

DECLARATION OF
PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
— AUDUBON

Dated: May 23, 1975

Recorded May 27, 1975 in the Erie County
Clerk's Office in Liber 8280 of Deeds at page 247.

**DECLARATION
OF
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— AUDUBON**

TABLE OF CONTENTS

	Page
BACKGROUND	I-4
ARTICLE I. DEFINITIONS	I-5
ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION	I-7
Section 2.01. Association Area 1	I-7
Section 2.02. Additional Property	I-7
ARTICLE III. LOCAL ASSOCIATIONS AND TRUSTS WITHIN AUDUBON	I-7
Section 3.01. Creation of Local Associations and Trusts	I-7
ARTICLE IV. AUDUBON ASSOCIATION — STRUCTURE: MEMBERSHIP, VOTING RIGHTS AND DIRECTORS	I-8
Section 4.01. Formation of Audubon Association, Inc.	I-8
Section 4.02. Membership	I-8
Section 4.03. Voting Rights of Members	I-8
Section 4.04. Assigning Right to Vote	I-8
Section 4.05. Voting Regulations	I-8
Section 4.06. Directors: Selection and Term	I-8
Section 4.07. Vacancies	I-9
Section 4.08. Removal of Directors	I-9
Section 4.09. Quorum	I-9
Section 4.10. Directors: Powers and Duties	I-9
ARTICLE V. AUDUBON ASSOCIATION PROPERTY RIGHTS AND POWERS	I-10
Section 5.01. Dedication of Audubon Facilities	I-10
Section 5.02. Right and Easement of Enjoyment in Audubon Facilities	I-10
Section 5.03. Right to Contract and Transfer Duties and Functions	I-10
Section 5.04. Hearing Procedures	I-10
Section 5.05. Acquisition, Conveyance, Improvement and Changes in Use of Audubon Facilities ..	I-11
Section 5.06. Use and Maintenance of Certain Audubon Facilities	I-11
Section 5.07. Rights to Borrow and Mortgage	I-12
Section 5.08. Right of Association to Use Utility Lines	I-12
Section 5.09. Environmental Considerations	I-12
Section 5.10. Non-Discrimination by Audubon Association	I-12
ARTICLE VI. AUDUBON ASSOCIATION — ASSESSMENTS	I-12
Section 6.01. Imposition, Personal Obligations, Lien	I-12
Section 6.02. Basis, Annual Rate and Maximum Rate of Maintenance Assessment; Assessment Classifications	I-12
Section 6.03. Establishment of Maintenance Assessments; Assessment Notice	I-13
Section 6.04. Commencement of Obligation to Pay Assessments on Specific Units	I-13
Section 6.05. Change in Maximum Rate of Maintenance Assessments	I-13
Section 6.06. Special Assessments for Capital Improvements	I-13
Section 6.07. Right to Lower Assessment for Certain Senior Citizens	I-14
Section 6.08. Units Restricted from Paying Full Assessments	I-14
Section 6.09. Effect of Non-Payment of Assessment	I-14
Section 6.10. Use of Funds	I-14
Section 6.11. Right to Maintain Surplus and Reserves	I-14
Section 6.12. Assessment Certificates	I-14
Section 6.13. Subordination of Maintenance Assessment Lien to Mortgages	I-15

ARTICLE VII.	INITIAL DEVELOPMENT OF PROPERTY	I-15
Section 7.01.	Control by UDC and UDR	I-15
Section 7.02.	Submission of Plans for Initial Development	I-15
Section 7.03.	Certificate of Compliance	I-15
Section 7.04.	Liability of UDC or UDR	I-15
Section 7.05.	Consent of UDC or UDR Necessary to Amend this Article VII	I-16
ARTICLE VIII.	CONTROL AFTER ISSUANCE OF CERTIFICATE OF COMPLIANCE	I-16
Section 8.01.	Control by Audubon Association	I-16
Section 8.02.	Composition and Function of Architectural Standards Committee	I-16
Section 8.03.	Submission of Plans to Architectural Committee	I-16
Section 8.04.	Basis for Disapproval of Plans by Architectural Committee	I-16
Section 8.05.	Approval of Architectural Committee	I-17
Section 8.06.	Written Notification of Disapproval	I-17
Section 8.07.	Failure of Committee to Act	I-17
Section 8.08.	Committee's Right to Promulgate Rules and Regulations	I-17
Section 8.09.	Delegation of Functions	I-17
Section 8.10.	Records of Meetings and Regulations	I-17
Section 8.11.	Liability of Architectural Committee	I-17
Section 8.12.	Architectural Committee Certificate	I-18
ARTICLE IX.	GENERAL COVENANTS AND RESTRICTIONS	I-18
Section 9.01.	Maintenance	I-18
Section 9.02.	Advertising and Signs	I-18
Section 9.03.	Animals, Birds and Insects	I-18
Section 9.04.	Protective Screening and Fences	I-18
Section 9.05.	Garbage and Refuse Disposal	I-18
Section 9.06.	No Above Surface Utilities Without Approval	I-19
Section 9.07.	Drainage Easements	I-19
Section 9.08.	Noxious or Offensive Activities	I-19
Section 9.09.	Party Walls; Encroachments	I-19
Section 9.10.	Oil and Mining Operations	I-19
Section 9.11.	Dwelling in Other Than Residential Units	I-20
Section 9.12.	Television and Radio Antennas	I-20
Section 9.13.	Trees and Other Natural Features	I-20
Section 9.14.	Use and Maintenance of Slope Control Areas	I-20
Section 9.15.	Snowmobiles	I-20
Section 9.16.	Waterfront Parcels	I-20
Section 9.17.	Non-Discrimination in Sale or Rental	I-20
ARTICLE X.	ADDITIONAL COVENANTS AND RESTRICTIONS APPLICABLE TO RESIDENTIAL PARCELS	I-21
Section 10.01.	Residential Use Only	I-21
Section 10.02.	Commercial and Professional Activity on Residential Property	I-21
Section 10.03.	No Division of Parcels or Change in Form of Ownership Without Approval	I-21
Section 10.04.	Outside Storage	I-21
Section 10.05.	Outdoor Repair Work	I-21
ARTICLE XI.	ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION	I-21
Section 11.01.	Declaration Runs With the Land	I-21
Section 11.02.	Enforceability	I-21
Section 11.03.	No Waiver by Failure to Enforce	I-22
Section 11.04.	Obligation and Lien for Cost of Enforcement by Audubon Association	I-22
Section 11.05.	Inspection and Entry Rights	I-22
Section 11.06.	Amending	I-22
Section 11.07.	Duration	I-23
Section 11.08.	Construction and Interpretation	I-23
Section 11.09.	Conflict with Municipal Laws	I-23
Section 11.10.	Invalidity of Declaration	I-23

ARTICLE XII. GENERAL	I-23
Section 12.01. Heading and Captions	I-23
Section 12.02. Notice	I-24
Section 12.03. Right of UDC to Transfer	I-24
Section 12.04. Right of Audubon Association to Transfer	I-24
SCHEDULE A — Association Area 1	I-26
CONSENT TO DECLARATION BY PARKSIDE HOUSES, INC. AND PARKSIDE ASSOCIATES ..	I-30
CONSENT TO DECLARATION BY P.W. BRAUN & ASSOCIATES, INC.	I-31
CONSENT TO DECLARATION BY RIDGE VIEW REALTY CORP.	I-32
CONSENT TO DECLARATION BY PALUMBO BUILDERS, INC.	I-33

**DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS – AUDUBON**

THIS DECLARATION, made this 23rd day of May, 1975 by the NEW YORK STATE URBAN DEVELOPMENT CORPORATION, a corporate governmental agency and public benefit corporation created under the New York State Urban Development Corporation Act of 1968, having its principal place of business at 1345 Avenue of the Americas, New York, New York (hereinafter referred to as "UDC"), the CORPORATION FOR URBAN DEVELOPMENT AND RESEARCH OF NEW YORK, a not-for-profit corporation created by the New York State Urban Development and Research Corporation Act of 1968, having its principal place of business at 1345 Avenue of the Americas, New York, (hereinafter referred to as "UDR") and the AUDUBON ASSOCIATION, INC., a New York not-for-profit corporation, having its office at 2222 Millersport Highway, Amherst, New York, (hereinafter referred to as the "Audubon Association").

The following is the background for this Declaration:

1. Except as otherwise provided for herein, UDC or UDR own lands described in Article II hereof (hereinafter referred to as Association Area 1).
2. UDC, with the assistance and cooperation of UDR, and in conjunction and cooperation with the Town of Amherst, other local government entities, and with private developers, proposes to develop Association Area 1 and additional lands into a planned community known as "Audubon."
3. UDC and/or UDR from time to time may bring additional lands within the scheme of this Declaration in accordance with the procedure set forth in Article II hereof (hereinafter referred to as "Additional Property") (Association Area 1 itself or together with any Additional Property being hereinafter referred to as "the Property").
4. UDC and UDR, in cooperation and conjunction with the Town of Amherst and private developers, intend to build or cause to be built, on the Property a variety of residential, commercial and institutional facilities.
5. To insure the preservation of the values and amenities of said Audubon, and to protect and enhance the value of the Property, it is the intention of UDC and UDR that the Property will be subject to certain covenants, conditions and restrictions created by this Declaration, which covenants, conditions and restrictions shall run with the land.
6. UDC and UDR in conjunction and cooperation with the Town of Amherst, intend to dedicate certain portions of the Property such as walkways, pathways, wooded areas and other unimproved open space to the Town of Amherst or to one or more special districts created or to be created by the Town of Amherst.
7. UDC and UDR in cooperation and conjunction with the Town of Amherst and private developers, intend to develop on portions of the Property common areas such as parks, recreation areas, open spaces, swimming pools, tennis courts and other common facilities for the benefit of all residents and owners of the Property (such facilities being hereinafter referred to as "Audubon Facilities").
8. In order to insure the efficient preservation of the values and amenities of said Audubon, UDC, on behalf of itself and UDR, and pursuant to Section 12 of the New York State Urban Development Corporation Act of 1968 and the New York Not-for-Profit Corporation Law has incorporated the AUDUBON ASSOCIATION, INC., a not-for-profit corporation, to own, maintain and administer the Audubon Facilities, and to administer and enforce the covenants, conditions and restrictions referred to above, and to collect and disburse the assessments and charges described herein.
9. UDC and UDR in cooperation and conjunction with the Town of Amherst and private developers, may also create by subsequent supplemental declaration(s), "Local Associations" or "Trusts" covering portions of the Property with or without facilities such as parks, playgrounds, and open space which, through such supplemental declaration(s), would be for the benefit of the residents of each such portion of the Property.
10. To initiate development of Association Area 1, UDC heretofore has conveyed to Parkside Houses, Inc. a New York limited profit housing company, as general partner and on behalf of Parkside Associates, a New York limited partnership (hereinafter referred to as "Parkside"), for development thereon of Residential Units, a portion of Association Area 1 (hereinafter referred to as the "Parkside Property") more particularly described in a deed recorded in the Erie County Clerk's Office on December 31, 1973, in Liber 8125 of Deeds at page 521; and Parkside has consented to bring the Parkside Property within

the scheme of this Declaration pursuant to a written consent signed by Parkside and accepted by UDC and UDR, and recorded simultaneously with this Declaration; and

11. To further development of Association Area 1, UDR heretofore has conveyed to P.W. Braun and Associates, Inc., a New York business corporation (hereinafter referred to as "Braun") for development thereon of Residential Units, a portion of Association Area 1 (hereinafter referred to as the "Braun Property"), more particularly described in a deed recorded in the Erie County Clerk's Office on September 27, 1974 in Liber 8213 of Deeds at page 531; and Braun has consented to bring the Braun Property within the scheme of this Declaration pursuant to a written consent signed by Braun and accepted by UDC and UDR and recorded simultaneously with this Declaration; and

12. To further development of Association Area 1, UDR also heretofore conveyed to Ridge View Realty Corp., a New York business corporation (hereinafter referred to as "Ridge View") for development thereon of Residential Units, a portion of Association Area 1 (hereinafter referred to as the "Ridge View Property"), more particularly described in a deed recorded in the Erie County Clerk's Office on October 18, 1974, in Liber 8221 of Deeds at page 273; and Ridge View has consented to bring the Ridge View Property within the scheme of this Declaration pursuant to a written consent signed by Ridge View and accepted by UDC and UDR and recorded simultaneously with this Declaration.

13. To further development of Association Area 1, UDR also heretofore conveyed to Palumbo Builders, Inc., a New York business corporation (hereinafter referred to as "Palumbo") for development thereon of Residential Units, a portion of Association Area 1 (hereinafter referred to as the "Palumbo Property"), more particularly described in a deed recorded in the Erie County Clerk's Office on May 13, 1975, in Liber 8276 of Deeds at page 509; and Palumbo has consented to bring Lot No. 3, Map Cover 2374 of the Palumbo Property within the scheme of this Declaration pursuant to a written consent signed by Palumbo and accepted by UDC and UDR and recorded simultaneously with this Declaration.

