association shall be governed by a Board of Directors. Until five (5) years have elapsed from the date of conveyance of the first lot or until 120 days after 75% of the lots have been sold by Sponsor and paid for (whichever shall first occur) and thereafter until their successors shall have been elected by the members, the Board of Directors shall consist of such of the officers and directors of Sponsor, or others, as Sponsor shall from time to time designate. Thereafter, the Board of Directors shall be composed of three (3) persons, all of whom shall be owners, co-owners, spouses of owners, or mortgagees of lots, or, in the case of corporate owners or mortgagees of lots, officers, directors, shareholders, or employees of such corporations, or in the case of fiduciary owners, shall be the fiduciary or officers or employees of such fiduciaries.

Section 2-02. Powers and Duties

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things, except as by law, or by the Certificate of Incorporation, or by the Declaration, or by these By-Laws, may not be delegated to the Board of Directors by the members. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- A. Care, upkeep, maintenance and operation of the common elements;
- B. The determination of amounts required to defray common expenses of the Association (such as amounts required for operation and maintenance of the common elements);
- C. Collection of common charges from members;
- D. Maintenance of detailed and accurate records, in chronological order, of receipts and disbursements arising from the operation of the property, which records shall be made available for examination by members at convenient hours on weekdays;
- E. Authorization and prosecution of suits to foreclose liens for non-payment of common charges, or to recover money judgments for unpaid common charges, on behalf of all members;
- F. Authorization and prosecution of actions or proceedings on behalf of the owners of two (2) or more lots as their respective interests may appear, with respect to any cause of action relating to the common elements or to more than one (1) lot;
- G. Employment and dismissal of personnel necessary or appropriate for the maintenance and operation of the property, the common areas and facilities and the restricted common areas and facilities;

- H. Adoption and amendment of rules and regulations not inconsistent with these By-Laws, covering the details of operation and use of the property;
- I. Establishment of bank accounts in the name of the Association, and authorization of signatories therefore;
- J. Purchasing, leasing, or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members, lots offered for sale, lease or surrender by their owners to the Board of Directors;
- K. Purchasing lots at foreclosure or other judicial sale in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members;
- L. Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with lots acquired by, and subleasing lots leased by the Board of Directors or its designee, corporate or otherwise on behalf of all members;
- M. Organizing corporations to act as designees of the Board of Directors in acquiring title to or leasing lots on behalf of all of the members;
- N. Procuring of insurance for the Association Property;
- O. Contracting for and/or making of repairs, additions, and improvements to the property, and for repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- P. Levying fines against members for violations of the rules and regulations established by it to govern the conduct of the members, provided, however, that no fine may be levied in an amount in excess of TWENTY-FIVE DOLLARS (\$25.00) for any one (1) violation. But for each day a violation continues after notice, it shall be considered a separate violation. Such fines may be collected as if they were common charges owed by the member(s) against whom the fines are levied. Where a member is fined for an infraction of the rules and regulations and fails to pay the

fine within ten (10) days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where a member persists in violation of the rules and regulations, the Board may require him to post a bond to secure future compliance with the rules and regulations;

Q. Controlling the use of all common elements of the property, including restricted common elements;

R. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however, that (1) the consent two-thirds (2/3) in number of all voting Association members, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) and (2) no lien to secure repayment of any sums borrowed may be created on any lot without the consent of the lot owner;

S. Exercising all other necessary and proper actions for the sound management of the Association and fulfillment of the terms and provisions of the Association Certificate of Incorporation, Declaration and By-Laws.

#### Section 2-03. Election and Terms of Office

At the first annual meeting of members, the terms of office of the Board of Directors shall be fixed as follows:

- A. The terms of office of one (1) member shall be set at three (3) years; and
- B. The terms of office of one (1) member shall be set at two (2) years.
- C. The terms of office of one (1) member shall be set at one (1) year.

At the expiration of the initial term of office of each Board Member, his successor shall be elected to serve for a term of three (3) years. Board Members shall hold office until their successors have been elected and hold their first meeting.

