

**WESTLAKE**

**Legal Documents**

**WESTLAKE ASSOCIATION, INC.**

Certificate of Incorporation

By - Laws

**DECLARATION OF COVENANTS  
AND RESTRICTIONS**

ACHENBACH REALTY COMPANIES

Essex, Connecticut

WESTLAKE ASSOCIATION, INC.

FIRST: WE, THE UNDERSIGNED, GEORGE J. ACHENBACH, EDWARD COLE, ROBERT FUSARI, JERRY BROPHY and LARRY PINCO, the post office address of all of whom is Essex Plaza, Brookside Lane, Essex, Connecticut, each being at least twenty-one years of age, do hereby associate ourselves as a body politic and corporate under the Nonstock Corporation Act of the State of Connecticut.

SECOND: The name of the corporation is:

WESTLAKE ASSOCIATION, INC.

THIRD: The Association is not formed for pecuniary gain or profit, direct or indirect, to itself or its members. The purposes for which the Association is formed are as follows:

To organize and operate a nonprofit civic organization, which shall be organized and operated exclusively for the promotion of the health, safety, common good and social welfare of the Owners of Lots and Living Units and Residents residing within the real property described in Schedule A, annexed hereto and made a part hereof, and within such additional real property as may be brought within the jurisdiction of the Association.

Said real property and such additional real property as may be brought within the jurisdiction of the Association are hereinafter referred to, collectively, as "The Properties".

Additions to The Properties shall be made only in accordance with the provisions of the Declaration; such additions, when properly made, shall extend the jurisdiction, functions, rights, duties and membership of the Association to such additions.

For the general purpose aforesaid, and limited to that purpose (hereinafter sometimes referred to as the "Purpose"), the Association shall have the following specific purposes:

1. To do any and all lawful things and acts within its powers, as hereinafter set forth, which the Association from time to time may deem to be appropriate in order to benefit, aid, promote and provide for peace, health, safety, convenience, comfort and the general welfare of the Owners of Lots and Living Units and Residents residing within The Properties;

2. To assist each Cluster Association in the conduct of its activities and performance of its responsibilities relating to the operation, maintenance and development of Residential Cluster Reserved Areas within its jurisdiction and control;

3. To aid, promote, and provide for the establishment, advancement and maintenance of any and all such utilities, systems, services and facilities within The Properties as shall promote the general welfare of the Owners, Tenants and Residents within The Properties and in connection therewith to promote the health, safety, education, culture, recreation, comfort or convenience of such persons to the extent and in the manner deemed desirable by the Board of Directors;

4. To exercise all the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth and undertaken in the Declaration, as the same may be amended or supplemented from time to time as therein provided;

5. To operate and maintain, or provide for the operation and maintenance of, any properties which may from time to time be designated or conveyed to the Association for operation and maintenance as areas serving the general welfare of the Owners, Tenants and Residents within The Properties with regard to health, safety, education, culture, recreation, comfort and convenience, all pursuant to the Declaration and subject to the provisions thereof;

6. To enforce all covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements, and liens provided in the Declaration, and to assess, collect, and disburse the charges created under such Declaration and to use the proceeds of such charges for the promotion of any and all of the purposes heretofore mentioned in any lawful manner determined by the Board of Directors, pursuant to and subject to the provisions of the Declaration.

Solely in aid of the Purposes of the Association, the Association shall have the following powers:

1. 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 or improvement, of real and personal property, and rights and privileges therein, suitable or convenient for the Purposes of the Association;

2. To purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, develop, construct, erect, improve, manage, maintain, and operate, and to aid and subscribe toward the acquisition, construction or improvement of, systems, utilities, master antenna towers or aerials, buildings, machinery,

equipment and facilities, and any other property or appliances which may appertain to or be useful in the accomplishment of the Purposes of the Association;

3. To impose, collect and disburse dues and assessments in accordance with and subject to the Declaration;

4. To solicit, receive and accept donations of money or property or any interest in property from the State of Connecticut, City of Middletown, or any subdivision of either, the Federal government or any agency or instrumentality thereof, or from any person or entity;

5. To make contracts, incur liabilities, and borrow money and to issue bonds, notes or other obligations and secure the same by mortgage of all or any part of the property, franchises or income of the Association and to guarantee the obligations of others in which it may be interested for the furtherance of the Purposes of the Association, provided that any such borrowing, issuance of bonds, notes, or other obligations, mortgaging or guaranteeing shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose or purposes;

6. To undertake and prepare or cause to be prepared studies, plans, recommendations, budgets and any other similar things (for submission to any public authority, civic group or association, or for its own use) which relate to any phase or aspect of the physical, social or cultural development of The Properties, and to create, or cause to be created, committees and other organizations for the supervision and implementation thereof;

7. To engage in and sponsor civic activities relating to the cultural, educational, social and civic affairs of the Owners, Tenants and Residents within The Properties, and to appear before and represent its Members in or before other civic groups, associations, boards or other like organizations;

8. To sponsor, engage in, conduct and encourage cultural, educational, social and civic and other beneficial activities relating to The Properties;

9. To grant easements or rights of way to any public utility corporation or agency;

10. To render direct financial assistance, to make direct contributions or grants of money, or to make loans or advances to the State of Connecticut or to the City of Middletown, or any agency, subdivision, authority or instrumentality of said State or City, or to any Association or any civic or other non-profit organization, when in the opinion of the Board of Directors such assistance, contribution or grant is desirable for and beneficial to the social welfare of the Owners, Tenants and Residents within The Properties, provided that any such

financial assistance, contributions, grants of money, loans or advances shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose or purposes;