NOW THEREFORE, UDC and UDR declare that the property comprising Association Area 1 as described in Article II herein as well as the Additional Property, if any, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to herein as "protective covenants, conditions and restrictions") hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property, and all of which shall run with the Property and be binding upon all parties having or acquiring any right, title or interest in and to any parcel or tract of land constituting any part of said Property (except as provided for herein) and shall inure to the benefit of UDC, UDR, the Town of Amherst, the Audubon Association, Inc. and each Owner and Resident of the Property, as said terms are defined in Article I below, their grantees, distributees, successors and assigns; and the Audubon Association joins in this Declaration for the purpose of accepting the duties and responsibilities provided for herein.

ARTICLE I

DEFINITIONS

Section 1.01. The following words, phrases or terms when used in this Primary Declaration or any supplemental declaration (unless otherwise defined therein) shall have the following meaning:

A. "ASSESSMENT EXEMPT PROPERTY" shall mean and refer to a Parcel or other portion of the Property exempt from paying Assessments provided for in Article VI herein, and shall include the following:

Declaration Exempt Property plus:

1. Any Parcel or other portion of the Property owned by the United States, the State of New York, the County of Erie, or any governmental agency or political subdivision, including without limitation, UDC, for so long as such entity, governmental agency or political subdivision shall be the owner thereof;
2. Any Parcel or other portion of the Property owned by the Audubon Association or a "successor corporation" (as provided for in Section 12.04 hereof) for so long as the Audubon Association or successor corporation, shall be the owner thereof;
3. Any Parcel or other portion of the Property owned by any Local Association or Trust for so long as such Local Association or Trust shall be the owner thereof;
4. Any Parcel or other portion of the Property otherwise fully exempt from the State, County, Town and School Real Property Taxes by virtue of applicable law including, without limitation, any Parcel or other portion of the Property owned by UDR.

B. "AUDUBON" shall mean and refer to the planned community being developed in the Town of Amherst, New York and which may or may not include lands other than the Property.

- C. "AUDUBON ASSOCIATION" or "ASSOCIATION" shall mean and refer to the Audubon Association, Inc.
- D. "AUDUBON FACILITIES" shall mean and refer to all lands, improvements and other properties owned by or in the possession of the Audubon Association.
- E. "CERTIFICATE OF COMPLIANCE" shall mean and refer to the document issued by UDC or UDR with respect to a Parcel or other portion of the Property acknowledging that the initial development of said Parcel or other portion of the Property has been completed to the satisfaction of UDC or UDR, as the case may be, in accordance with all the requirements of this Declaration for issuance of such Certificate.
- F. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions and Restrictions (sometimes referred to herein as "Primary Declaration") as it may from time to time be supplemented, extended or amended in the manner provided for in Article XI herein.
- G. "DECLARATION EXEMPT PROPERTY" shall mean and refer to any Parcel or other portion of the Property owned by the Town of Amherst, a Special District of the Town of Amherst or a local school district, and which is therefore exempt from the terms of the Declaration for so long as such Parcel or other portion of the Property is owned by such entity. This paragraph 1.01G shall not be amended without the specific consent of the Town Board of the Town of Amherst.
- H. "DEVELOPMENT PERIOD" shall mean and refer to the period between the date on which the Primary Declaration is recorded in the Office of the Erie County Clerk and January 1, 1985.
- I. "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 lines, 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. "Improvement" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of surface waters to, from, upon or across the Property or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon or across the Property and (ii) any change in the grade of any portion of the Property of more than six inches.
- J. "LOCAL ASSOCIATION" shall mean and refer to a not-for-profit corporation formed pursuant to Article III hereof for the purpose of preserving the values and amenities of a designated portion of the Property ("Local Area"); enforcing the covenants and restrictions set forth in the supplemental declaration applicable thereto; and collecting and disbursing any assessments and charges which may be imposed by said Association; which Local Association may or may not own and maintain land or improvements or other property for the benefit and enjoyment of the owners and residents of such Local Area.
- K. "MEMBER" shall mean and refer to every person who is a member of the Audubon Association as provided for in Section 4.02 herein.
- L. "NON-RESIDENTIAL I UNIT" shall mean and refer to any building or portion thereof under separate ownership, lease, sublease or form of occupancy, which is not a Residential Unit and which is designated as such type by the Audubon Association. In general, buildings or portions thereof used for commercial, professional and office purposes shall be deemed to be Non-Residential I Units.
- M. "NON-RESIDENTIAL II UNIT" shall mean and refer to any building or portion thereof, under separate ownership, lease, sublease or form of occupancy, which is not a Residential Unit and which is designated as such type by the Audubon Association. In general, buildings or portions thereof used for industrial, warehousing, institutional, cultural or active recreational purposes shall be deemed to be Non-Residential II Units.
- N. "OWNER" shall mean and refer to the holder, whether one or more persons or entities, of record title of the fee interest in any Parcel, whether or not such holder actually resides thereon; *provided*, however, that with respect to any Parcel to which such record title is held by a corporation organized pursuant to the provisions of the Private Housing Finance Law of the State of New York (or such successor statute as may govern the matters presently governed thereby), and which corporation is a party to a recorded instrument stating that such corporation holds such record title on behalf of a partnership which has the equitable interest in the Parcel and certain Improvements being, to be or having been constructed thereon, the term "Owner" shall mean and refer to such corporation and to such partnership, as their interests may appear.

- O. "PARCEL" shall mean and refer to any plot or piece of land within the Property, improved or unimproved, under separate ownership, including a condominium or cooperative unit.
- P. "PROPERTY" shall mean and refer to all land and the Improvements thereon covered by this Primary Declaration (Association Area I) and such additions as may be made thereto from time to time (Additional Property), in accordance with the procedure set forth herein.
- Q. "RESIDENTIAL UNIT" shall mean and refer to any individual dwelling unit.
- R. "TRUST" shall mean and refer to a trust created pursuant to Article III hereof for the purpose of preserving the values and amenities of a Local Area; enforcing the covenants and restrictions set forth in the supplemental declaration applicable thereto; and collecting and disbursing any assessments and charges which may be imposed by said Trust to carry out its purposes, which Trust may or may not own and maintain land, improvements or other Property for the benefit and enjoyment of the owners and residents of such Local Area.
- S. "UDC" shall mean and refer to the NEW YORK STATE URBAN DEVELOPMENT CORPORATION, its successors and assigns.
- T. "UDR" shall mean and refer to the CORPORATION FOR URBAN DEVELOPMENT AND RESEARCH OF NEW YORK, its successors and assigns.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Association Area I:

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Primary Declaration is located in the Town of Amherst, County of Erie, and State of New York, and is more particularly described in Schedule A attached hereto and made a part hereof.

Section 2.02. Additional Property:

Either UDC or UDR during the Development Period, or the Audubon Association after the Development Period by the affirmative vote of not less than three-fourths of the Association's Board of Directors, shall have the right to bring Additional Property within the scheme of this Declaration.

The additions shall be made by recording a supplemental declaration which shall extend the scheme of covenants, conditions and restrictions of this Primary Declaration to such Additional Property and thereby subject such additional Property to assessment for its fair share of the expenses of the Audubon Association. Said extending declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Primary Declaration as may be necessary to reflect the different character, if any, of the Additional Property and as are not inconsistent with the provisions of this Primary Declaration.

Nothing contained in this Primary Declaration, however, or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development shall be construed as requiring UDC, UDR or the Audubon Association to subject to the provisions of this Primary Declaration any other land now or hereafter owned by any of them regardless of whether or not such other land is governed by agreement similar or identical to the provisions of this Primary Declaration.

ARTICLE III

LOCAL ASSOCIATIONS AND TRUSTS WITHIN AUDUBON

Section 3.01. Creation of Local Associations and Trusts:

Either UDC or UDR during the Development Period, or the Audubon Association after the Development Period by the affirmative vote of not less than three-fourths of the Association's Board of Directors, shall have the right to form one or more Local Associations or Trusts each of which would perform certain designated functions with respect to a Local Area pursuant to a supplemental declaration to be filed or recorded with respect to said Local Area. Such supplemental declaration may contain such covenants, conditions and restrictions applicable to such Local Area as are not inconsistent with the scheme of the Declaration and may subject the Parcels in the Local Area to assessments and charges which may be imposed and

collected by the Local Association or Trust in accordance with the terms thereof; *provided, however*, that neither UDC nor UDR nor the Audubon Association may include a Parcel within the scheme of such a supplemental declaration unless the Owner(s) thereof and all Voting Members, if any, residing thereon who are not Owner(s), also consent in writing thereto.

ARTICLE IV

AUDUBON ASSOCIATION – STRUCTURE: MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 4.01. Formation of Audubon Association, Inc.:

Pursuant to the Not-for-Profit Corporation Law of New York and the New York State Urban Development Corporation Act, UDC has formed the Audubon Association, Inc. to own, operate and maintain the Audubon Facilities, enforce the covenants, conditions and restrictions set forth in the Declaration and to have such other specific rights, obligations, duties and functions as are set forth in the Declaration and in the Certificate of Incorporation and By-Laws of the Audubon Association, as the same may be amended from time to time. The provisions of the Certificate of Incorporation or By-Laws of the Association may not conflict or be inconsistent with the provisions of the Declaration, and may not be amended in any way which would so conflict without also amending the Declaration. Subject to the additional limitations provided in the Declaration and the Certificate of Incorporation, the Audubon 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 4.02. Membership:

The Audubon Association shall have initially two classes of members:

- A. **Resident Members:** Only Residents shall be members of Class One. Each resident shall upon becoming such, be deemed automatically to be a Resident Member and there shall be no other qualification for such membership. A "Resident" shall be any person who is an inhabitant of a Residential Unit on the Property. Membership as a Resident Member in the Audubon Association shall terminate when the status of Resident terminates.
- B. **UDC:** UDC shall be the only member of Class Two. UDC's membership and its rights as a member shall terminate on January 1, 1985.

Section 4.03. Voting Rights of Members:

- A. UDC shall have no voting rights or any other rights as a Member of the Audubon Association, except as long as UDC is a Member, UDC shall designate the Appointed Directors as provided in Section 4.06 below, and there shall be no amendment of the Certificate of Incorporation or the By-Laws of the Audubon Association without the consent of UDC.
- B. Except for those rights specifically granted above to UDC, all other rights of membership shall be in the Resident Members. Each Resident Member 18 years of age or older and who has been a Resident Member for not less than thirty (30) days, shall have one vote in the Audubon Association ("Voting Members").

Section 4.04. Assigning Right to Vote:

Any Voting Member of the Audubon Association shall be entitled to assign his or her right to vote, by power of attorney, by proxy or otherwise, to any other Voting Member, provided that such assignment is made pursuant to the By-Laws of the Audubon Association.

Section 4.05. Voting Regulations:

The Board of Directors of the Audubon Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation and By-Laws of the Audubon Association and applicable law, as it deems advisable for any meeting of Members, in regard to proof of age, proof of residency or membership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 4.06. Directors: Selection and Term:

The business and affairs of the Audubon Association shall be managed by a Board of Directors. Except as provided for in subparagraph A below, there shall be nine directors selected as follows:

- A. Five Directors have been designated in the Certificate of Incorporation of the Audubon Association to serve until the first annual meeting of Members after there are 100 Voting Members ("Initial Directors").
- B. Commencing with said first annual meeting of Members after there are 100 Voting Members and until January 1, 1985, six Directors shall be appointed by UDC ("Appointed Directors") and three Directors shall be elected by the Voting Members ("Elected Directors"). Appointed Directors need not be Voting Members. Elected Directors shall be elected in accordance with the procedures set forth in the By-Laws of the Audubon Association.
- C. At the first annual meeting of Members after January 1, 1985, all six Appointed Directors shall be replaced by Directors elected by the Voting Members and thereafter all Directors shall be Elected Directors.
- D. Both Appointed and Elected Directors shall serve for two year terms except that:
 - 1. one of the Elected Directors initially elected by the Voting Members shall be elected to a one-year term and three of the Appointed Directors initially appointed by UDC shall be appointed to a one-year term.
 - 2. the terms of Directors elected to replace Appointed Directors at the first annual meeting after January 1, 1985 shall be such that the terms of four Directors shall expire one year thereafter and the terms of five Directors shall expire two years thereafter.

Section 4.07. Vacancies:

Any vacancy of an Initial or Appointed Director shall be filled by appointment by UDC. Any vacancy of an Elected Director shall be filled at the next meeting of the Board of Directors by the affirmative vote of a majority of the remaining Elected Directors or by a sole remaining Elected Director, or, if not previously so filled, shall be filled at the next succeeding annual meeting of the Members. Any Director appointed or elected to fill a vacancy shall serve as such until the expiration of the term of the vacated position.

Section 4.08. Removal of Directors:

UDC may, at its discretion, remove any Initial or Appointed Director at any time and may appoint the successor to fill the unexpired term of the removed Director.

At any duly called meeting of Members, the Voting Members may, by the affirmative vote of two-thirds of all Voting Members, remove any Elected Director (or Director appointed to fill the vacancy of an Elected Director) from office. The Voting Members may thereafter elect the successor to fill the unexpired term of the Elected Director so removed.

Section 4.09. Quorum:

At all meetings of the Board of Directors, two-thirds of all Directors shall constitute a quorum for the transaction of business. Except in cases in which it is by statute, the Declaration, the Certificate of Incorporation, or the By-Laws of the Audubon Association otherwise provided, a vote of a majority of those in attendance at a duly constituted meeting shall be sufficient to elect and pass any measure.