Section 2-04. Vacancies

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the members, shall be filled by vote of the majority of the remaining Board Members, even though they may constitute less than a quorum; each person so elected shall hold office until his successor is elected at the next annual meeting of Association members.

Section 2-05. Removal of Board Members

At any regular or special meeting duly called, any one or more members of the Board of Directors may be removed with or without cause by a majority of voting Association members, and a successor may then and there be elected to fill the vacancy so created. Any Board Members so elected shall serve for the unexpired term of his predecessor in office. Any Director whose removal has been proposed by the Association member shall be given an opportunity to be heard at the meeting at which a vote is to be taken on the issue of his removal.

Section 2-06. Organizational Meetings

The first (1st) meeting of the Board of Directors shall be held within fifteen (15) days of the first (1st) annual meeting of Association members at which Board Members are elected and at such place as may be fixed by the Board of Directors. No notice shall be necessary to the newly elected Board of Directors in order legally to constitute such a meeting, providing a majority of the Board shall be present.

Section 2-07. Regular Meetings

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least one (1) of such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Board Member personally, or by mail, telephone, or telegraph at least three (3) business days prior to the date set for such meeting.

Section 2-08. Special Meetings

Special meetings of the Board of Directors may be called by the President, and shall be called by the President or Secretary on the written request of at least two (2) Board Members on two (2) business days' notice to each Board Member, given personally or by mail, telephone, or telegraph. Any such notice shall state the time, place, and purpose of the meeting.

Section 2-09. Waiver of Notice

Any Board Member may at any time waive notice of any meeting of the Board of Directors in writing, and any such written waiver shall be deemed equivalent to the giving of the notice required herein. Attendance by any Board Member of any meeting of the Board shall constitute a waiver by him of notice of the time and place thereof. If all Board Members are present at any meeting of the Board, no notice shall be required, and any business may be transacted at any such meeting.

Section 2-10. Quorum of Board of Directors

At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, a majority of those present may adjourn the meeting. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 2-11. Fidelity Bonds

The Board of Directors shall in their discretion, obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums of such bonds shall constitute a common expense.



Section 2-12. Compensation

No member of the Board of Directors shall receive compensation from the Association for acting as such, provided, however, that nothing herein contained shall be construed to preclude any Board Member from serving the Association or the Board of Directors in any other capacity and receiving compensation therefore.

Section 2-13. Liability of Board Directors

The members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liabilities to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Certificate of Incorporation, the Declaration or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the Board of Directors on behalf of the Association shall provide that the members of the Board of Directors are acting only as agents for the Association and shall have no personal liability thereunder.

## ARTICLE THREE - LOT OWNERS

Section 3-01. Annual Meetings

Within 120 days after 75% of the lots have been sold by Sponsor and paid for or within five (5) years from the date of conveyance of the first lot, whichever shall first occur, sponsor shall notify all lot owners thereof, and the first annual meeting of members shall be called by the President to be held within thirty (30) days thereafter. At such meeting officers and directors of the Sponsor holding office as members of the Board of Directors shall resign, and all lot owners, including Sponsor, shall elect a new Board of Directors. Thereafter, annual meetings of members shall be held, at the property, on the first Monday in June of

each succeeding year, or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Directors delivered to the members not less than fifteen (15) days prior to the date fixed for said meeting. At such meetings there shall be elected by ballot of the members, a Board of Directors in accordance with the requirements of Section 2-03 of these By-Laws. The members may also transact such other business of the Association as may properly come before the meeting.

Section 3-02. Special Meetings

The President may, and shall if directed by resolution of the Board of Directors or by Petition signed and presented to the Secretary by members representing twenty-five percent (25%) of the voting Association membership, call a special meeting of the Association. The notice of any special meeting shall state the time and place of the meeting, and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3-03. Place of Meetings

Meetings of the Association shall be held at the principal office of the Association, or at such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 3-04. Notice of Meetings

It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose, the time and the place thereof, to each Association member, at least ten (10), but not more than thirty (30) days prior to such meeting. Any notice so mailed shall be considered served.

Section 3-05. Quorum; Majority Voting

At all meetings of the Association, members holding in the aggregate in excess of fifty percent (50%) in voting interests, shall constitute a quorum for transaction of business.