11. To dedicate or transfer all or any part of the Common Land to the State of Connecticut, City of Middletown, or any subdivision of either, the Federal government or any agency or instrumentality thereof, or to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action hereunder is sent to every Member at least ninety (90) days in advance of any action taken;

12. To enforce any restrictive covenant, and any covenant or other obligation providing for the payment of any charges, assessments or fees, which are a part of the Declaration or created by any contract, deed, or other instrument executed pursuant to the provisions of said Declaration, not for profit but for the purpose of providing for the payment of the expenses of the Association, the cost of the construction, improvement, repair, equipping, furnishing, maintenance, and operation of its facilities, the cost of its services, and the principal and interest on its obligations and to create any facilities, boards or associations deemed to be convenient by the Board of Directors for such enforcement;

13. To create, cause to be created, or to assist in or approve the creation of Cluster Associations which shall be non-profit civic organizations having automatic membership for the property owners in a certain area or areas within The Properties and which shall have the purpose and function of enhancing the peculiar common interests of the particular area or areas and the inhabitants thereof;

14. To have and exercise to the extent necessary or desirable for the accomplishment of the aforesaid specific purposes and to the extent that they are not inconsistent with the Purposes of the Association, any and all powers conferred upon corporations of a similar character by the General Statutes of the State of Connecticut.

FOURTH: The principal office of the Association shall be in the Town of Middletown, Connecticut.

FIFTH: The Association is not authorized to issue capital stock or pay dividends.

SIXTH: The following words and terms, when used in this Certificate of Incorporation shall have the following meanings:

ASSOCIATION – Westlake Association, Inc., its successors and assigns.

DIRECTORS – The Board of Directors of the Association.

THE PROPERTIES – All the real property at any time subject to the Declaration or any Supplementary Declaration made pursuant thereto.

DECLARATION – The Declaration of Covenants, Conditions and Restrictions, applicable to The Properties, including any Supplementary Declaration, as the same may be amended.

DEVELOPER – George J. Achenbach, his heirs, successors and assigns, if such heirs, successors and assigns should acquire more than one undeveloped Lot from Developer for the purpose of development.

COMMON LAND – Land devoted to the social welfare, use and enjoyment of Owners and Residents of The Properties and actually conveyed to the Association by one or more deeds and designated “Common Land” in such deed or deeds.

RESIDENTIAL CLUSTER – Land comprising a part of The Properties and shown and designated as “Residential Cluster No. ” on a subdivision map filed or recorded in the office of the appropriate Town or City Clerk.

CLUSTER ASSOCIATION – A nonstock corporation whose membership consists of the Owners of Lots or Living Units within a Residential Cluster.

There shall be as many Cluster Associations as there are Residential Clusters located on The Properties.

RESIDENTIAL CLUSTER RESERVED AREA – Land devoted to the social welfare, use and enjoyment of the Owners and Residents of Lots and Living Units in a Residential Cluster and which has been actually conveyed to a Cluster Association by one or more deeds and designated “Residential Cluster No. Reserved Area” in such deed or deeds.

LOT – Any Lot shown on any recorded subdivision map of The Properties except Common Land and Residential Cluster Reserved Areas.

LIVING UNIT – Any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence, including rental apartments, cooperative apartments, and condominium units.

**OWNER** – The record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot or Living Unit within The Properties. A Tenant, as hereinafter defined, shall not be deemed an Owner, as herein defined.

No mortgagee shall be deemed an Owner until such mortgagee has acquired fee title to a Lot or Living Unit pursuant to a foreclosure or proceeding in lieu thereof.

**TENANT** – Any one (1) or more persons, other than an Owner, residing on a Lot or in a Living Unit pursuant to an agreement made by him or them with the Owner.

**RESIDENT** – (1) Each Tenant, and

(2) Members of the immediate family of each Owner and of each such Tenant actually living in the same household with such Owner or such Tenant.

**MEMBER** – A Member of the Association.

**YEAR** – A calendar year.

**SEVENTH: A.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall automatically be a Member of the Association, provided that any such person or entity holding such interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separate from ownership of a Lot or a Living Unit which is subject to assessment.

**B.** The Association shall have two classes of voting membership:

(1) **Class A.** Class A members shall be all those Owners as defined in Paragraph A, Article Seventh hereof, with the exception of the Developer. Class A members shall be entitled to one vote for each Lot and/or Living Unit in which they hold the interests required for membership by Paragraph A, Article Seventh hereof. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, shall have the right to attend all meetings of the Association, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

(2) **Class B.** Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot and/or Living Unit in which he holds the interest required for membership by Paragraph A, Article Seventh hereof, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) July 1, 1978.

(3) Provided, however, that the vote of any Owner or Owners of Living Units, other than condominium units, shall not be entitled to a weight greater than forty-nine (49%) per cent of the total vote expressed on any issue on which the Association votes.

**C.** For purposes of determining the votes allowed under this Article Seventh, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

**D.** The voting rights of a corporation which is the Owner of a Lot or Living Unit shall be exercised only by a person named in a certificate signed by an officer of the corporation and filed with the clerk of the Association of which the corporation is a member. Any such certificate filed by a corporation shall be valid until revoked or superseded by a subsequent certificate, or until the corporation ceases to be a member of the Association.

**E.** Any Member who is in violation of the Declaration, as determined by the Directors, or who fails to pay any annual or special assessment established by the Directors or the Association shall not be entitled to vote during any period in which such annual or special assessment is due and unpaid or in which such violation continues.

**EIGHTH: A.** The Association shall have not less than five (5) or more than nine (9) Directors who need not be Members of the Association.