Section 4.10. Directors: Powers and Duties:

The Board of Directors may exercise all the powers of the Audubon Association, except such as are by statute, the Declaration, the Certificate of Incorporation or the By-Laws of the Audubon Association conferred upon or reserved to either UDR, UDC or Resident Members.

Among the duties of the Board of Directors shall be the following:

- A. To provide for the maintenance and operation of all Audubon Facilities, and to adopt and publish rules and regulations governing their use.
- B. To levy, assess and collect the assessments provided for in the Declaration.
- C. To maintain the Audubon Association books and records in accordance with accepted principles and procedures.
- D. To prepare the annual operating budget of the Audubon Association, and to submit the same to the Members.
- E. To protect the rights of Owners and Resident Members by enforcing the covenants, conditions and restrictions set forth in the Declaration.
- F. To otherwise enforce and carry out the provisions of the Declaration.

ARTICLE V
AUDUBON ASSOCIATION
PROPERTY RIGHTS AND POWERS

Section 5.01. Dedication of Audubon Facilities:

UDC and UDR intend to convey, lease or cause to be conveyed or leased to the Audubon Association, subsequent to the recordation of this Primary Declaration, certain portions of the Property, with or without Improvements thereon. The Audubon Association must accept any such conveyance or lease made or caused to be made by UDC or UDR provided such conveyance or lease is made without consideration. The Audubon Association may also, from time to time, acquire or lease certain other portions of the Property or other properties for the use and enjoyment of its Members. Properties, with Improvements if any, conveyed to, acquired by, or in possession of the Audubon Association shall hereinafter be referred to as "Audubon Facilities." UDC or UDR may retain the fee title to those portions of the Property designated or intended to be used as Audubon Facilities until such time as Improvements have been completed thereon or until such time as, in the opinion of UDC or UDR, the Audubon Association is able to maintain the same. UDC or UDR may convey or cause to be conveyed any such portion of the Property either by gift or for such consideration as may be mutually agreed upon between UDC or UDR as the case may be, and the Audubon Association.

Section 5.02. Right and Easement of Enjoyment in Audubon Facilities:

Every Resident Member and Owner shall have a right and easement of enjoyment in and to all Audubon Facilities, except if restricted pursuant to Section 5.06 hereof. All such rights, easements and privileges shall be subject, however, to the right of the Audubon Association, through its Board of Directors, to:

- A. adopt and promulgate reasonable rules and regulations pertaining to the use of the Audubon Facilities;
- B. promulgate rules and regulations relating to the operation and maintenance of the Audubon Facilities;
- C. establish reasonable admission and other fees for such use. In connection therewith, the Board of Directors may establish reasonable classifications of Members, non-Members and Owners;
- D. enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations or with other not-for-profit or institutional entities, for the use of or sharing of facilities.

Section 5.03. Right to Contract and Transfer Duties and Functions:

The Audubon Association may contract with any person, corporation, firm 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 Local Associations or Trusts, condominiums, cooperatives and other homeowners' or residents' associations, both within and without the Property.

Unless otherwise specifically prohibited herein or within the Certificates of Incorporation or By-Laws of either the Audubon Association or any Local Association or in the trust agreement of any Trust, any and all functions of the Audubon Association, in so far as they affect the members of a Local Association or beneficiaries of a Trust, shall be fully transferable, in whole or in part to the Local Association or Trust and any and all functions of the Local Association or Trust shall be fully transferable in whole or in part to the Audubon Association.

Section 5.04. 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 5.04 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 30 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be posted on the Property, one such Notice to be posted for each 500 Residential Units or fraction thereof in a conspicuous public place convenient to such Residential Units, for not less than 20 days prior to the date of the Hearing. The Notice shall also be published once in a newspaper of general circulation in Audubon not less than 10 nor more than 20 days prior to the date of the Hearing. 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 the 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 Members and 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 5.05. Acquisition, Conveyance, Improvement and Changes in Use of Audubon Facilities:

Subject to the limitations set forth in Subparagraphs A through C below, the Board of Directors of the Audubon 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, for use as an Audubon Facility (subject to the obligation of the Board of Directors to accept a conveyance from or through UDC or UDR as set forth in Section 5.01 hereof);
2. the transfer, conveyance, donation, lease or other disposition of an Audubon Facility or portion thereof;
3. the construction of Improvements or the making of additions, modifications or alterations to, or the demolition of, an Audubon Facility;
4. the change in the use of any Audubon Facility.

A. Upon the affirmative vote of the Board of Directors proposing:

1. a transfer, conveyance, donation, lease or other disposition of an Audubon Facility (a "Transfer") the effect of which will be to deprive or substantially limit the use and enjoyment of such Audubon Facility by some or all Owners and Members; and/or
2. a change in use of an Audubon Facility (including, without limitation, construction of Improvements so as to convert passive recreational or open space to active recreational use), which change in use will be a material alteration or abridgment of the use of such Audubon Facility (hereinafter referred to as a "Material Change in Use");

the Board of Directors shall hold a Hearing on the Proposal in accordance with the Hearing Procedures set forth in Section 5.04 hereof. In addition to such Hearing Procedures, not less than 20 days prior to the date of the Hearing, the Board of Directors shall cause a copy of the Notice to be mailed or delivered:

1. to all Voting Members residing within 300 feet of any portion of the affected Audubon Facility;
2. to all Owners (who are not also Voting Members) of Parcels within 300 feet of any portion of the affected Audubon Facility: and

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 be in accord with Section 11.09 of this Declaration.

- B. If a proposed acquisition of land or Improvements or the construction of Improvements or the making of an addition, modification or alteration to, or the demolition of an Audubon Facility, will result in a change in the Maximum Rate of the Maintenance Assessment as provided in Section 6.05 hereof or the imposition of a Special Assessment as provided in Section 6.06, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 5.04, and the provisions of Section 6.05 or Section 6.06 as the case may be, prior to finally authorizing such action.

C. Prior to

1. the making of an addition, modification or alteration to an Audubon Facility; or
2. the demolition of an Audubon Facility; or
3. the authorizing of a Material Change in Use of an Audubon Facility;

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

Section 5.06. Use and Maintenance of Certain Audubon Facilities:

Notwithstanding any other provision herein to the contrary, if UDC or UDR determines that any portion of the Property proposed to be conveyed to the Audubon Association will primarily benefit one or more Resident(s) and/or Owner(s) because of proximity to and principal use of such portion of the Property, or if the Board of Directors of the Audubon Association so determines with respect to an existing or proposed Audubon Facility or Facilities, UDC or UDR, or the Board of Directors after holding a Hearing thereon pursuant to Section 5.04 hereof, may either:

- A. formally restrict or limit the use of such Audubon Facility(ies) to such Resident(s) and/or Owner(s) and require that maintenance and operation of such Audubon Facility(ies) and the cost thereof be the direct responsibility of such Resident(s) and/or Owner(s), provided however that no such determination with respect to any Audubon Facility(ies) shall be valid unless a similar determination is made with respect to all other Audubon Facility(ies) (present and future) which are of a similar nature or type and which primarily benefit one or more Resident(s) or Owner(s) in a substantially similar manner; or

- B. without formally restricting or limiting the use of such Audubon Facility(ies) to such Resident(s) or Owner(s), provide that maintenance and operation of such Audubon Facility(ies) be the direct responsibility of such Resident(s) and/or Owner(s), but only if each such Owner or Resident consents in writing thereto.

Section 5.07 Rights to Borrow and Mortgage:

The Audubon Association may borrow funds and in conjunction therewith may mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with lenders shall be determined by the Board of Directors acting in its absolute discretion, subject only to the ability of the Audubon Association to repay such borrowed funds from Assessments.

Section 5.08. Right of Association to Use Utility Lines:

For the purpose of maintaining, improving or repairing Audubon Facilities, the Audubon Association may use water or electricity from outdoor taps or sockets located anywhere on the Property. Promptly after each such usage, the Association in writing, shall so notify the Owner or occupant of the Parcel upon which the tap or socket is located, setting forth the date of such usage and an estimate of the duration or amount of such usage, as well as any other pertinent information. The Audubon Association shall reimburse the Owner or occupant of the Parcel upon which such tap or socket is located, for that portion of the Owner's or occupant's charges for water or electricity attributable to the use by the Audubon Association, such proportionate allocation to be as the Audubon Association reasonably determines.

Section 5.09. Environmental Considerations:

In carrying out its responsibilities to enforce the provisions of the Declaration, and in particular the provisions of Section 9.08 herein, the Board of Directors of the Audubon Association (and the Architectural Committee as provided in Article VIII hereof) shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may in its discretion establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 5.10. Non-Discrimination by Audubon Association:

Neither the Audubon Association nor any officer, Director, agent, committee, Member, or committee member, or employee thereof shall make unavailable or deny the occupancy or use of any Audubon Facility to any person or persons or take any other actions which discriminate on the basis of race, religion, color, sex, sexual orientation or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time.

ARTICLE VI

AUDUBON ASSOCIATION – ASSESSMENTS

Section 6.01. Imposition, Personal Obligation, Lien:

Each Owner of a Residential or Non-Residential Unit (except Assessment Exempt property unless the Owner thereof waives such exemption in writing) on becoming the Owner by the acceptance of a deed or otherwise, whether or not the deed or any other instrument pursuant to which title is obtained so provides, shall be deemed to covenant and agree to pay to the Audubon Association:

- A. annual assessments or charges ("Maintenance Assessments");
- B. special assessments for capital improvements, ("Special Assessments")

together hereinafter being referred to as "Assessments."

The Assessments shall be fixed, established and collected from their Due Date(s) as described in Section 6.03 below. Each Assessment (or installment payment thereof), together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Unit or underlying portion of the Property against which the Assessment is made and shall also be the personal obligation of the Owner of such Unit on such Due Date.

Section 6.02. Basis, Annual Rate and Maximum Rate of Maintenance Assessment; Assessment Classifications:

The annual Maintenance Assessment for each Unit shall be based upon the "Useable Floor Area" of a Unit ("the Basis") multiplied by a monetary rate ("Annual Rate") per square foot of such Useable Floor Area.

"Useable Floor Area" shall mean and refer to the sum of the gross horizontal area of the one or more floors of a Unit as measured between the exterior faces of exterior walls or from the center line of interior walls subject to such exclusions, inclusions, additions and interpretations as the Board of Directors may from time to time determine by written regulations consistently applied.

The Annual Rate or Rates shall be determined each year by the Board of Directors for "Residential," "Non-Residential I" and "Non-Residential II" Units (the "Assessment Classifications") but shall not exceed in any fiscal year the maximum Annual Rate ("Maximum Rate") permitted for each Assessment Classification, and provided further that the Annual Rate for "Non-Residential I" Units shall at no time be greater than 1/2 of the Annual Rate for "Residential" Units and the Annual Rate for "Non-Residential II" Units shall at no time be greater than 1/3 of the Annual Rate for "Residential" Units. There can be no amendment of the Declaration which alters the foregoing ratios without a 2/3 vote of the Owners or Lessees of Non-Residential Units. Any Owner or Lessee of a Non-Residential Unit shall be entitled to assign his or her right to vote, by power of attorney, by proxy or otherwise to any other Owner or Lessee of a Non-Residential Unit, provided such assignment is made pursuant to any applicable provision of the By-Laws of the Audubon Association.

In determining the Assessment Classification(s) of a Unit the Board of Directors shall apply the definitions set forth in Section 1.01 of the Declaration, with such exclusions, inclusions, adjustments and interpretations as such Board of Directors may from time to time determine by written regulations consistently applied.

The initial Maximum Rates effective for the first fiscal year of the Association shall be \$0.20 per square foot of Useable Floor Area in a Residential Unit, \$0.10 per square foot of Useable Floor Area in a Non-Residential I Unit and \$0.07 per square foot of Useable Floor Area in a Non-Residential II Unit, and shall increase each year by the greater of (1) 6 percent or (2) the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers as published by the U.S. Bureau of Labor Statistics for the twelve-month period immediately preceding the date set by the Board of Directors for fixing the Annual Rates (or a comparable publication or index selected by the Board of Directors). The Annual Rates and Maximum Rates for each Assessment Classification for each year shall be set forth in the Assessment Notice referred to in Section 6.03 below.

Section 6.03. Establishment of Maintenance Assessment; Assessment Notice:

For each fiscal year, prior to commencement thereof, based on the Association's budget for such year and in accordance with Section 6.02 above, the Board of Directors of the Audubon Association shall (1) fix the Annual Rate or Rates for such fiscal year; (2) determine or redetermine the Assessment Classification or Classifications of each Unit and the Useable Floor Area of such Unit or of each portion thereof in a separate Assessment Classification; (3) fix the Maintenance Assessment for each Unit; (4) establish the due date or dates ("Due Dates") for payment of the Maintenance Assessment or installments thereof; and (5) so notify the Owner of each Unit in writing (the "Assessment Notice").