If a quorum is present at a meeting, the acts of a majority of voting members present shall bind all members for all purposes other than those for which a higher percentage is required by law, by the Declaration or by these By-Laws. If, at any meeting of members, less than a quorum is present, a majority of voting members present may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice. As used in these By-Laws, the term "majority of members" shall mean those members holding in excess of fifty percent (50%) in the aggregate in voting interests.

Section 3-06. Order of Business

The order of business at all meetings of Association members shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of the preceding meeting;
- D. Reports of officers;
- E. Report of Board of Directors;
- F. Reports of committees;
- G. Election of voting inspectors (when appropriate);
- H. Election of members of Board of Directors (when required);
- I. Unfinished business;
- J. New business.

Section 3-07. Title to Lots

Title to lots may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or a partnership, or in the name of a fiduciary.

Section 3-08. Voting

The Association shall have one class of voting membership. Members shall be entitled to no more than, nor less than one vote. The appointment of any proxy shall be made in a writing filed with the Secretary, and shall be revocable at any time by notice in writing to the Secretary.

ARTICLE FOUR - OFFICERS

Section 4-01. Designation

The principal officers of the Association shall be President, Vice-President, Secretary/Treasurer, all of whom shall be elected by and from the Board of Directors.

Section 4-02. Election of Officers

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board, and shall hold office at the pleasure of the Board of Directors.

Section 4-03. 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 his successor 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 4-04. President

The President shall be the chief executive officer of the Association, shall supervise the functions of the other officers, shall preside at all meetings of the Association members and shall preside at all meetings of the Board of Directors. He shall keep the Board of Directors fully informed, and shall freely consult with them concerning the activities of the Association. He shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Association all contracts, agreements, deeds, leases, checks, and other instruments of the Association authorized either generally or specifically by the Board of Directors. He shall perform all duties incident to the office of President, subject however, to the control of the Board of Directors.

Section 4-05. Vice-President

The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

Section 4-06. Secretary

The Secretary shall keep the minutes of all meetings of the Board of Directors and of the Association members; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary, subject however, to the control of the Board of directors and such other duties as shall from time to time be assigned to him by the Board of Directors.

Section 4-07. Treasurer

The Treasurer shall have the custody of all funds and securities of the Association which may come into his hands. He shall keep or cause to be kept complete and

accurate accounts of receipts and disbursements of the Association, and shall deposit all monies and other valuable effects of the Association in the name and to the credit of the Association in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of directors, he shall render a statement of his accounts. He shall at all reasonable times exhibit his books and accounts to any officer or member of the Board of Directors of the Association, and shall perform all duties incident to the office of Treasurer, subject however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give security for the faithful performance of his duties as the Board of Directors may require.

Section 4-08. Agreements, Contracts, Deeds, Checks and Other Instruments

All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any one (1) officer of the Association or by such other person or persons as may be designated by the Board of Directors.

Section 4-09. Compensation of Officers

The salaries, if any, of all officers shall be set by the Board of Directors, in their discretion, and the fact that any officer is a member of the Board of Directors shall not preclude him from receiving his salary, if any, or from voting on any resolution providing for the same.

ARTICLE FIVE - OPERATION OF PROPERTY

Section 5-01. Determining Common Charges

Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of any alteration, addition or improvement to, common elements ("common expenses") shall be determined by the Board of Directors and shall be borne by the Association members. The Board of Directors shall from time to time, and at least annually, prepare a budget for

the Association which budget shall include projections of common expenses, common revenues (from sources other than assessments of lot owners), the amount of common charges required to meet the excess of the former over the latter, and an allocation and assessment of such common charges against lot owners as provided in the Declaration. As used in these By-Laws, the term "common expenses" or "common charges" shall mean expenses or charges for which lot owners are proportionately liable, and shall include, but shall not be limited to the following:

- A. All expenses of administration, maintenance, repair and replacement of the common elements;
- B. Insurance premiums on all policies of insurance obtained by the Board of Directors, pursuant to Section 5-10 of this Article;
- C. All other amounts that the members may agree upon or that the Board of Directors may deem necessary or appropriate for the operation, administration, and maintenance of the common area;
- D. All other amounts designated common expenses by the Declaration, by these By-Laws, or by law.