**B.** The initial Board of Directors shall be composed of seven (7) individuals who shall be elected by the incorporators at the organization meeting of the Association and shall constitute the "Charter Members" of the Board of Directors. The term of office of one (1) of such Charter Members shall expire at the time of each of the first seven (7) anniversaries of their election.

**C.** Upon the expiration of the first term of office of a Charter Member of the Board of Directors, his successor shall be elected for a term of five (5) years by a majority vote of the Members present at a meeting called for said purpose.

**D.** If the office of any Charter Member shall become vacant, the unexpired portion of his term of office shall be filled by a majority vote of the remaining Charter Members and the person elected to fill such vacancy shall be deemed a Charter Member.

If the office of any Director other than a Charter Member shall become vacant, the unexpired portion of his term of office shall be filled by a majority vote of all the remaining Directors.

E. Except as provided in Paragraphs B and D, Article Eighth hereof, all the Directors of the Association shall be elected by the Members at their annual meeting for a term of five (5) years.

F. Directors elected by the Membership shall take office at the first annual meeting of the Board of Directors following their election.

G. The Directors shall take all such measures as may be necessary to:

(a) restrict the use of the Common Land and Residential Cluster Reserved Areas to non-commercial uses devoted to the general welfare, including the health, safety, education, culture, recreation, comfort and convenience of the persons entitled to the use thereof;

(b) provide for the maintenance of those portions of such land as may require maintenance and provide funds for any such necessary maintenance;

(c) obtain and at all times maintain in force public liability insurance in such amounts and coverages as may be reasonably adequate to protect the Association against claims for damages or personal injury (including death) arising or resulting from its ownership of the Common Land;

(d) keep all the improvements from time to time owned by the Association and existing on the Common Land insured against loss by fire or other casualty, which insurance shall include the standard extended coverage endorsement and be in such amounts as may be necessary to prevent the Association's becoming a co-insurer thereof; and,

(e) recover all amounts due the Association on account of any loss sustained by reason of any casualty, condemnation or otherwise.

H. The Directors shall:

(a) adopt and publish rules and regulations governing the use of the Common Land and the facilities thereon and the personal conduct of the Members and Residents and their guests thereon.

NINTH: The following provisions are hereby adopted for the purpose of defining, limiting and regulating the powers of the Association and of the Directors and Members:

1. The books, records and papers of the Association shall at all times,

during reasonable business hours, be subject to inspection by any Member. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

2. The Association may enter into contracts and transact business with any Director or Member or with any corporation, partnership, trust or association of which any Director or Member is a stockholder, director, officer, partner, member, trustee, beneficiary, employee or in which any Director or Member is otherwise interested; and such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or Member has or may have an interest therein which is or might be adverse to the interests of the Association, provided that the fact of such interest shall be disclosed or known to the other Directors or Members acting upon such contract or transaction; and such Director or Member may be counted in determining the existence of a quorum at any meeting of the Members or Board of Directors which shall authorize any such contract or transaction and may vote thereat to authorize any contract or transaction, with like force and effect as if he were not so interested. No Director or Member having disclosed or made known an adverse interest shall be liable to the Association or any Member or creditor thereof or any other person for any loss incurred by the Association under or by reason of any such contract or transaction, nor shall any such Director or Member be accountable for any gains or profits realized therefrom.

3. Any contract, transaction or act of the Association or of the Board of Directors which shall be ratified by a majority of the Members having voting powers and attending any annual meeting, or attending any special meeting called for such purpose, shall so far as permitted by law be as valid and as binding as though ratified by every Member of the Association, provided, that a quorum of Members shall be present at any such meeting.

4. Any person who is serving or has served as a Director, officer or employee of the Association may be indemnified by the Association, insofar as it is able, and insofar as the Board of Directors shall by resolution determine, against expense actually and necessarily incurred by him in connection with the defense of any action, suit or proceedings in which he is made a party by reason of having been such a Director, officer or employee, except in relation to matters as to which such person is adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty.

5. Members holding ten (10%) per cent of the total votes eligible to be cast, present in person or by proxy, shall constitute a quorum at any meeting of Members, except as otherwise required by State Statute, this Certificate of Incorporation, the Declaration, or By-Laws. If a quorum is not present at any meeting of Members, a majority of the Members present in person or by proxy may adjourn the meeting from time to time without notice, other than

announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Any business may be transacted at the adjourned meeting as originally noticed.

6. The Association reserves the right to make from time to time and at any time any amendment to its Certificate of Incorporation, as then in effect, which may be now or may hereafter be authorized by law, provided, however, (a) that no amendment shall be made except upon the affirmative vote of (i) two-thirds (2/3) of the Board of Directors then in office, and, (ii) seventy-five (75%) per cent of the Members entitled to vote and (b) that no such amendment (i) may change the Purposes of the Association and (ii) shall be made which limits or terminates the term of office of any Charter Member of the Board of Directors or his duly elected successor or successors.

7. The Association may be dissolved only with the assent given in writing and signed by the Members entitled to cast two-thirds (2/3) of the votes of each class of its membership. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of the assets (which shall be consonant with Paragraph 8, Article Ninth hereof) shall be mailed to every member at least ninety (90) days in advance of any action taken.

8. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to (1) the State of Connecticut or to the City of Middletown, or any agency, subdivision, authority or instrumentality of said State or City or to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the Declaration, unless made in accordance with the provisions of such Declaration.

9. Additions to The Properties may be made only in accordance with the provisions of the Declaration. Such additions, when properly made under the applicable covenants, shall extend the jurisdiction, functions, duties, and membership of this Association to such additions.