Section 6.04. Commencement of Obligation to Pay Assessments on Specific Unit:

With respect to each newly-constructed Residential or Non-Residential Unit, the current Owner thereof shall become initially liable for the payment of Assessments commencing on the first day of the month following the earlier of (A) the date the Unit is occupied, or (B)

- (i) if the Unit is to be Owner-occupied, the date title to said Unit is initially transferred to the Owner for occupancy; or
- (ii) if the Unit is to be tenant-occupied, the commencement date for the payment of rent pursuant to the lease (or sublease) for occupancy of said Unit.

If such obligation with respect to a Unit commences at a time other than the beginning of the Association's fiscal year, the annual Maintenance Assessment due for the balance of such fiscal year shall be pro-rated accordingly.

Section 6.05. Change in Maximum Rate of Maintenance Assessments:

The Audubon Association may change the Maximum Rate of the Maintenance Assessment in the following manner:

Upon the affirmative vote of the Board of Directors proposing a change in the Maximum Rate, the Board of Directors shall hold a Hearing on said Proposal in accordance with the Hearing Procedures set forth in Section 5.04 hereof. Not less than 10 nor more than 45 days after such Hearing the Board of Directors shall vote on the proposed increase or a lesser increase, and the affirmative vote of not less than three-fourths of the entire Board of Directors shall be required for approval.

Section 6.06. Special Assessments for Capital Improvements:

In addition to the Maintenance Assessments, and in accordance with the provisions of this Section 6.06, the Board of Directors may levy in any fiscal year a Special Assessment, payable in that year or in 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 repairs of a capital nature to, Audubon Facilities, including the necessary fixtures and personal property related thereto. Before levying such Special Assessment, the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedures set forth in Section 5.04 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall vote on the proposed Special Assessment or a Special Assessment of a lesser amount, and the affirmative vote of not less than three-fourths of the entire Board of Directors

shall be required for approval. Each Unit shall pay that portion of a Special Assessment which bears the same ratio to the total amount of the Special Assessment as that Unit's Maintenance Assessment for such fiscal year bears to the total of the Maintenance Assessments levied by the Association for such fiscal year, such ratio to be determined for each Unit as of the date such Special Assessment is approved by the Board of Directors. The Board shall establish a due date or due dates ("Due Dates") for payment of each Special Assessment or installments thereof and shall notify each Owner thereof in writing at least 30 days prior to its Due Date or the first such Due Date if payable in installments. Each notice shall set forth the total amount of such Special Assessment, the amount to be paid by the Owner, and the manner in which said Owner's share was determined.

Section 6.07. Right to Lower Assessment for Certain Senior Citizens:

Notwithstanding any other provision herein, the Board of Directors may, in a given year, with respect to the Maintenance Assessment, assess Residential Units occupied by "Senior Citizens" or certain categories of "Senior Citizens" (as such term shall be from time to time defined and consistently applied by the Board of Directors) at a rate lower than the Annual Rate and/or may exempt such Units from paying Special Assessments or reduce the amounts of Special Assessments due from such Units. Such reduction in Assessments shall be subject to such qualifications and regulations which the Board of Directors may establish from time to time.

Section 6.08. Units Restricted from Paying Full Assessments:

Certain Residential Units may be restricted by governmental regulations from paying full Assessments because they are subsidized by a governmental agency or are partially tax exempt because they have been constructed for sale to or occupancy by persons of low income, or because they are occupied either by persons of low income or by persons who are receiving or who qualify for subsidies from a governmental agency. Notwithstanding any other provision herein, an Owner of such a Unit shall not be required to pay Assessments with respect to any such Unit, in a total annual amount greater than that permitted by the controlling governmental or supervisory agency regulations and at no time shall any such Unit be required to pay an amount which would cause such Unit to fail to maintain its subsidized or tax exempt status or otherwise be ineligible for occupancy by persons of low income.

Section 6.09. Effect of Non-Payment of Assessment:

If a Maintenance or Special Assessment or installment payment thereof with respect to a Unit, is not paid by the Due Date established pursuant to Section 6.02 or Section 6.06 hereof for the payment of such Maintenance or Special Assessment, or installment payment, then such payment shall be deemed delinquent and shall (together with interest, penalties or cost of collection including attorney's fees as may be fixed from time to time by the Board of Directors) be a lien on the Parcel on which the Unit is situated. In addition to such lien, the then Owner of the Unit may be held personally liable for the payment thereof (including interest, penalties and costs of collection). Such personal liability with respect to a delinquent payment shall remain the personal liability of the then Owner until paid and shall not pass to any successors in interest to the Unit or Parcel unless expressly assumed by them. The Association may bring legal action for payment against the Owner(s) personally liable or may foreclose on the lien as it deems advisable.

Section 6.10. Use of Funds:

The Assessments shall be used exclusively for the benefit of the Resident Members of the Audubon Association and the Owners of the Property, to promote the recreation, health, safety and welfare of said Resident Members and Owners, to preserve, protect and enhance the value of the Audubon Facilities and the Property, and to insure the enjoyment of rights, privileges and easements with respect to the Audubon Facilities.

Section 6.11. Right to Maintain Surplus and Reserves:

The Audubon Association shall not be obligated in any calendar year to spend all sums collected in such year by way of Assessments, or otherwise, and may allocate such funds to any reserves for repair or replacement of the Audubon Facilities or additions thereto (which the Audubon Association, through its Board of Directors, may establish and maintain) or carry such sums forward as surplus. The Audubon Association shall not be obligated to apply any such surpluses to the reduction of the Maintenance Assessment 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 Audubon Association.

Section 6.12. Assessment Certificates:

Upon the written request of an Owner or lessee or occupant or any prospective Owner, lessee, mortgagee or title insurer of a Residential or Non-Residential Unit, the Audubon Association shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Assessment Certificate") signed by an officer or designee of the Audubon Association setting forth with respect to such Unit or Units, as of the date of said Certificate, (i) whether the Assessments, if any, have been paid, (ii) the amount of such Assessments, including interest, penalties and costs, if any, due and payable as of such date and (iii) any other amounts owing to the Association. When the request for the Certificate is made by a person or entity other than the Owner, a copy of the Certificate shall also be sent to the Owner. A reasonable

charge, as determined by the Board of Directors, may be made for the issuance of such Certificate. Any such Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Audubon Association and any bona fide purchaser or new lessee of, or lender on, or title insurer of, the Unit or Units in question.

Section 6.13. Subordination of Assessment Lien to Mortgages:

The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgages or mortgage now or hereafter placed upon any Unit or other portion of the Property subject to said 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 Unit or other portion of the Property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such Unit or other portion of the Property from any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessments.

ARTICLE VII

INITIAL DEVELOPMENT OF PROPERTY

Section 7.01. Control of UDC and UDR:

The initial construction of any Improvements on a Parcel or any other portion of the Property (except Declaration Exempt Property) and the initial use of any such portion of the Property (except Declaration Exempt Property), shall be under the exclusive control of UDC and UDR until the initial development of such portion of the Property has been completed to the satisfaction of UDC or UDR, as the case may be, 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 Parcel or portion of the Property, control of all further development or construction on said Parcel or portion of the Property and the use thereof shall be the responsibility of the Audubon 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 Parcel or portion of the Property (except Declaration Exempt Property), unless and until plans for such improvements, in such detail as UDC or UDR may require, have been approved by UDC or UDR as to the proposed use and external design 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. UDC or UDR as the case may be, may impose such other requirements with respect to the construction of such initial Improvement or such other development of such portion of the Property, as either of them deem appropriate, provided the same do not conflict with the 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 Parcel or any other portion of the Property (except Declaration Exempt Property) to the satisfaction of UDC or UDR, as the case may be, in accordance with the approved plans, the Declaration and such other requirements as UDC or UDR may have imposed, UDC or UDR, as the case may be, shall issue a Certificate of Compliance identifying such Improvements, the Parcel or other portion of the Property on which such Improvements are located, the approved use of 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 Parcel or 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 the Declaration. Prior to actual completion of certain Improvements, UDC or UDR may issue temporary Certificates of Compliance under such circumstances and on such terms and conditions as they deem appropriate.

Section 7.04 Liability of UDC or UDR:

Except to the extent specifically provided in Section 7.03 above with respect to issuance of a Certificate of Compliance, no action taken by UDC or UDR or any officer, employee or agent thereof 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 Parcel 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 UDC or UDR shall be deemed to be hereby waived. Neither UDC nor UDR shall be liable for any damages to anyone submitting plans to either of them for

approval or to any Owner, Member or any other person, by reason of mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of such plans. Every person or other entity which submits plans to UDC or UDR for approval, agrees, by submission of such plans, that no action or suit will be brought against UDC or UDR, as the case may be, in connection with such submission.

Section 7.05. Consent of UDC or UDR 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 UDC or UDR shall not be valid without the consent in writing of UDC or UDR, whichever is having its rights or authority altered or abridged.

ARTICLE VIII

CONTROL AFTER ISSUANCE OF CERTIFICATE OF COMPLIANCE

Section 8.01. Control by Audubon Association:

After issuance of a Certificate of Compliance with respect to a Parcel 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 Parcel or portion of the Property shall be the responsibility of the Audubon 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 sub-committee of the Audubon Association and shall approve all proposed additions, modifications or alterations to any Improvements or any proposed change in the use of a Parcel or any other portion of the Property (including Audubon Facilities) after issuance of a Certificate of Compliance with respect thereto. The Architectural Committee may also assist and advise the Board of Directors of the Audubon 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 five or more persons (as determined by the Board of Directors from time to time) at least one of whom shall be a licensed architect registered to practice as such in the State of New York. The Committee members shall be designated by the Board of Directors of the Audubon Association for terms of two years, but shall be subject to removal, with or without cause by the affirmative vote of not less than three-fourths of the members of the Board of Directors. All Committee members, except the required architect, shall be Resident Members or employees of UDC.

Section 8.03. Submission of Plans to Architectural Committee:

After issuance of a Certificate of Compliance with respect to a Parcel or any portion of the Property, no addition, modification or alteration shall be made on or to such Parcel 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 Parcel 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 regulations.

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

Section 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 Parcel or portion of the Property shall be final as to such Parcel or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the Improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Parcel or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Parcel or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Parcel or 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 within 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 sub-committee 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, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Parcel or other portion of the Property. Neither the Audubon Association nor the Archi-

tectural 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 Audubon Association or the Architectural Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

Section 8.12. Architectural Committee Certificate:

Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Parcel or other portion of the Property, as to which a Certificate of Compliance has been previously issued, the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Parcel or other portion of the Property, or any Improvements thereon, violates any of the provisions of the Declaration respecting the exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated between the Audubon Association and any bona fide purchaser of, new lessee of, lender on, or title insurer of, the Parcel or other portion of the Property in question.

ARTICLE IX

GENERAL COVENANTS AND RESTRICTIONS

Section 9.01. Maintenance:

After issuance of a Certificate of Compliance with respect to a Parcel or other portion of the Property, the Owner thereof shall keep the Parcel and all Improvements thereon 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 9.02. 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 UDC or UDR in connection with the initial development, lease or sale of Parcels or Improvements or any other signs erected in accordance with the plans approved by UDC or UDR pursuant to Article VII hereof including without limitation, business, professional or institutional signs,) no additional sign or other advertising device of any nature shall be placed for display to the public view on such Parcel or other portion of Property (including temporary signs advertising property for sale or rent) except with the consent of the Architectural Committee.

Section 9.03. Animals, Birds and Insects:

After issuance of a Certificate of Compliance with respect to any Parcel or other portion of the Property, unless the Certificate of Compliance issued by UDC or UDR specifically permits such use of such Parcel or other portion of the Property, no animals, birds or insects shall be kept or maintained on such Parcel or other portion of the Property other than for domestic purposes, except with the consent of the Architectural Committee which may, from time to time, impose reasonable rules and regulations setting forth the type and number of animals, birds and insects that may be kept on any portion of the Property and may prohibit certain types of animals, birds or insects entirely.

Section 9.04. Protective Screening and Fences:

Any screen planting, fence enclosures or walls initially developed on a Parcel or other portion of the Property shall be maintained by the Owner of said Parcel 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 parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 9.05. Garbage and Refuse Disposal:

Except for building materials during the course of construction or repair of any approved Improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary con-

tainers 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 Parcel or portion of the Property so as to provide access to persons making such pick-up. UDC and UDR, with respect to Parcels or other portions of the Property for which Certificates of Compliance have not been issued, and the Audubon Association, with respect to Parcels 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. Notwithstanding anything to the contrary above, no Trash shall be placed or stored on any portion of the Property within twenty feet of the edge of any water course or body of water (except containers placed with the permission of the Architectural Committee) or dumped into such water course or body of water, except that clean fill may be placed nearer to the same provided that the natural water course is not altered or blocked by such fill. In addition, liquid waste shall not be discharged into an open body of water or sewer unless treated and controlled in accordance with applicable governmental ordinances and codes.

Section 9.06. No Above Surface Utilities Without Approval:

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 (except hoses and movable pipes used for irrigation purposes) shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of UDC or UDR prior to issuance of a Certificate of Compliance on a Parcel or portion of the Property, and of the Architectural Committee thereafter.