The Board of Directors shall furnish all lot owners and mortgagees with copies of the budget by which the allocations and assessments of common charges are based.

#### Section 5-02. Collection of Assessments

The Board of Directors shall assess common charges against the lot owners from time to time, and at least annually, and shall advise each lot owner in writing of the amount of common charges payable by him. If any common charges remain unpaid for more than ten (10) days from the date due, the Board of Directors shall take prompt action to collect the same and impose a late charge 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 equitable and uniformly applied.

Section 5-03. Obligation to Pay Common Charges

All lot owners are obligated to pay common charges assessed by the Board of Directors at such times as the Board may determine. No lot owner may exempt himself from liability for any assessment for common charges by waiver of the use or enjoyment of any of the common elements or by abandonment of his lot. In all voluntary conveyances of lots, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover against the grantor any amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Directors, or the Managing Agent or the Manager, setting forth the amount of unpaid assessments. In such event, the grantee shall not be liable for any amount in excess of the amount set forth in such statement. A mortgagee or other purchaser of a lot at a foreclosure sale, shall not be liable for non-payment of any common charges assessed prior to the date of the foreclosure sale and such lot shall not be subject to a lien for non-payment of such charges.

Section 5-04. Default in Payment of Common Charges

In the event of default by any lot owner in paying the common charges assessed against his lot by the Board of Directors, such lot owner shall be obligated to pay the maximum legal interest rate permissible by law (or such lower interest rate as may be fixed by the Board of Directors), on such common charges from the due date thereof, together with all expenses, including reasonable attorneys' fees incurred by the Board of Directors in any proceeding brought to collect such common charges, or to foreclose a lien for non-payment thereof.

Section 5-05. Foreclosure of Liens for Unpaid Common Charges

The Board of Directors have the right and duty to attempt to recover unpaid common charges, together with interest thereon, and expenses of the proceeding, including reasonable attorney's fees, (1) in an action to recover a money judgment brought against any lot owner in default on his obligation to pay the common charges, or (2) by foreclosure of the lien, on any lot in respect to which such default has



occurred. The suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien, securing the same, and foreclosure shall be maintainable notwithstanding the pendency of a suit to recover a money judgment. In any such foreclosure, the lot owner shall be required to pay reasonable rental for the lot for any period prior to sale, and the Board of Directors, as Plaintiff in such a foreclosure, shall be entitled to the appointment of a receiver to collect the same.

Section 5-06. Common 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 balance remaining. The Association shall not be 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 effectuation of the purposes of the Association.

Section 5-07. Maintenance and Repair

All maintenance and repairs and the responsibility therefore shall be in accordance with the provision of Articles Seven of the Declaration, which provisions shall become a part of these By-laws as if fully set forth herein.

Section 5-08. Uses of Lots

In order to provide for a more congenial occupancy of the common area and for the protection of the values of the lots, the use of the common area shall be restricted to and shall be in accordance with the following provisions:

- A. Lots shall be used for residential purposes only.
- B. Common elements may be used only for the furnishing of the services, the facilities and the other uses for which they are reasonably suited.

C. No nuisance shall be allowed on the common area, nor shall any use or practice be allowed which is a source of annoyance to owners or occupants of the lots or which interferes with the peaceful possession or proper use of the common area by its owners or occupants.

D. No immoral, improper, offensive or unlawful use shall be made of the common area or any portion thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the common area, shall be complied with at the full expense of the respective lot owners or the Board of Directors, whoever shall have the obligation to maintain or repair such part of the property.

#### Section 5-09. Modifications by Board of Directors

Any additions or alterations in or to the common elements costing ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) or less may be made by the Board of Directors without the approval of members or lot mortgagees, and the cost thereof shall be treated as common expenses. Whenever, in the judgment of the Board of Directors, the common elements require additions or alterations costing in excess of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) the making of such additions or alterations shall require approval by a majority of voting members, and by those mortgagees holding first mortgages on fifty-one percent (51%) of the lots. After such approval has been obtained, the Board of Directors shall proceed with the additions or alterations, and the cost thereof shall be treated as common expenses.