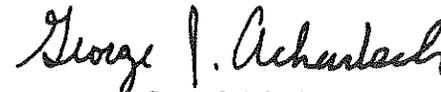
10. Subject to the provisions of the Declaration, and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to

all Members at least ninety (90) days in advance of any action taken and shall set forth the purpose of the meeting.

TENTH: The duration of the Association shall be perpetual.

IN WITNESS WHEREOF, we have signed this Certificate of Incorporation this 23rd day of July, 1971.

WITNESS:

  
George J. Achenbach

  
Edward Cole

  
Chester J. Dzialo

  
Robert Fusari

  
Jerry Brophy

  
Larry Pinco

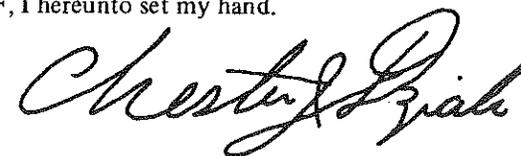
STATE OF CONNECTICUT:

: ss. Middletown

COUNTY OF MIDDLESEX:

On this 23rd day of July, 1971, before me, Chester J. Dzialo, the undersigned officer, personally appeared George J. Achenbach, Edward Cole, Robert Fusari, Jerry Brophy and Larry Pinco, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained as their free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand.

  
Chester J. Dzialo  
Notary Public

SCHEDULE A

All those certain pieces or parcels of land, together with all buildings now or hereafter placed thereon, situated on the northerly side of Smith Street, in the Town of Middletown, County of Middlesex and State of Connecticut, shown and designated as (1) Lots Nos. 1 through 150, inclusive, and Lots Nos. 152 through 202, inclusive, (2) "Brookside Drive", (3) "Inverness Lane", (4) "Inverness Square", (5) "Highlands Crescent", (6) "Stirling Court", (7) "Braeburn Lane", (8) "Heather Square", (9) "Afton Terrace", (10) "Area To Be Dedicated as Part of Public Street", and (11) "Residential Cluster No. 1 Reserve Area" on the following entitled maps: (a) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" = 40', Date: March 26, 1971, Sheet 1 of 3", (b) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" = 40', Date: March 26, 1971, Sheet 2 of 3", and (c) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" = 40', Date: March 26, 1971, Sheet 3 of 3", which maps are on file in the Middletown Town Clerk's Office as (i) Map No. 3232, (ii) Map No. 3233, and (iii) Map No. 3234, respectively, to which maps reference is hereby made and may be had for a more particular description and location of said premises.

THE HIGHLANDS AT  
WESTLAKE ASSOCIATION, INC.

BY-LAWS  
ARTICLE I  
OFFICES

Section 1. The Association shall be located in the Town of Middletown, Connecticut.

Section 2. The principal office shall be in the Town of Middletown, Connecticut.

Section 3. The Association may also have offices at such other places as the Board of Directors may from time to time determine or the business of the Association may require.

ARTICLE II  
DEFINITIONS

Section 1. The following words and terms when used in these By-Laws shall have the following meanings:

ASSOCIATION – The Highlands at Westlake Association, Inc., its successors and assigns.

CERTIFICATE OF INCORPORATION – The Certificate of Incorporation of The Highlands of Westlake Association, Inc.

DIRECTORS – The Board of Directors of the Association.

THE PROPERTIES – All the real property described in Schedule A, annexed hereto and made a part hereof.

DECLARATION – The Declaration of Covenants, Conditions and Restrictions applicable to The Properties, including any Supplementary Declaration, as the same may be amended.

DEVELOPER – George J. Achenbach, his heirs, successors and assigns, if such heirs, successors and assigns should acquire more than one undeveloped Lot from Developer for the purpose of development.

RESIDENTIAL CLUSTER – Land comprising a part of "Westlake" and shown and designated as "Residential Cluster No. 1" on a subdivision map filed or recorded in the office of the appropriate Town or City Clerk.

**RESIDENTIAL CLUSTER NO. 1 RESERVED AREA** – Land devoted to the social welfare, use and enjoyment of the Owners and Residents of Lots and Living Units in The Properties and which has been actually conveyed to the Association by one or more deeds and designated “Residential Cluster No. 1 Reserved Area” in such deed or deeds.

**LOT** – Any Lot shown on any recorded subdivision map of The Properties except Residential Cluster No. 1 Reserved Areas.

**LIVING UNIT** – Any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence, including rental apartments, cooperative apartments, and condominium units.

**OWNER** – The record owner, whether one (1) or more persons or entities, of a fee title to any Lot or Living Unit within The Properties. A Tenant, as hereinafter defined, shall not be deemed an Owner, as herein defined.

No mortgagee shall be deemed an Owner until such mortgagee has acquired fee title to a Lot or Living Unit pursuant to a foreclosure or proceeding in lieu thereof.

**TENANT** – Any one (1) or more persons, other than an Owner, residing on a Lot or in a Living Unit pursuant to an agreement made by him or them with the Owner.

**RESIDENT** – (1) Each Tenant; and

(2) Members of the immediate family of such Owner and of each such Tenant actually living in the same household with such Owner of such Tenant.

**MEMBER** – A Member of the Association.

**YEAR** – A calendar year.

### **ARTICLE III ASSOCIATION PURPOSES**

Section 1. The Association is not formed for pecuniary gain or profit, direct or indirect, to itself or its members. The purposes for which the Association is formed are as follows:

To organize and operate a nonprofit civic organization, which shall be organized and operated exclusively for the promotion of the health, safety, common good and social welfare of the Owners of Lots and Living Units and Residents residing within the real property described in Schedule A, annexed hereto and made a part hereof.

Said real property is hereinafter referred to as “The Properties”.