Section 9.07. Drainage Easements:

Each Owner shall maintain and repair any drainage facilities on such Owner's Parcel. Each and every other Owner shall have the right to enter upon the drainage easement areas of any other Parcel for the purpose of installing, maintaining and repairing the drainage facilities on such other Parcel which in any way interfere with the drainage or drainage facilities on such Owner's Parcel. Unless required by law, the Town of Amherst shall not be responsible for the maintenance and repair of the drainage facilities and such maintenance and repair shall be the responsibility of the Owners.

Section 9.08. Noxious or Offensive Activities:

No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code. In addition, the sound pressure level as measured at the edge of any Parcel or other portion of the Property, and which is produced by mechanical, electrical or vehicular operation on such Parcel or other portion of the Property, where said Parcel or other portion is proximate to a residential area, shall not exceed the average intensity of the street traffic noise in said residential area except with the consent of UDC or UDR prior to the issuance of a Certificate of Compliance with respect to a Parcel or other portion of the Property, and the Architectural Committee thereafter.

Section 9.09. Party Walls; Encroachments:

A wall, intended to be constructed on the dividing line between two or more adjacent Parcels (whether or not such wall is on a dividing line between adjacent Parcels) shall constitute a party wall.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the adjoining Parcels in proportion to their use of the wall. If a party wall is destroyed or damaged by fire or other casualty, to the extent that the cost of repair is not recovered by insurance, any Owner who shares the wall may restore it and the other Owner(s) who share the wall shall contribute to the cost of restoration proportionately. Notwithstanding any other provision of this paragraph an Owner who, by his negligent or willful act or omission, damages or causes the party wall to be damaged shall bear the entire cost of repair.

If a structure located primarily on one Parcel inadvertently encroaches not more than three feet upon another Parcel as a result of the original construction of such structure, or the later reconstruction of such structure or a portion thereof after partial or total destruction by fire or other casualty or through eminent domain proceedings, or as a result of settling or shifting of such structure or a portion thereof, there shall be implied an easement for such encroachment and for the maintenance of same so long as such encroaching Improvement or portion thereof shall stand.

Section 9.10 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 UDC or UDR prior to the issuance of a Certificate of Compliance, or the Architectural Committee thereafter.

Section 9.11. 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 not a Residential Unit shall be used, temporarily or permanently, as a dwelling on any Parcel or other portion of the Property except with the consent of UDC or UDR prior to issuance of a Certificate of Compliance with respect thereto, and of the Architectural Committee thereafter.

Section 9.12. Television and Radio Antennas:

No outside television or radio antenna shall be erected on any Parcel or other portion of the Property except with the consent of UDC or UDR prior to issuance of a Certificate of Compliance with respect thereto, and by the Architectural Committee thereafter.

Section 9.13. Trees and Other Natural Features:

Prior to issuance of a Certificate of Compliance no trees shall be removed from any Parcel or portion of the Property except with the permission of UDC or UDR. After issuance of a Certificate of Compliance with respect to a Parcel 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 UDC or UDR pursuant to Article VII hereof, shall be removed from such Parcel or 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 9.14. Use and Maintenance of Slope Control Areas:

Within any slope control area shown on any filed map or plat, no Improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels. The slope control areas of any Parcel shall be maintained continuously by the Owner of said Parcel or portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 9.15. Snowmobiles:

No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Audubon Association.

Section 9.16. Waterfront Parcels:

After issuance of a Certificate of Compliance with respect to any Parcel or portion of the Property which abuts upon any lake, stream, creek, brook, canal or other waterway, (hereinafter collectively referred to as "Waterways,"):

- A. No wharf, pier, dock, bulkhead, barge, piling, float or other structure shall be built or maintained upon such Parcel or portion of the Property except with the consent of the Architectural Committee (as well as the entity, other than the Audubon Association, controlling or owning the Waterway, if any).
- B. No vehicle shall be parked or stored within twenty (20) feet of the waterfront except in areas designated for parking, or except with the consent of the Architectural Committee.

Section 9.17. Non-Discrimination in Sale or Rental:

No Owner or Resident shall refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable to or deny the occupancy or use of any portion of the Property to any person or persons because of race, color, religion, sex, sexual orientation or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time.

ARTICLE X
ADDITIONAL COVENANTS AND RESTRICTIONS
APPLICABLE TO RESIDENTIAL PARCELS

Section 10.01. Residential Use Only:

Except as provided in Section 10.02 below, Parcels or portions of the Property designated in a Certificate of Compliance for residential use shall be used only for residential purposes and purposes incidental and accessory thereto except that, with the consent of UDC or UDR given prior to issuance of a Certificate of Compliance for such Parcel or portion thereof, or with the consent of the Architectural Committee thereafter, such Parcel or portion of the Property may be used for a model home or for a real estate office.

Section 10.02. Commercial and Professional Activity on Residential Property:

After issuance of a Certificate of Compliance, no business, profession or home industry shall be conducted in or on any Parcel or portion thereof approved for residential use without the consent of the Architectural Committee except as provided in Section 10.01 above.

Section 10.03. No Division of Parcels or Change in Form of Ownership Without Approval:

After issuance of a Certificate of Compliance, except as may be permitted pursuant to the Certificate of Compliance, no Parcel or portion of the Property designated for residential use shall be split, divided, or subdivided for sale, resale, gift, lease, transfer or otherwise (including, but not necessarily limited to, conversion to a condominium, cooperative or townhouse-for-sale form of ownership) without the consent of the Architectural Committee.

Section 10.04. Outside Storage:

After issuance of a Certificate of Compliance with respect to a Parcel or portion of the Property designated for residential use, there shall be no outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers except as may be permitted by the Architectural Committee, (unless prohibited altogether by the applicable zoning requirements).

Section 10.05. Outdoor Repair Work:

After issuance of a Certificate of Compliance with respect to a Parcel or portion thereof designated for residential use, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Parcel or portion thereof, except with the consent of the Architectural Committee.

ARTICLE XI
ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land:

Except as otherwise provided in this Section 11.01 each person or entity acquiring an interest in a Parcel 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, and also covenants and agrees to incorporate the Declaration by reference in any deed, lease or other instrument further transferring an interest in such Parcel or other portion of the Property. Notwithstanding the foregoing, the Town of Amherst, Special Districts and local School Districts shall not be bound by the provisions of the Declaration with respect to any Parcel or other portion of the Property owned by any of them during the period of such ownership (such Parcels or portions of the Property being previously defined as "Declaration Exempt Property"), unless such exemption is specifically waived, in whole or in part, by a written instrument executed by the exempt party and recorded in the Office of the Clerk of the County of Erie; provided, however, if the Town, a Special District or School District should sell, transfer or otherwise terminate its interest in any such Declaration Exempt Property, any such Declaration Exempt Property shall cease to be Declaration Exempt Property, and any transferee, assignee, or successor-in-interest to such previous Declaration Exempt Property shall be thereafter fully bound by all the terms and provisions of the Declaration, whether or not the deed or any other instrument incorporates or refers to the Declaration. This Section 11.01 shall not be amended without the specific consent of the Town Board of the Town of Amherst.

Section 11.02. Enforceability:

The provisions of the Declaration shall bind the Property except Declaration Exempt Property as provided herein, and shall be construed as running with the land and shall inure to the benefit of and be enforceable by UDC or UDR during the

Development Period, and by the Audubon Association (the Audubon Association being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors, and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 11.03. No Waiver by Failure to Enforce:

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

Section 11.04. Obligation and Lien for Cost of Enforcement by Audubon Association:

If the Audubon Association 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 an Owner, such cost shall also be a lien upon the Parcel or portion of the Property owned by such violators, if any.

Section 11.05. Inspection and Entry Rights:

Any agent of UDC or UDR, prior to the issuance of a Certificate of Compliance with respect to a Parcel or other portion of the Property, and the Audubon Association (or the Architectural Committee) thereafter, may at any reasonable time or times enter upon such Parcel or other portion of the Property to inspect the Improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other Improvements thereon comply with the Declaration, or with rules and regulations issued pursuant thereto, or for the purpose of determining or confirming the Useable Floor Area of any Unit on such Parcel or for the purpose of inspecting and/or designating certain trees in accordance with Section 9.13 herein. Neither UDC, UDR, the Audubon Association (nor the Architectural Committee thereof) nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if, after issuance of a Certificate of Compliance with respect to a Parcel or other portion of the Property, the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of Sections 9.01 or 9.04 hereof, the Audubon Association shall notify the Owner of the Parcel 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, then the Audubon Association may take such remedial action at the expense of the Owner.

Section 11.06. Amending:

Except as otherwise specifically provided for in Sections 1.01G, 5.10, 6.02, 7.05, 9.17, 11.01 and 11.09 hereof, the Board of Directors on its own initiative, or pursuant to a written petition signed by not less than the lesser of 100 Voting Members or 25 percent of the total Voting Members of the Audubon Association or by not less than 25 percent of the total number of Owners who are not Voting Members, may propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 5.04 herein for the purpose of considering such proposed amendment. In addition to the Notice required to be given pursuant to such Section 5.04, notice of the Hearing shall be mailed or delivered to all Owners who are not Voting Members not less than 10 nor more than 30 days prior to the date set for such Hearing.

Not less than 30 nor more than 45 days after the Hearing, the Voting Members and Owners who are not Voting Members 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 Voting Members and Owners who are not Voting Members, not less than 14 days prior to the date or dates set for the canvass thereof.

The affirmative vote of not less than two-thirds of the total number of Voting Members and not less than two-thirds of the total number of Owners who are not Voting Members shall be required for approval of a proposed amendment; provided, however, that the written consent of UDC shall be required prior to January 1, 1985.

Any approved amendment to the Declaration shall become effective only when an instrument describing such amendment has been duly recorded in the Office of the Clerk of the County of Erie and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such amendment. Such instrument need not contain the written consent of the required number of Voting Members and Owners but shall contain a certification

by the Board of Directors that the consents required for such amendment have been received and filed by the Board.

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 Erie and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such amendment. Such instrument need not contain the written consent of the required number of Voting Members 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 11.07. Duration:

Except as otherwise provided for herein and in Section 5.10, the Declaration shall continue with full force and effect (unless terminated by an amendment to this Section 11.07 pursuant to Section 11.06 herein). Between August 1, 2049 and October 1, 2049 (and each 20 years thereafter that the Declaration continues in effect) the Board of Directors of the Audubon Association shall hold a Hearing in accordance with Section 5.05 herein for the purpose of considering the termination of the Declaration. In addition to the Notice required to be given pursuant to such Section 5.04, notice of the Hearing shall be mailed or delivered to all Owners who are not voting Members not less than 10 nor more than 30 days prior to the date set for such Hearing.

Not less than 30 nor more than 45 days after the Hearing, the Voting Members and Owners who are not Voting 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 Voting Members and Owners who are not Voting Members 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 Voting Members and not less than a majority of the total number of Owners who are not Voting members, voting for such termination, 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 Erie 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 Voting Members 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 11.08. Construction and Interpretation:

The Audubon Association shall have the right to construe and interpret the provisions of the Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction or interpretation shall be binding as to all persons or property benefitted or bound by the provisions hereof.

The Audubon Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of the Declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determinations, rulings, or orders or in the issuance of permits, authorizations or approvals, the Audubon Association (and the Architectural Committee) shall take into consideration the best interests of the Owners and Members and of the Property to the end that the value and amenities of the Property shall be preserved and maintained.

Section 11.09. Conflict with Municipal Laws:

The Declaration shall not be construed as permitting anything prohibited by the applicable zoning laws, or any other applicable laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease and no action may be taken hereunder which would so violate such applicable zoning laws, other laws, ordinances, rules, regulations or restrictions. In the event of any conflict, the more restrictive provision shall be deemed to govern and control or in the event of a direct contradiction or incompatibility, the applicable law, ordinance, rule, or regulation of the governmental entity shall control. This Section 11.09 shall not be amended without the specific consent of the Town Board of the Town of Amherst.

Section 11.10. Invalidity of Declaration:

The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII

GENERAL

Section 12.01. Heading and Captions:

The headings and captions contained in the Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

Section 12.02. Notice:

Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postage prepaid, or otherwise delivered to the last known address of the person who appears as Member or Owner on the records of UDC, UDR or the Audubon Association whichever is sending such notice, at the time of such mailing.

Section 12.03. Right of UDC to Transfer:

Notwithstanding any other provision herein to the contrary, UDC and UDR shall at all times have the absolute right to transfer, convey and assign any of their rights, benefits and obligations hereunder, either one to the other, or to third parties, and upon such transfer, conveyance or assignment the successor shall have all of the rights and be subject to all of the duties of the transferor as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions of this Declaration, to the same extent as if such successor had been an original party to this Declaration. Any such transfer to a party other than UDC or UDR shall be accepted by the successor in a written agreement pursuant to which such successor shall expressly assume all the duties and obligations of the transferor, however, a failure to accept in writing shall in no way alter the obligation of the successor to be bound by all provisions of this Declaration.