#### Section 5-10. Liability Insurance

The Board of Directors shall obtain and continue in effect, insurance against liability for personal injury and death and for damage to property arising from accidents occurring within the common area in an amount to be determined by the governing board. The premiums for such insurance shall be a common expense.

#### Section 5-11. Use of Common Elements and Facilities

A lot owner shall not place or cause to be placed in the common facilities or

areas, other than an area to which such lot owner has sole access, any furniture, packages, merchandise or object of any kind.

Section 5-12. Rules of Conduct

Rules and regulations concerning the use of the common elements and of individual lots may be promulgated and amended from time to time by vote of a majority of the Board of Directors. Copies of all such rules and regulations shall be furnished by the Board of Directors to each lot owner prior to their effective date. Initial rules and regulations shall be effective until amended by the Board of Directors.

Section 5-13. Abatement of Violations

Violation of any provision of the Declaration, of these By-Laws, or any rule or regulation adopted pursuant hereto, shall give the Board of Directors, acting on behalf of all lot owners, the right, in addition to any other rights set forth herein:

A. To enter any lot in or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting lot owner, any thing or condition constituting such violation or breach, and the Board of Directors shall not be deemed guilty of trespass in so doing; or,

B. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

ARTICLE SIX - MORTGAGES

Section 6-01. Notice to Board of Directors

The lot owner who mortgages his lot shall, within fifteen (15) days after such mortgage has been executed, notify the Board of Directors of the name and address of his mortgagee. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Lots".

Section 6-02. Payment of Assessments

No lot owner shall be permitted to convey, mortgage, pledge, sell, or lease his lot unless and until he has paid in full to the Board of Directors all unpaid charges theretofore assessed his lot, and until he has satisfied all unpaid liens against his lot other than mortgage liens.

Section 6-03. Notice of Unpaid Common Charges

The Board of Directors, whenever so requested in writing by a mortgagee of a lot, shall promptly report any unpaid common charges or any default by the owner of the mortgaged lot.

Section 6-04. Notice of Default

Upon giving notice to a lot owner of a default, whether in payment of common charges or otherwise, the Board of Directors shall send a copy of such notice to each holder of a mortgage secured by such lot whose name and address appears in the book entitled "Mortgagees of Lots".

Section 6-05. Notice of Action

Upon written request to the Association any eligible mortgage holder shall be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held by such eligible mortgage holder;
- B. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- C. Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Article Eleven of these By-Laws.

Section 6-06. Inspection of Books

Lot owners and lot mortgagees shall be permitted to inspect the books of accounts of the Association at reasonable times during business hours, but not more often than once per month.

## ARTICLE SEVEN - SALES AND LEASES OF LOTS

Section 7-01. Compliance with Article

No lot owner may sell or lease his lot or any interest therein except by complying with the provisions of this Article.

Section 7-02. Payment of Assessment

No lot owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his lot unless and until he shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against his lot and until he shall have satisfied all unpaid liens against such lot, other than permitted mortgages.

## ARTICLE EIGHT - CONDEMNATION

Section 8-01. Condemnation of Association Property

Except as regarding eligible holders of mortgages as provided in Section 11.07 of the Declaration, in the event of a taking in condemnation or eminent domain of part or all of the property, the award made for such taking shall be payable to the Board of Directors. If seventy-five percent (75%) or more in number of voting lot owners duly and promptly approve the repair and restoration of the common elements, the Board of Directors shall contract for such repair and restoration, and shall disburse the proceeds of the award in appropriate progress payments to contractors engaged in such repair and restoration. If the proceeds of the award are

insufficient to defray the entire expense of repair and restoration, the excess of such expense over such proceeds shall be treated as a common expense. In the event that seventy-five percent (75%) or more of the voting lot owners do not duly and promptly approve the repair and restoration of the property, the net proceeds shall be divided by the Board of Directors among all lot owners proportionately, paying out of the share of each lot owner the amount of any unpaid liens on his lot, in the order of priority of such liens.