For the general purpose aforesaid, and limited to that purpose (hereinafter sometimes referred to as the “Purpose”), the Association shall have the following specific purposes:

1. To do any and all lawful things and acts within its powers, as hereinafter set forth, which the Association from time to time may deem to be appropriate in order to benefit, aid, promote and provide for peace, health, safety, convenience, comfort and the general welfare of the Owners of Lots and Living Units and Residents residing within The Properties;

2. To aid, promote, and provide for the establishment, advancement and maintenance of any and all such utilities, systems, services and facilities within The Properties as shall promote the general welfare of the Owners, Tenants and Residents within The Properties and in connection therewith to promote the health, safety, education, culture, recreation, comfort or convenience of such persons to the extent and in the manner deemed desirable by the Board of Directors;

3. To exercise all the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth and undertaken in the Declaration as the same may be amended or supplemented from time to time as therein provided;

4. To operate and maintain, or provide for the operation and maintenance of, any properties which may from time to time be designated or conveyed to the Association for operation and maintenance as areas serving the general welfare of the Owners, Tenants and Residents within The Properties with regard to health, safety, education, culture, recreation, comfort and convenience, all pursuant to the Declaration and subject to the provisions thereof;

5. To enforce all covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements, and liens provided in the Declaration, and to assess, collect, and disburse the charges created under such Declaration and to use the proceeds of such charges for the promotion of any and all of the purposes heretofore mentioned in any lawful manner determined by the Board of Directors, pursuant to and subject to the provisions of the Declaration.

Solely in aid of the Purposes of the Association, the Association shall have the following powers:

1. 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 or improvement, of real and personal

property, and rights and privileges therein, suitable or convenient for the Purposes of the Association;

2. To purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, develop, construct, erect, improve, manage, maintain, and operate, and to aid and subscribe toward the acquisition, construction or improvement of, systems, utilities, master antenna towers or aerials, buildings, machinery, equipment and facilities, and any other property or appliances which may appertain to or be useful in the accomplishment of the Purposes of the Association;

3. To impose, collect and disburse dues and assessments in accordance with and subject to the Declaration;

4. To solicit, receive and accept donations of money or property or any interest in property from the State of Connecticut, City of Middletown, or any subdivision of either, the Federal government or any agency or instrumentality thereof, or from any person or entity;

5. To make contracts, incur liabilities, and borrow money and to issue bonds, notes or other obligations and secure the same by mortgage of all or any part of the property, franchises or income of the Association and to guarantee the obligations of others in which it may be interested for the furtherance of the Purposes of the Association;

6. To undertake and prepare or cause to be prepared studies, plans, recommendations, budgets and any other similar things (for submission to any public authority, civic group or association, or for its own use) which relate to any phase or aspect of the physical, social or cultural development of Residential Cluster No. 1 Reserved Areas, and to create, or cause to be created, committees and other organizations for the supervision and implementation thereof;

7. To engage in and sponsor civic activities relating to the cultural, educational, social and civic affairs of the Owners, Tenants and Residents within The Properties, and to appear before and represent its Members in or before other civic groups, associations, boards or other like organizations;

8. To sponsor, engage in, conduct and encourage cultural, educational, social and civic and other beneficial activities relating to The Properties;

9. To grant easements or rights of way to any public utility corporation or agency;

10. To render direct financial assistance, to make direct contributions or grants of money, or to make loans or advances to the State of Connecticut or to the City of Middletown, or any agency, subdivision, authority or instrumentality

of said State or City, or to any Association or any civic or other non-profit organization, when in the opinion of the Board of Directors such assistance, contribution or grant is desirable for and beneficial to the social welfare of the Owners, Tenants and Residents within The Properties;

11. To dedicate or transfer all or any part of Residential Cluster No. 1 Reserved Areas to the State of Connecticut, City of Middletown, or any subdivision of either, the Federal Government or any agency or instrumentality thereof, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action hereunder is sent to every Member at least ninety (90) days in advance of any action taken;

12. To enforce any restrictive covenant, and any covenant or other obligation providing for the payment of any charges, assessments or fees, which are a part of the Declaration or created by any contract, deed, or other instrument executed pursuant to the provisions of said Declaration, not for profit but for the purpose of providing for the payment of the expenses of the Association, the cost of construction, improvement, repair, equipping, furnishing, maintenance, and operation of its facilities, the cost of its services, and the principal and interest on its obligations and to create any facilities, boards or associations deemed to be convenient by the Board of Directors for such enforcement;

13. To have and exercise to the extent necessary or desirable for the accomplishment of the aforesaid specific purposes and to the extent that they are not inconsistent with the Purposes of the Association, any and all powers conferred upon corporations of a similar character by the General Statutes of the State of Connecticut.

Section 2. Subject to the provisions of the Declaration, and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all Members at least ninety (90) days in advance of any action taken and shall set forth the purpose of the meeting.

Section 3. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that

such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to (1) the State of Connecticut or to the City of Middletown, or any agency, subdivision, authority or instrumentality of said State or City or to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the Declaration, unless made in accordance with the provisions of such Declaration.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

Section 1. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall automatically be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separate from ownership of a Lot or a Living Unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all those Owners as defined in Section 1, Article IV hereof with the exception of the Developer. Class A members shall be entitled to one vote for each Lot and/or Living Unit in which they hold the interests required for membership by Section 1, Article IV hereof. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, shall have the right to attend all meetings of the Association, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

(b) Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot and/or Living Unit in which he holds the interest required for membership by Section 1, Article IV hereof, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;  
or
- (2) July 1, 1978.