Section 12.04. Right of Audubon Association to Transfer:

Notwithstanding any other provision herein to the contrary, the Audubon Association, by the affirmative vote of not less than three-fourths of its Board of Directors, shall at all times have the absolute right to transfer, convey and assign its right, title and interest under the Declaration to any successor not-for-profit corporation, trust or governmental entity and upon such assignment the successor corporation, trust or governmental entity shall have all the rights and be subject to all the duties of the Audubon 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, trust or governmental entity had been an original party to this Declaration, and all references herein to Board of Directors shall refer to the board of directors, trustees or governing board of such successor corporation, trust or governmental entity. Any such assignment shall be accepted by the successor corporation, trust or governmental entity under a written agreement pursuant to which the successor corporation, trust or governmental entity shall expressly assume all the duties and obligations of the Audubon Association, however, a failure to accept in writing shall in no way alter the obligation of the successor to be bound by all provisions of this Declaration. If for any reason the Audubon Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, trust or governmental entity, the covenants, easements, charges and liens imposed hereunder, and under any supplemental declaration, trust agreement, or other agreement, shall nevertheless continue and any Owner or Member may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation, trust or governmental entity to take over the duties and responsibilities of the Audubon Association subject to the conditions provided for in the Declaration.

IN WITNESS WHEREOF, the undersigned have caused their corporate seals to be hereunto affixed and this declaration to be signed by their duly authorized officers the day and year above written.

[SEAL]

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

ATTEST:

/s/ Kenneth E. McLaughlin
Secretary

By /s/ John G. Burnett
Acting Chief Executive Officer

[SEAL]

CORPORATION FOR URBAN DEVELOPMENT
AND RESEARCH OF NEW YORK

ATTEST:

/s/ Kenneth E. McLaughlin
Secretary

By /s/ John G. Burnett
Executive Vice President

[SEAL]

AUDUBON ASSOCIATION, INC.

By /s/ Mark J. Ramsdell

STATE OF NEW YORK SS.
COUNTY OF NEW YORK

On this 23rd day of May, 1975, before me personally came John G. Burnett to me known, who, being by me duly sworn, did depose and say that he resides at 54 West 13th Street, New York, New York, that he is the Acting Chief Executive Officer of NEW YORK STATE URBAN DEVELOPMENT CORPORATION, the corporation described in and which executed the above 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.

/s/ Clifford P. Case, III

Clifford P. Case, III
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1976

STATE OF NEW YORK SS.
COUNTY OF NEW YORK

On this 23rd day of May, 1975, before me personally came John G. Burnett to me known, who, being by me duly sworn, did depose and say that he resides at 54 West 13th Street, New York, New York, that he is the Executive Vice President of CORPORATION FOR URBAN DEVELOPMENT AND RESEARCH OF NEW YORK, the corporation described in and which executed the above 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.

/s/ Clifford P. Case, III

Clifford P. Case, III
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1976

STATE OF NEW YORK SS.
COUNTY OF ERIE

On this 27th day of May, 1975, before me personally came Mark J. Ramsdell to me known, who, being by me duly sworn, did depose and say that he resides at 50 Ashland Avenue, Buffalo, New York, that he is the President of AUDUBON ASSOCIATION, INC., the corporation described in and which executed the above 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.

/s/ George R. Grasser

George R. Grasser
Notary Public, State of New York
Qualified in Erie County
Commission Expires March 30, 1976

SCHEDULE "A" – NORTH PARCEL

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 69, Township 12 and Range 7 of the Holland Land Company's Survey and being more particularly bounded and described as follows:

COMMENCING at a point in the east line of said Lot No. 69 (said east line also being the centerline of Campbell Boulevard as laid out 66 feet wide) distant 1455.34 feet (1451.01 feet record) southerly from the northeast corner of said Lot No. 69 as measured along said east line, said northeast corner of Lot No. 69 also being the intersection of the centerlines of Campbell Boulevard and Dodge Road, said point of commencement also being the southeast corner of lands conveyed to Howard W. Robert and Marion L. Robert, his wife, by deeds recorded in the Erie County Clerk's Office in Liber 3943 of Deeds at page 178 and Liber 3943 of Deeds at page 190 and said point of commencement also being in the northeast corner that portion of the right of way of the Niagara Mohawk Power Corporation as described in Deed recorded in the Erie County Clerk's Office in Liber 2086 of Deeds at page 83; running thence N-88°-34'-26"-W, and along the boundary line between the lands of said Roberts on the north and Niagara Mohawk Power Corporation on the south a distance of 158.40 feet to a point at the westerly terminus thereof; said point being the principal point of beginning; running

1. thence S-01°-25'-35"-W, along the westerly right of way line of the Niagara Mohawk Power Corporation, as described in Deed Liber 2086 of Deeds at page 83, a distance of 38.57 feet to an angle point therein;
2. thence N-89°-55'-46"-W, along the northerly right of way line of the Niagara Mohawk Power Corporation, as described in deeds Liber 2086 of Deeds at page 83 and Liber 2454 of Deeds at page 341, a distance of 1086.91 feet to an angle point therein;
3. thence N-50°-51'-43"-W, along the northeasterly right of way line of the Niagara Mohawk Power Corporation, as described in Deed Liber 2454 of Deeds at page 341, a distance of 215.46 feet to a point;
4. thence N-02°-44'-27"-E, 451.67 feet to a point in the southerly highway boundary of the proposed Robin Road;
5. thence westerly along said southerly highway boundary of proposed Robin Road, on a curve to the right, having a radius of 4035.00 feet, an arc distance of 290.02 feet, to a point of reverse curve;
6. thence continuing along the last mentioned highway boundary, along a curve to the left, having a radius of 865.00 feet, an arc distance of 139.36 feet to a point of compound curve;
7. thence continuing westerly along the last mentioned highway boundary, along a curve to the left, having a radius of 981.89 feet, an arc distance of 161.41 feet to the point of intersection thereof with the northeasterly right of way line of Niagara Mohawk Power Corporation as described in deed Liber 2454 of Deeds at page 341;
8. thence N-50°-51'-43"-W along the last mentioned northeasterly right of way line of Niagara Mohawk Power Corporation, a distance of 749.85 feet to the point of intersection thereof with the southerly boundary of the existing 66 feet wide right-of-way of the Town of Amherst, formerly owned by the New York Central Railroad and also formerly known as the "Peanut Line"; as conveyed to said Town of Amherst by deed recorded in the Erie County Clerk's Office in Liber 7034 of Deeds at page 69;
9. thence S-85°-29'-00"-E along the last mentioned southerly boundary of the Town of Amherst right-of-way, a distance of 2351.46 feet to a point therein where said line would be intersected by a line drawn parallel with the west boundary line of Campbell Boulevard and distant 205.40 feet westerly therefrom, measured at right angles thereto;
10. thence S-01°-25'-35"-W, parallel with the west boundary line of Campbell Boulevard, a distance of 569.29 feet to the southwest corner of lands conveyed to Richard E. Westra and Betty J. Westra, his wife, by Deed recorded in the Erie County Clerk's Office in Liber 7165 of Deeds at page 55;
11. thence S-88°-34'-26"-E, and along the southerly line of lands conveyed to said Westras by Deeds recorded in the Erie County Clerk's Office in Liber 7165 of Deeds at page 55 and Liber 6678 of Deeds at page 283, a distance of 80 feet;
12. thence S-01°-25'-35"-W parallel with the west boundary line of Campbell Boulevard and along the westerly line of lands conveyed to Howard W. Robert and Marion L. Robert, his wife, by deeds aforementioned a distance of 276.87 feet to the point or place of beginning, containing 33.63 acres, more or less.

SCHEDULE "A" — SOUTH PARCEL

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 69, Township 12 and Range 7 of the Holland Land Company's Survey, and being more particularly bounded and described as follows:

COMMENCING at a point in the east line of said Lot No. 69 (Said east line also being the centerline of Campbell Boulevard as laid out 66 feet wide) distant 2379.70 feet (2379.66 feet record) southerly from the northeast corner of said Lot No. 69, as measured along said east line, said northeast corner of Lot No. 69 also being the intersection of the centerlines of Campbell Boulevard and Dodge Road, said point of commencement also being the northeast corner of lands described in deed to Alice Muck recorded in the Erie County Clerk's Office in Liber 7359 of Deeds at page 351; running thence south-89°-09'-15"W, along the north line of lands described in said deed to Alice Muck, 33.04 feet to a point in the westerly highway boundary of Campbell Boulevard, said point being the principal point of beginning; running

1. thence S-89°-09'-15"W, along the north line of lands so conveyed to Alice Muck, a distance of 407.84 feet to a point in the northwest corner thereof;
2. thence S-01°-25'-35"W, a distance of 457.87 feet to a point in the southwest corner of lands conveyed to Frederick G. Muck and Amelia L. Muck, his wife, by Deed recorded in the Erie County Clerk's Office in Liber 6187 of Deeds at page 231;
3. thence N-89°-09'-15"E, along the south line of lands so conveyed to said Frederick G. Muck and Amelia L. Muck, his wife, a distance of 397.05 feet to a monument on the westerly highway boundary of Millersport Highway as conveyed to the County of Erie by deed recorded in the Erie County Clerk's Office in Liber 2366 of Deeds at page 78;
4. thence S-09°-50'-35"W, along said westerly highway boundary of Millersport Highway, a distance of 235.67 feet to a monument at an angle point therein;
5. thence S-24°-05'-35"W, continuing along said northwesterly highway boundary of Millersport Highway, a distance of 906.63 feet to a point;
6. thence N-65°-54'-15"W, 370.00 feet to a point;
7. thence N-42°-24'-25"W, 48.18 feet to a point in a line drawn parallel with the southerly boundary of proposed Robin Road and distant 18 feet southerly therefrom, measured radial thereto;
8. thence along said line drawn parallel with the southerly boundary of proposed Robin Road on a curve to the right having a radius of 488.00 feet, an arc distance of 247.29 feet to a point of compound curve;
9. thence continuing along the last mentioned parallel line, on a curve to the right, having a radius of 623.00 feet, an arc distance of 327.90 feet to a point of tangency;
10. thence continuing along the aforementioned parallel line, N-73°-13'-00"W, 115.00 feet to a point of curve;
11. thence continuing along the aforementioned parallel line, on a curve to the left, having a radius of 2697.00 feet, an arc distance of 326.09 feet to a point of compound curve;
12. thence continuing along the aforementioned parallel line, on a curve to the left, having a radius of 947.00 feet, an arc distance of 18.00 feet to a point;
13. thence N-09°-51'-17"E, 88.01 feet to a point;
14. thence westerly along a curve to the left, having a radius of 1035.00 feet, an arc distance of 273.19 feet to a point;
15. thence due north, 227.25 feet to a point;
16. thence N-45°-00'-00"E, 84.85 feet to a point;

17. thence due east, 369.96 feet to a point in a line drawn parallel with the westerly boundary of proposed Little Robin Road and distant 18 feet westerly therefrom, measured at right angles thereto;
18. thence N-42°-18'-57"-E along said line drawn parallel with the westerly boundary of the proposed Little Robin Road, 170.50 feet to a point of curve;
19. thence continuing along the last mentioned parallel line, along a curve to the left, having a radius of 447.00 feet, an arc distance of 185.51 feet to a point of tangency;
20. thence, N-18°-32'-17"-E, along the last mentioned parallel line 43.00 feet to a point;
21. thence N-71°-27'-42"-W, 122.00 feet to a point;
22. thence N-76°-44'-18"-W, 159.97 feet to a point;
23. thence N-74°-03'-17"-W, 109.20 feet to a point;
24. thence N-23°-23'-07"-W, 201.56 feet to a point;
25. thence due north, 145.00 feet to a point;
26. thence N-46°-32'-53"-E, 130.86 feet to a point;
27. thence S-88°-41'-53"-E, 440.11 feet to a point;
28. thence S-41°-13'-28"-E, 139.60 feet to a point;
29. thence due south, 154.69 feet to a point in a line drawn parallel with the northerly boundary of proposed Little Robin Road and distant 18 feet northerly therefrom measured radial thereto;
30. thence northeasterly and easterly along said line drawn parallel with the northerly boundary of the proposed Little Robin Road, along a curve to the right, having a radius of 333.00 feet, an arc distance of 230.24 feet to a point of compound curve;
31. thence continuing along the last mentioned parallel line, along a curve to the right, having a radius of 453.00 feet, an arc distance of 7.25 feet to a point;
32. thence due north, 230.43 feet to a point;
33. thence due east, 0.25 feet to a point;
34. thence due north, 112.50 feet to a point;
35. thence due east, 125.00 feet to a point;
36. thence due north, a distance of 70.17 feet to the line established as the Top of Bank of the existing Lake embankment, and further known and established as a contour line, having an elevation of 580.00 feet, relative to the locally known datum of the United States Geological Survey (U.S.G.S.);
37. thence northerly and following along the last mentioned line described as Top of Bank, 710.00 feet, more or less, to a point where said Top of Bank would be intersected by a line drawn S-00°-04'-17"-W from a point in the southerly right of way line of the Niagara Mohawk Power Corporation as described in Deed recorded in the Erie County Clerk's Office in Liber 2086 of Deeds at page 83 and distant 1029.50 feet westerly from the westerly highway boundary of Campbell Boulevard as measured along said southerly right of way line;
38. thence N-00°-04'-17"-E, 62.50 feet, more or less, to the southerly right of way line of the Niagara Mohawk Power Corporation;

39. thence, S-89°-55'-43"-E along the southerly right of way line of the Niagara Mohawk Power Corporation, 1029.50 feet to the intersection thereof with the westerly highway boundary of Campbell Boulevard;
40. thence S-01°-25'-35"-W along the last mentioned highway boundary, 747.52 feet to the point of place of beginning, said parcel containing 61.73 acres, more or less.