ARTICLE NINE - RECORDS

Section 9-01. Records

The Board of Directors shall keep detailed records of all actions of such Board of Directors, as well as minutes of the meetings of the Board of Directors, minutes of the meetings of members, and financial records and books of accounts for the Association, including a chronological record of all receipts and disbursements. A separate account shall also be kept for each lot containing, among other things, the amount of each assessment against such lot, the date when due, amounts paid thereon, and the balance remaining due. Additionally, an annual report of receipts and disbursements of the Association shall be rendered by the Board of Directors to all lot owners and mortgagees requesting the same, promptly after the end of each fiscal year. An annual financial statement and tax return shall be prepared by an independent certified public accountant.

Section 9-02. Fiscal Year

The fiscal year of the Association shall commence on January 1st of each year and end on December 31st.

## ARTICLE TEN - MISCELLANEOUS

Section 10-01. Notices

All notices required or permitted to be sent to the Board of Directors shall be personally delivered or sent by registered or certified mail in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Board of Directors at 849 Paul Road, Rochester, New York, or to such other address as the Board of Directors may designate. All notices required or permitted to be sent to any lot owner, shall be sent by registered or certified mail to the Association or to such other address as such owner may have designated in writing to the Board of Directors. All notices to lot mortgagees shall be sent by registered or certified mail to their respective addresses, as maintained in the book entitled "Mortgagees of Lots". 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.

Section 10-02. Invalidity

If any provision or provisions of these By-Laws is or are declared invalid, such invalidity shall in no way impair or effect in any manner the validity, enforceability, or affect of the remaining provisions of these By-Laws.

Section 10-03. 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 10-04. Waiver

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 and failures to enforce that may occur.

Section 10-05. Gender; Singular/Plural

The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 10-06. References to the Sponsor

Whenever a reference is made to the sponsor, such reference shall be deemed to include any corporation, subsidiary or other entity wholly controlled by the sponsor and designated by it to act in its place and stead concerning any matter pertaining to ownership, leasing or mortgaging of lots, operation of the Association property, or both.

ARTICLE ELEVEN - AMENDMENTS TO BY-LAWS

Section 11-01. Amendments

These By-Laws may be modified or amended by the vote of two-thirds (2/3) of all voting members at a meeting of members duly called for such purposes.

However, 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 ByLaws 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 areas (or lots if applicable);
- D. Insurance or Fidelity Bonds;



- E. Rights to use of the common areas;
- 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 project;
- H. Boundaries of any lot;
- I. The interests in the general common areas;
- J. Convertibility of lots into common areas or of common areas into lots;
- K. Leasing of lots;
- L. Imposition of any rights of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;
- M. Any provisions which are for the express benefit of eligible mortgage holders.

Section 11-02. Amendments Affecting Sponsor

Notwithstanding any provision contained herein to the contrary, no amendment to these By-Laws shall be effective in any way against the Sponsor, until five (5) years shall have elapsed from the date of conveyance of the first home lot or until 120 days after 75% of the lots have been sold by Sponsor and paid for, whichever shall first occur.

ARTICLE TWELVE - CONFLICTS

Section 12-01. Conflicts

In the case of any conflict between the Certificate of Incorporation and these

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

ARTICLE THIRTEEN - DEFINITIONS

Section 13-01. Definitions

The words, phrases or terms used in these By-Laws shall have the same meanings as those words, phrases or terms set forth and defined in Article One of the Declaration.

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

JAMES GROUP, INC.

Sponsor

BY: James J. Valerio  
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 known and who, by me being duly sworn did depose and say:

That he resides in the Town of Chili, County of Monroe and State of New York, that he is the President of James Group, Inc., an authorized corporation, the Corporation described in and which executed the foregoing Instrument; that such seal affixed to said Instrument is such corporate seal; that it was affixed to said Instrument by order of the Board of Directors of such Corporation in writing, and that he signed his name thereto by like order.

David J. Gutmann  
Notary Public

DAVID J. GUTMANN  
NOTARY PUBLIC, State of N.Y., Monroe Co.  
My Commission Expires 1/31/89

## SCHEDULE "A"

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 800 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.