(c) Provided, however, that the vote of any Owner or Owners of Living

Units, other than condominium units, shall not be entitled to a weight greater than forty-nine (49%) per cent of the total vote expressed on any issue on which the Association votes.

Section 3. For purposes of determining the votes allowed under this Article IV, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

Section 4. The voting rights of a corporation which is the Owner of a Lot or Living Unit shall be exercised only by a person named in a certificate signed by an officer of the corporation and filed with the clerk of the Association of which the corporation is a member. Any such certificate filed by a corporation shall be valid until revoked or superseded by a subsequent certificate, or until the corporation ceases to be a member of the Association.

Section 5. Any Member who is in violation of the Declaration, as determined by the Board of Directors, or who fails to pay any annual or special assessment established by the Board of Directors or the Association shall not be entitled to vote during any period in which such annual or special assessment is due and unpaid or in which such violation continues. If the Directors adopt and publish rules and regulations governing the use of the Residential Cluster No. 1 Reserved Areas and facilities and the personal conduct of any person thereon, the Directors may, in their discretion, suspend, for a period not to exceed thirty (30) days, the rights of any such person for violation of such rules and regulations.

#### ARTICLE V BOARD OF DIRECTORS

Section 1. The Association shall have not less than five (5) or more than nine (9) Directors who need not be Members of the Association.

Section 2. The initial Board of Directors shall be composed of seven (7) individuals who shall be elected by the incorporators at the organization meeting of the Association and shall constitute the "Charter Members" of the Board of Directors. The term of office of one (1) of such Charter Members shall expire at the time of each of the first seven (7) anniversaries of their election.

Section 3. Upon the expiration of the first term of office of a Charter Member of the Board of Directors, his successor shall be elected for a term of five (5) years by a majority vote of the Members present at a meeting called for said purpose.

Section 4. If the office of any Charter Member shall become vacant, the unexpired portion of his term of office shall be filled by a majority vote of the remaining Charter Members and the person elected to fill such vacancy shall be deemed a Charter Member.

If the office of any Director other than a Charter Member shall become vacant, the unexpired portion of his term of office shall be filled by a majority vote of all the remaining Directors.

Section 5. Except as provided in Sections 2 and 4, Article V hereof, the Directors of the Association shall be elected by the Members at their annual meeting for a term of five (5) years.

Section 6. Directors elected by the Membership shall take office at the first annual meeting of the Board of Directors following their election.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. The Board of Directors shall have power:

(a) To call special meetings of the Members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Article X, Section 2 hereof.

(b) To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever.

(c) To establish, levy and assess, and collect the assessments or charges referred to in Article VI of the Declaration.

(d) To adopt and publish rules and regulations governing the use of the Residential Cluster No. 1 Reserved Areas and facilities and the personal conduct of the Members and their guests thereon.

(e) To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to the meeting or to Members in the covenants.

(f) In the event that any member of the Board of Directors of the Association shall be absent from five (5) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said fifth absence occurs, declare the office of said Director to be vacant.

Section 2. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting

of the Members or at any special meeting when such is requested in writing by one-fourth (1/4) of the voting membership, as provided in Article X, Section 2 hereof.

(b) To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.

(c) As more fully provided in Article VI of the Declaration applicable to The Properties:

(1) To fix the amount of the annual assessment against each Lot and/or Living Unit for each assessment period at least thirty (30) days in advance of such date or period and, at the same time;

(2) To prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member, and, at the same time;

(3) To send written notice of each assessment to every Owner subject thereto.

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

(e) To take all such measures as may be necessary to:

(1) restrict the use of the Residential Cluster No. 1 Reserved Areas to non-commercial uses devoted to the social welfare, including the health, safety, education, culture, recreation, comfort and convenience of the persons entitled to the use thereof;

(2) provide for the maintenance of those portions of such land as may require maintenance and provide funds for any such necessary maintenance;

(3) obtain and at all times maintain in force public liability insurance in such amounts and coverages as may be reasonably adequate to protect the Association against claims for damages or personal injury (including death) arising or resulting from its ownership of Residential Cluster No. 1 Reserved Areas;

(4) keep all the improvements from time to time owned by the Association and existing on the Residential Cluster No. 1 Reserved Areas insured against loss by fire or other casualty, which insurance shall include the standard

extended coverage endorsement and be in such amounts as may be necessary to prevent the Association's becoming a co-insurer thereof; and

(5) recover all amounts due the Association on account of any loss sustained by reason of any casualty, condemnation or otherwise.

## ARTICLE VII MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular meetings of the Board of Directors shall be held on such dates and at such places as shall be designated from time to time by the Board of Directors.

Section 2. Special meetings of the Board of Directors may be called at any time by the President or by a majority of the Board of Directors by vote at a meeting, or in writing with or without a meeting. Such special meetings shall be held at such place or places as may be designated from time to time by the Board of Directors. In the absence of such designation such meetings shall be held at such places as may be designated in the calls.

Section 3. Except as provided in Section 3, Article VII hereof, notice of the place, day and hour of every regular and special meeting shall be given to each Director two (2) days (or more) before the meeting, by delivering the same to him personally, or by sending the same to him by telegraph, or by leaving the same at his residence or usual place of business, or, in the alternative, by mailing such notice three (3) days (or more) before the meeting, postage prepaid, and addressed to him at his last known post office address, according to the records of the Association. Unless required by these By-Laws or by resolution of the Board of Directors, no notice of any meeting of the Board of Directors need state the business to be transacted thereat. No notice of any meeting of the Board of Directors need be given to any Director who attends, or to any Director who, in a writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. Any meeting of the Board of Directors, regular 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.