EXCEPTING AND RESERVING from North and South Parcels those portions thereof conveyed by New York State Urban Development Corporation to Parkside Houses, Inc. by Deed dated December 28, 1973 and recorded December 31, 1973 in the Erie County Clerk's Office in Liber 7125 of Deeds at page 521.

ALSO EXCEPTING AND RESERVING from South Parcel those portions thereof conveyed by Corporation for Urban Development and Research of New York to P.W. Braun and Associates, Inc. by Deed dated September 27, 1974, and recorded in the Erie County Clerk's Office in Liber 8213 of Deeds at page 531, and to Ridge View Realty Corp., by Deed dated October 18, 1974 and recorded in the Erie County Clerk's Office in Liber 8221 of Deeds at page 273, and to Palumbo Builders, Inc. by Deed dated March 26, 1975 and recorded in the Erie County Clerk's Office in Liber 8276 of Deeds at page 509.

**CONSENT TO DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS – AUDUBON**

The undersigned, PARKSIDE HOUSES, INC., a New York limited profit housing company and PARKSIDE ASSOCIATES, a New York limited partnership, being the owner of premises in the Town of Amherst, New York, which premises are in the planned community of Audubon, declares and states as follows:

1. That the Offering Plan which has been filed with the Department of Law of the State of New York for the Audubon Association, Inc. and the Declaration of Protective Covenants, Conditions and Restrictions – Audubon, have been presented to it for review; and

2. That it has determined to bring property which it owns within the scheme of the Declaration of Protective Covenants, Conditions and Restrictions – Audubon and to obtain all the benefits provided for in such Declaration and to submit the premises to said Declaration.

NOW THEREFORE, the undersigned hereby declares the following premises to be subject to the Declaration of Protective Covenants, Conditions and Restrictions – Audubon intended to be recorded in the Erie County Clerk's Office simultaneously herewith, together with the benefits and subject to the covenants, conditions and restrictions, easements, charges and liens as provided for in said Declaration:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being fully described in a deed recorded in the Erie County Clerk's Office in Liber 8125 of Deeds at page 521 on December 31, 1973.

IN WITNESS WHEREOF, PARKSIDE HOUSES, INC. and PARKSIDE ASSOCIATES have caused these presents to be signed this 31st day of March 1975..

PARKSIDE HOUSES, INC.

[SEAL]

By /s/ Ann Shipley
Vice President

PARKSIDE ASSOCIATES

By Kenmore Corporation of Western New York
Managing General Partner

By /s/ Victor L. Peterson
President

STATE OF NEW YORK
COUNTY OF ERIE SS.

On this 31st day of March, 1975, before me personally came Ann Shipley to me known, who, being by me duly sworn, did depose and say that she resides at 20 W. 64th Street, New York, New York, that she is the Vice President of PARKSIDE HOUSES, INC., the corporation described in and which executed the above Instrument; that she 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 she signed her name thereto by like order.

F. WILLIAM GRAY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1976

/s/ F. William Gray
NOTARY PUBLIC

STATE OF NEW YORK
COUNTY OF ERIE SS.

On this 14th day of May, 1975, before me personally came Victor L. Peterson to me known, who, being by me duly sworn, did depose and say that he resides at 283 Louvaine Drive, Tonawanda, New York, that he is the President of Kenmore Corporation of Western New York, the Managing General Partner of PARKSIDE ASSOCIATES, the partnership described in and which executed the above 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.

PHYLLIS M. HANNA
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1976

/s/ Phyllis M. Hanna
NOTARY PUBLIC

**CONSENT TO DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS – AUDUBON**

The Undersigned, P.W. Braun & Associates, Inc. a New York corporation, being the owner of premises in the Town of Amherst, New York, which premises are in the planned community of Audubon, declares and states that it has determined to bring such premises within the scheme of a certain Declaration of Protective Covenants, Conditions and Restrictions – Audubon and to obtain all the benefits provided for in such Declaration and to submit the premises to said Declaration.

NOW THEREFORE, the undersigned hereby declares the following premises to be subject to the Declaration of Protective Covenants, Conditions and Restrictions – Audubon to which this consent is attached and which is to be recorded in the Erie County Clerk's Office, together with the benefits and subject to the covenants, conditions and restrictions, easements, charges and liens as provided for in said Declaration:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, designated as Subdivision Lots Nos. 21 and 22 as shown on map entitled "Audubon, Robinwood, Development Parcel 12" filed in Erie County Clerk's office on August 9, 1974 under Map Cover No. 2374.

IN WITNESS WHEREOF, P.W. BRAUN & ASSOCIATES, INC. has caused these presents to be signed this 9th day of Sept. 1974.

[SEAL]

P.W. BRAUN & ASSOCIATES, INC.

By _____ /s/ Peter W. Braun

STATE OF NEW YORK SS.
COUNTY OF ERIE

On this 9th day of September, 1974, before me personally came Peter W. Braun to me known, who, being by me duly sworn, did depose and say that he resides at 65 Meadowstream Drive, Snyder, New York, that he is the President of P.W. Braun & Associates, Inc., the corporation described in and which executed the above 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.

F. WILLIAM GRAY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1976

/s/ F. William Gray
NOTARY PUBLIC

**CONSENT TO DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS – AUDUBON**

The Undersigned, RIDGE VIEW REALTY CORP., a New York corporation, being the owner of premises in the Town of Amherst, New York, which premises are in the planned community of Audubon, declares and states that it has determined to bring such premises within the scheme of a certain Declaration of Protective Covenants, Conditions and Restrictions – Audubon and to obtain all the benefits provided for in such Declaration and to submit the premises to said Declaration.

NOW THEREFORE, the undersigned hereby declares the following premises to be subject to the Declaration of Protective Covenants, Conditions and Restrictions – Audubon to which this consent is attached and which is to be recorded in the Erie County Clerk's Office, together with the benefits and subject to the covenants, conditions and restrictions, easements, charges and liens as provided for in said Declaration:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, designated as Subdivision Lots Nos. 16 and 17 as shown on map entitled "Audubon, Robinwood, Development Parcel 12" filed in Erie County Clerk's Office on August 9, 1974, under Map Cover No. 2374.

IN WITNESS WHEREOF, RIDGE VIEW REALTY CORP. has caused these presents to be signed this 17th day of October 1974.

[SEAL]

RIDGE VIEW REALTY CORP.

By /s/ Leonard A. Peterson Jr.

STATE OF NEW YORK SS.
COUNTY OF ERIE

On this 17th day of October, 1974, before me personally came Leonard A. Peterson, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at 53 Willowlane Drive, Tonawanda, N.Y. 14150 that he is the Vice President of RIDGE VIEW REALTY CORP., the corporation described in and which executed the above 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.

F. WILLIAM GRAY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1976

/s/ F. William Gray
NOTARY PUBLIC

**CONSENT TO DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS – AUDUBON**

The Undersigned, PALUMBO BUILDERS, INC., a New York corporation, being the owner of premises in the Town of Amherst, New York, which premises are in the planned community of Audubon, declares and states that it has determined to bring such premises within the scheme of a certain Declaration of Protective Covenants, Conditions and Restrictions – Audubon and to obtain all the benefits provided for in such Declaration and to submit the premises to said Declaration.

NOW THEREFORE, the undersigned hereby declares the following premises to be subject to the Declaration of Protective Covenants, Conditions and Restrictions – Audubon to which this consent is attached and which is to be recorded in the Erie County Clerk's Office, together with the benefits and subject to the covenants, conditions and restrictions, easements, charges and liens as provided for in said Declaration:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, designated as Subdivision Lot No. 3 as shown on map entitled "Audubon, Robinwood, Development Parcel 12" filed in Erie County Clerk's Office on August 9, 1974, under Map Cover No. 2374.

IN WITNESS WHEREOF, PALUMBO BUILDERS, INC. has caused these presents to be signed this 7th day of April 1975.

[SEAL]

PALUMBO BUILDERS, INC.

BY /s/ Anthony M. Palumbo, Secretary

STATE OF NEW YORK SS.
COUNTY OF ERIE

On this 7th day of April, 1975, before me personally came Anthony M. Palumbo to me known, who, being by me duly sworn, did depose and say that he resides at Town of Tonawanda, N.Y. that he is the Secretary of PALUMBO BUILDERS, INC., the corporation described in and which executed the above 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.

F. WILLIAM GRAY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1976

 /s/ F. William Gray
NOTARY PUBLIC

CERTIFICATE OF INCORPORATION
OF AUDUBON ASSOCIATION, INC.

*Under Section 402 of the Not-For-Profit Corporation Law
and Section 12 of the New York State Urban Development
Corporation Act:*

The undersigned, for the purpose of forming a Not-for-Profit Corporation pursuant to the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is AUDUBON ASSOCIATION, INC. (hereinafter referred to as the Corporation).
2. (a) The Corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or enures to the benefit of, its members, directors, or officers except to the extent permitted under the Not-for-Profit Corporation Law, (b) the purposes for which the Corporation is formed are to preserve, protect and enhance the value of community facilities, to insure the enjoyment of rights, privileges and easements with respect thereto, and to promote and enhance the general health, safety, well-being and social welfare of the people of the planned community of Audubon, in accordance with and as described and defined in a certain Declaration of Protective Covenants, Conditions and Restrictions — Audubon to be recorded in the office of the Erie County Clerk, and such additions and amendments thereto as may hereafter be set forth in one or more Supplemental or Amending Declarations, also to be recorded (such Declaration of Protective Covenants, Conditions and Restrictions — Audubon together with any Supplemental or Amending Declarations being hereinafter referred to as the "Declaration").
3. In furtherance of the Purposes of the Corporation, the Corporation shall have any and all powers provided by law, except as the same may be specifically prohibited, limited or modified by the provisions of the Declaration, and in addition thereto, the Corporation shall have the power, as more particularly set forth in the Declaration: (a) To purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, develop, improve, maintain, and operate, and to aid and subscribe toward the acquisition, development, construction or improvement of, real and personal property, and rights and privileges therein and to sell, lease, donate, or otherwise transfer, mortgage, pledge or otherwise encumber the same, as may be suitable, convenient or otherwise in furtherance of the purposes of the Corporation; (b) To impose and collect the charges and assessments imposed on properties in Audubon as provided for in the Declaration, not for profit but for the purpose of providing for the payment of the expenses of the Corporation including without limitation the cost of construction, improvement, repair, equipping, furnishing, maintenance, and operation of its properties and facilities, the cost of its services, and the principal and interest on its obligations; (c) to fix, charge and collect tolls, fees, rates, rentals and other charges for the use of the property or facilities of, or for the services rendered by the Corporation, not for profit but for the purpose of providing for the payment of the expenses of the Corporation, including without limitation the cost of the construction, improvement, repair, equipping, furnishing, maintenance, and operation of its facilities, the cost of its services, and principal and interest on its obligations; (d) to make contracts, incur liabilities, borrow money, to issue bonds, notes and other obligations, and to secure the same by mortgage or pledge of all or any part of the property, franchises and/or future income of the Corporation, including without limitation the aforementioned assessments and charges; and to guarantee the obligations of others in which it may be interested in furtherance of the purposes of the Corporation; and (e) to otherwise enforce the terms and provisions of the Declaration.
4. This Corporation is a "Type A" not-for-profit corporation as defined under Section 201 of the Not-for-Profit Corporation Law of the State of New York.
5. The office of the Corporation shall be located in the Town of Amherst, County of Erie and State of New York.
6. The territory in which the activities of the Corporation are to be principally conducted is the Town of Amherst and County of Erie.
7. The post office address to which the Secretary of the State of New York shall mail a copy of any notice required by law shall be: New York State Urban Development Corporation, 2222 Millersport Highway, Getzville, New York 14068.

8. The management of the affairs of the Corporation shall be vested in a Board of Directors of not less than three Directors; the exact number of Directors to be established by the By-Laws of the Corporation in accordance with the terms and provisions of the Declaration. The initial Directors of the Corporation, to serve pursuant to the Declaration, are:

1. David F. Parker
2. Joseph B. Lynch
3. David W. Parry
4. Wolfgang H. Rosenberg
5. F. William Gray

9. This Certificate of Incorporation shall not be amended in any manner which conflicts with the Declaration.

10. The incorporator hereof is at least nineteen years of age, a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, I have made, signed, acknowledged and filed this certificate.

ANN SHIPLEY
New York State Urban Development Corporation
1345 Avenue of the Americas
New York, New York 10019

STATE OF NEW YORK)
)SS
COUNTY OF NEW YORK)

On this 15th day of November, 1974, before me personally came Ann Shipley, to me known and known to me to be the same person described in and who executed the foregoing Certificate of Incorporation of Audubon Association, Inc., and she duly acknowledged to me that she executed the same.

S/ MAMIE E. PEARSON
PUBLIC NOTARY, STATE OF NEW YORK

BY-LAWS
OF
AUDUBON ASSOCIATION

**BY-LAWS
OF
AUDUBON ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION

Section 1.01. The name of the corporation is Audubon Association, Inc., hereinafter referred to as the "Association." The principal office of the corporation shall be located in the Town of Amherst, County of Erie and State of New York.

ARTICLE II

DEFINITIONS

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

Section 2.01. **Audubon Facilities:** all land, improvements and other properties heretofore or hereafter owned by or in the possession of the Association.

Section 2.02. **Declaration:** the document entitled "Declaration of Protective Covenants, Conditions and Restrictions — Audubon" (the "Primary Declaration") as it may from time to time be supplemented or amended in the manner provided for in said Primary Declaration.

Section 2.03. **Property:** all such land and the improvements thereon, and such additions as may be made thereto from time to time, as are subject to the Declaration.

Section 2.04. **UDC:** shall mean and refer to the NEW YORK STATE URBAN DEVELOPMENT CORPORATION, its successors and assigns.

Section 2.05. **UDR:** shall mean and refer to the CORPORATION FOR URBAN DEVELOPMENT AND RESEARCH OF NEW YORK, its successors and assigns.

ARTICLE III

MEMBERS

Section 3.01. **Membership:** Initially there shall be two classes of Members:

- A. **Resident Members:** Only Residents shall be members of Class One. All Residents shall upon becoming such, be deemed automatically to be Resident Members and there shall be no other qualification for such membership. A "Resident" shall be defined as provided in the Declaration. Membership as a Resident Member shall terminate when the status of Resident terminates.
- B. **UDC:** UDC shall be the only member of Class Two. UDC's membership and its rights as a member shall terminate on January 1, 1985.

Section 3.02. **Right to Assign Membership:** UDC may assign its membership to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may make successive like assignments. Resident Members may not transfer or assign their membership.

Section 3.03. **Voting Rights of Members:**

- A. UDC shall have no voting rights or any other rights as a Member except as long as UDC is a Member, UDC shall designate the Appointed Directors as provided for herein, and there shall be no amendment of the Certificate of Incorporation or these By-Laws without the consent of UDC.
- B. Except for those rights specifically granted above to UDC, all other rights of membership shall be in the resident Members. Each Resident Member 18 years of age or older and who has been a Resident Member for not less than thirty (30) days, shall have one vote in the Audubon Association ("Voting Members").

Section 3.04. **Assigning Right to Vote:** Any Voting Member may assign his or her right to vote, by written proxy to any other Voting Member, provided that each such proxy shall specify the meeting or issue to which it applies. The form of such proxy may be prescribed from time to time by the Board of Directors.

Section 3.05. **Voting Regulations:** The Board of Directors may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of Members, in regard to proof of age, proof of residency or membership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

ARTICLE IV MEETINGS OF MEMBERS

Section 4.01. **Annual Meeting:** The Annual Meeting of Members shall be held on the first Wednesday in May at the hour of 7:30 P.M. or at such other date and time and at such place as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors in accordance herewith 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 an otherwise valid corporate seal.

Section 4.02. **Special Meetings:** Special Meetings of the Voting Members unless otherwise regulated by statute, may be called at any time by the President by resolution of Board of Directors, or by the President or Secretary at the request in writing of a majority or the Board of Directors or at the request in writing of not less than the lesser of one-tenth (1/10) or 500 of the Voting Members. Such request shall state the purpose of the meeting.

Section 4.03. **Notice of Meetings:** Not less than ten (10) nor more than thirty (30) days before the date of any Annual or Special Meeting of Members, the Association shall provide each Voting Member, written notice stating the time and place of the meeting and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be mailed or otherwise delivered to each Voting Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the Voting Member at his or her post office address as it appears on the records of the Association with postage thereon prepaid. Notwithstanding the foregoing provision, a waiver of notice in writing signed by the Voting Member either before or after the meeting, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such Voting Member. Any meeting of Voting Members, Annual or Special may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. **Quorum:** At each meeting of Members, there shall be present in person or by proxy, to constitute a quorum for the transaction of business at such meeting, not less than the lesser of one hundred Voting Members or one-tenth of the total number of Voting Members. If a quorum is not present at any meeting of Voting Members, a majority of the Voting Members present may adjourn the meeting from time to time to a future day without further notice. The act of a majority of the Voting Members present in person or by proxy at a meeting at which a quorum is present shall be the act of the Members unless the act of a greater number is required by law, or by the Certificate of Incorporation of the Association, or by the Declaration.

ARTICLE V BOARD OF DIRECTORS

Section 5.01. **Number, Selection and Term:** The business and affairs of the Association shall be managed by a Board of Directors. Except as provided for in subparagraph A below, there shall be nine directors who shall be selected as follows:

A. Five Directors have been designated in the Certificate of Incorporation of the Association to serve until the first Annual Meeting of Members after there are 100 Voting Members ("Initial Directors").

- B. Commencing with said first Annual Meeting of Members after there are 100 Voting Members and until January 1, 1985, six Directors shall be appointed by UDC ("Appointed Directors") and three Directors shall be elected by the Voting Members ("Elected Directors"). Appointed Directors need not be Voting Members. Elected Directors shall be Voting Members.
- C. At the first annual meeting after January 1, 1985 all six appointed Directors shall be replaced by Directors elected by the Voting Members and thereafter all Directors shall be Elected Directors.
- D. Both Appointed and Elected Directors shall serve for two year terms except that:
 - 1. one of the Elected Directors initially elected by the Voting Members shall be elected to a one-year term and three of the Appointed Directors initially appointed by UDC shall be appointed to a one-year term.
 - 2. the terms of Directors elected to replace Appointed Directors at the first annual meeting after January 1, 1985 shall be such that the terms of four Directors shall expire one year thereafter and the terms of five Directors shall expire two years thereafter.

Section 5.02. Nominations for Elected Directors: Only Voting Members may be nominated for Elected Director.

Nominations for Elected Directors shall be made initially by a Nominating Committee consisting of a Chairman, who shall be a member of the Board of Directors and two (2) or more Voting Members. The Members of the Nominating Committee shall be appointed by the Board of Directors at least sixty (60) days prior to each Annual Meeting of Members and shall serve only to make nominations for Elected Directors to be elected at that meeting. The Nominating Committee shall make as many nominations for Elected Directors as it shall, in its sole discretion, determine, but not less than the number of vacancies that are to be filled.

The Nominating Committee shall submit its list of Nominees to the Secretary of the Association not less than thirty (30) days prior to the Annual Meeting and such list shall be included in the notice of the Annual Meeting.

In addition to nominations by the Nominating Committee, any other Voting Member may be nominated for Elected Director by a written nominating petition signed by ten (10) or more Voting Members and submitted to the Secretary of the Association not less than ten (10) days prior to the date of the Annual Meeting; provided, however, if any such nominating petition is submitted to the secretary not less than thirty (30) days prior to the Annual Meeting, the person nominated therein shall be included in the list of nominees in the notice of the Annual Meeting.

In addition to the foregoing, write-in votes for Voting Members not previously nominated shall be permitted at the time of voting.

Section 5.03. Voting for Elected Directors: 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 or by the nominating petitions;
- c. provide space for a write-in vote for each vacancy.

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

Section 5.05. Vacancies: Any vacancy of an Appointed or an Initial Director shall be filled by appointment by UDC. Any vacancy of an Elected Director shall be filled at the next meeting of the Board of Directors by the affirmative vote of a majority of the remaining Elected Directors or by the sole remaining Elected Director, or if not previously so filled, shall be filled at the next succeeding Annual Meeting of the Members (nominations and voting therefor to be provided in Sections 5.02 and 5.03 of these By-Laws). Any Director appointed or elected to fill a vacancy shall serve as such until the expiration of their term of the vacated position.

Section 5.05. Removal: UDC may, at its discretion, remove any Appointed or Initial Director and may appoint the successor to fill the unexpired term of the removed Director.

At a duly called meeting of Members, the Voting Members may, by the affirmative vote of two-thirds of all Voting Members, remove any Elected Director (or Director appointed to fill the vacancy of an Elected Director). The Voting Members may thereafter elect the successor to fill the unexpired term of the Elected Director so removed.

Section 5.06. Compensation: No Director shall receive any compensation or salary for his or her services as Director. However, a Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties, and a Director who serves the Association in any other capacity may receive compensation therefor.

Section 5.07. Regular Meetings: The Board of Directors by resolution may provide for the holding of regular meetings and may fix the time and place within the Town of Amherst for the holding of such meetings. Notice of regular meetings need not be given.

Section 5.08. Special Meetings: Special meetings of the Board of Directors may be called by the President and shall be called by the President or Secretary upon the written request of two or more Directors. The person or persons authorized to call such special meetings of the Board may fix any place, within the Town of Amherst as the place for holding such special meetings.

Section 5.09. Notice of Special Meetings: Notice of the time and place of each Special Meeting of the Board of Directors shall be served upon each Director in one of the following ways: by ordinary mail directed to him or her at his or her usual place of business or residence at least five days before the day of the meeting, by delivering the same to him or her personally at least two days before the day of the meeting, by sending the same to him or her by telegram, cablegram or radio message or notifying him or her by telephone at least three days before the day of the meeting. Any Director may waive notice of any meeting by signing a written waiver before, at or after the meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting. Neither the business to be transacted at, nor the purpose of such Special Meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Declaration, by the Certificate of Incorporation, or by the By-Laws.

Section 5.11. Quorum and Voting: At all meetings of the Board of Directors, two-thirds of the Directors shall constitute a quorum for the transaction of business. In the absence of a quorum, the Directors present, by majority vote and without further notice, may adjourn the meeting from time to time until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. Except in cases in which it is by statute, by the Declaration or these By-Laws otherwise provide, a vote of a majority of those in attendance at a duly constituted meeting shall be sufficient to elect and pass any measure.

ARTICLE VI OFFICERS

Section 6.01. Officers: The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary and a Treasurer and such other officers as may be elected by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 6.02. Election and Term: Officers shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each Annual Meeting of Members, to hold office until a successor shall have been duly elected. 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 6.03. Resignation and Removal: Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.04. President: The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, and if there is no Chairman of the Board, shall preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board.

Section 6.05. Vice President: Any Vice President shall be capable of performing all of the duties of the President. He or she may sign in the name of the Corporation any and all contracts or other instruments authorized by the Board, and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

Section 6.06. **Secretary:** The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, keep the minutes of all meetings, shall have charge of the seal of the Corporation and the corporate records and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be able of performing all of the duties of the Secretary.

Section 6.07. **Treasurer:** The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they require it, with respect to all his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President or the Board.

Section 6.08. **Other Officers:** Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

ARTICLE VII

COMMITTEES

Section 7.01. **Committees:** The Board of Directors, by resolution duly adopted, may designate one or more committees; each to have a Chairman and two or more members which may or may not be Directors, and may delegate such powers and duties to them as the Board may deem advisable; provided, however, that no such committee shall have the authority to approve an amendment to the Certificate of Incorporation of the Association, the By-Laws or a plan or merger or consolidation.

Section 7.02. **Standing Committees:** The standing committee of the Association shall be the Architectural Standards Committee and such other committees as the Board of Directors shall deem desirable. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration.

Section 7.03. **Rules:** Each committee may adopt rules and regulations 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 designating the committee or with rules adopted by the Board of Directors.

ARTICLE VIII

FINANCE

Section 8.01. **Fiscal Year:** The fiscal year of the Association shall be the twelve (12) calendar months ending May 31st of each year, unless otherwise provided by the Board of Directors.

Section 8.02. **Annual Reports & Budgets:** There shall be prepared annually at the direction of the Board of Directors, 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, and a budget for the ensuing year, which shall be submitted at the Annual Meeting of the Association, and will be made available to all Resident Members.

ARTICLE IX

BOOKS AND RECORDS

Section 9.01. **Books and Records:** The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member or Owner of any portion of the Property. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or Owner of any portion of the Property at the principal office of the Association.

ARTICLE X

CERTIFICATES OF MEMBERSHIP

Section 10.01. **Certificates of Membership:** The Board of Directors may provide for the issuance of certificates evidencing membership in the Association, which shall be in such form as may be determined by the Board of Directors. The name and address of each Resident Member and the date of issuance of the certificate shall be entered on the records of the Association. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefor, upon such terms and conditions as the Board of Directors may determine or prescribe.

ARTICLE XI
CORPORATE SEAL

Section 11.01. **Corporate Seal:** The Board of Directors shall provide a suitable corporate seal, bearing the name of the corporation, the year of its incorporation and the words "New York."

ARTICLE XII
UDC ACT

Section 12.01. The Association is organized by the New York State Urban Development Corporation, pursuant to the New York State Urban Development Corporation Act of 1968 and the Not-for-Profit Corporation Law of New York. All the functions of this corporation are subject to the provisions of such laws.

ARTICLE XIII
AMENDMENTS

Section 13.01. These By-Laws may be altered, repealed or amended and new By-Laws may be adopted at any regular or special meeting of the Voting Members, by vote of a majority of the Voting Members present in person or by proxy, or at any regular or special meeting of the Board of Directors by the affirmative vote of a 3/4 of the whole Board of Directors; provided, however, until January 1, 1985 UDC shall approve any amendment of these By-Laws. In addition, these By-Laws shall not be amended in any manner which conflicts with the Declaration or the Certificate of Incorporation; and 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.