Section 4. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which it is by Statute, by the Declaration, by the Certificate of Incorporation or by these By-Laws otherwise provided, the vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present by majority vote and without notice other than by announcement 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.

Section 5. Directors as such shall not receive any compensation for their services. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 6. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all members of the board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the board or committee.

## ARTICLE VIII OFFICERS

Section 1. The officers of the Association shall be chosen by the Board of Directors and shall be a president, a vice president, a secretary and a treasurer. The Board of Directors may also choose additional vice presidents, and one or more assistant secretaries and assistant treasurers.

Section 2. The Board of Directors, at its first meeting after each annual meeting of the Association, shall choose a president and a vice president from among the Directors, and shall choose one or more vice presidents, a secretary and a treasurer, none of whom need be a member of the Board of Directors.

Each Director shall be eligible for election to any office whether or not he is a Member of the Association.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. The salaries of all officers and agents of the Association shall be fixed by the Board of Directors.

Section 5. The officers of the Association shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may, with or without cause, be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Association shall be filled by the Board of Directors.

## THE PRESIDENT

Section 6. The president shall be the chief executive officer of the

Association, shall preside at all meetings of the Board of Directors, shall have general and active management of the affairs of the Association and shall see that all orders and resolutions of the Board of Directors are carried into effect.

Section 7. He shall execute bonds, mortgages and other contracts where not required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

#### THE VICE PRESIDENTS

Section 8. The vice president, or if there shall be more than one, the vice presidents in the order determined by the Board of Directors, shall in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

#### THE SECRETARY

Section 9. The secretary shall attend all meetings of the Board of Directors and record all the proceedings thereof in a book to be kept for that purpose and shall perform like duties for the standing committees, when required. He shall give, or cause to be given, notice of all special meetings of the Board of Directors requiring notice, and shall perform such other duties as may be prescribed by the Board of Directors or president, under whose supervision he shall be. He shall have custody of the Association seal and shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of any other officer. The Board of Directors may give general authority to any other officer to affix the seal of the Association and to attest the affixing by his signature.

#### THE TREASURER

Section 10. The treasurer shall have the custody of Association funds and securities and shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors.

Section 11. He shall disburse the funds of the Association as may be ordered by the Board of Directors, making proper vouchers for such disbursements, and shall render to the president and the Board of Directors, whenever the Board of Directors so requires, an account of all his transactions as treasurer and of the financial condition of the Association.

Section 12. If required by the Board of Directors, he shall give the Association a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Association, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association.

#### ARTICLE IX COMMITTEES

Section 1. The Board of Directors may by resolution provide for an Executive Committee and for such other standing or special committees as it deems desirable, and discontinue the same at pleasure. Each such committee shall have such powers and perform such duties, not inconsistent with law, as may be assigned to it by the Board of Directors.

#### ARTICLE X MEETINGS OF MEMBERS

Section 1. (Amended April 19, 1972) The Association shall hold each year, commencing with the year 1972, an annual meeting of the Members for the election of Directors and the transaction of any business within the powers of the Association, at 8:00 o'clock P.M. on the fourth Wednesday in November in each year if not a legal holiday, and if a legal holiday then on the first day following which is not a legal holiday. Any business of the Association may be transacted at an annual meeting without being specially designated in the notice, except such business as is specifically required by Statute or by the Certificate of Incorporation to be stated in the notice. Failure to hold an annual meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 2. Special meetings of the Members for any purpose may be called at any time by the president, the vice president, the secretary or treasurer, or by any two or more members of the Board of Directors, or upon written request of the Members who have a right to vote one-fourth (1/4) of all of the votes of the entire membership or who have a right to vote one-fourth (1/4) of the votes of the Class A membership.

Section 3. All meetings of Members shall be held at the principal office of the Association in Middletown, Connecticut, except in cases in which the notice thereof designates some other place.

Section 4. Not less than ten (10) days nor more than ninety (90) days before the date of every Members' meeting, the Secretary shall give to each

Member entitled to vote at such meeting, written or printed notice stating the time and place of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, either by mail or by presenting it to him personally or by leaving it at his residence or usual place of business. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the Member at his 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 person or persons entitled to such notice and filed with the records of the meeting, whether before or after the holding thereof, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of 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.

Section 5. Members holding ten (10%) per cent of the total votes eligible to be cast, present in person or by proxy, shall constitute a quorum at any meeting of Members, except as otherwise required by State Statute, the Certificate of Incorporation, these By-Laws or the Declaration. If a quorum is not present at any meeting of Members, a majority of the Members present in person or by proxy may adjourn the meeting from time to time without notice, other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Any business may be transacted at the adjourned meeting as originally noticed.

## ARTICLE XI MISCELLANEOUS

### CHECKS

Section 1. All checks or demands for money and all notes of the Association shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time select.

### FISCAL YEAR

Section 2. The fiscal year of the Association shall be determined by the Board of Directors.

### SEAL

Section 3. The Association seal shall be circular in form, shall have inscribed thereon the name of the Association with the words "Seal" and "Connecticut". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

## AMENDMENTS

Section 4. These By-Laws may be altered, amended or repealed or new By-Laws may be adopted at any regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, provided that, in each such instance notice of the proposed alteration, amendment, repeal, or adoption be set forth in a notice of such meeting and no such alteration, amendment or repeal shall create an inconsistency between these By-Laws and the Declaration or Certificate of Incorporation.

Section 5. In case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

DECLARATION made this 23rd day of July, 1971, by GEORGE J. ACHENBACH of the Town of Middletown, County of Middlesex and State of Connecticut (hereinafter referred to as "Developer"),

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Schedule A, annexed hereto and made a part hereof, and desires to construct or cause to be constructed thereon a planned residential community with permanent parks, open spaces and other common facilities for the benefit of said community and the social welfare of the Owners of Lots and Living Units and the Residents residing within such community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the preservation, maintenance and improvement of said parks, open spaces and common facilities and to that end desires to subject the real property described in said Schedule A and such additional real property as may be added thereto to the covenants, restrictions, easements, charges, assessments and liens set forth herein; and

WHEREAS, Developer desires to develop such real property so that all the buildings and other structures thereon shall be harmoniously designed, landscaped and located and to that end and also for the purpose of maintaining such harmony for the benefit of such property and its owners and the persons residing therein, Developer further desires to subject such real property to the covenants and restrictions relating to architectural and landscape review set forth in Articles VIII and IX hereof; and

WHEREAS, Developer has deemed it desirable to create an agency to which should be delegated the powers of maintaining, improving and administering the Common Land, promoting the social welfare of the Residents and the Owners of property in the community, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused to be incorporated as a Nonstock Corporation under the laws of Connecticut, Westlake Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer declares that the real property described in said Schedule A and such additional real property as may be added thereto

pursuant to the terms hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions, easements, assessments, charges and liens (hereinafter called, collectively, "Covenants and Restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

1.1. The following words and terms when used in this Declaration or any Supplementary Declaration shall have the following meanings:

ASSOCIATION – Westlake Association, Inc., its successors and assigns.

DIRECTORS – The Board of Directors of the Association.

THE PROPERTIES – All the real property at any time subject to this Declaration or any Supplementary Declaration made pursuant hereto.

DEVELOPER – George J. Achenbach, his heirs, successors and assigns, if such heirs, successors and assigns should acquire more than one undeveloped Lot from Developer for the purpose of development.

COMMON LAND – Land devoted to the social welfare, use and enjoyment of Owners and Residents of The Properties and actually conveyed to the Association by one or more deeds and designated "Common Land" in such deed or deeds.

The term "Common Land" shall not extend to or include any land designated as such on any map, whether or not recorded or filed, until actually conveyed to the Association or to any land actually so conveyed unless the same is specifically designated "Common Land" in the deed of conveyance.

RESIDENTIAL CLUSTER – Land comprising a part of The Properties and shown and designated as "Residential Cluster No. \_\_\_\_\_" on a subdivision map filed or recorded in the office of the appropriate Town or City Clerk.

CLUSTER ASSOCIATION – A nonstock corporation whose membership consists of the Owners of Lots or Living Units within a Residential Cluster.

There shall be as many Cluster Associations as there are Residential Clusters located on The Properties.

RESIDENTIAL CLUSTER RESERVED AREA – Land devoted to the social welfare, use and enjoyment of the Owners and Residents of Lots and Living Units in a Residential Cluster and which has been actually conveyed to a

Cluster Association by one or more deeds and designated "Residential Cluster No. Reserved Area" in such deed or deeds.

The term "Residential Cluster No. Reserved Area" shall not extend to or include any land designated as such on any map, whether or not recorded or filed, until actually conveyed to a Cluster Association or to any land actually so conveyed unless the same is specifically designated "Residential Cluster No. Reserved Area" in the deed of conveyance.

LOT - Any Lot shown on any recorded subdivision map of The Properties except Common Land and Residential Cluster Reserved Areas.

LIVING UNIT - Any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence, including rental apartments, cooperative apartments, and condominium units.

OWNER - The record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot or Living Unit within The Properties. A Tenant, as hereinafter defined, shall not be deemed an Owner, as herein defined.

No mortgagee shall be deemed an Owner until such mortgagee has acquired fee title to a Lot or Living Unit pursuant to a foreclosure or proceeding in lieu thereof.

TENANT - Any one (1) or more persons, other than an Owner, residing on a Lot or in a Living Unit pursuant to an agreement made by him or them with the Owner.

RESIDENT - (1) Each Tenant, and  
(2) Members of the immediate family of each Owner and of each such Tenant actually living in the same household with such Owner or such Tenant.

MEMBER - A Member of the Association.

CLUSTER MEMBER - A Member of a Cluster Association.

CLUSTER DIRECTORS - The Board of Directors of a Cluster Association.

MULTI-FAMILY STRUCTURE - Any building containing two (2) or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.

DEVELOPMENT PERIOD - The ten (10) year period commencing on the day this Declaration is recorded in the Middletown, Connecticut, Town Clerk's Office.

YEAR - A calendar year.

## ARTICLE II DESCRIPTION OF PROPERTY

2.1. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is situated in the Town of Middletown, County of Middlesex and State of Connecticut and more particularly described in Schedule A, annexed hereto and made a part hereof. Said real property is hereinafter referred to as "Existing Property".

2.2. Developer, his heirs, successors and assigns, shall have the right, without the consent of the Members within the Development Period, to subject additional lands to this Declaration by recording in the land records of the town in which such additional lands are situated, in whole or in part, a Supplementary Declaration of Covenants and Restrictions with respect to the additional land which shall extend the Covenants and Restrictions of this Declaration to such lands, provided that the Federal Housing Authority (FHA) or Veterans Administration (VA), or their successors and assigns, determines that the annexation is in accord with the general plan of development heretofore approved by said FHA and/or VA.

2.3. Any such Supplementary Declaration of Covenants and Restrictions may contain such additions to or modifications of the Covenants and Restrictions set forth in this Declaration as may be deemed by Developer advisable to reflect the different character of the added lands or the improvements thereon, provided:

(a) such additions and modifications shall apply prospectively to said added lands or the improvements thereon;

(b) any land to which the Covenants and Restrictions shall be extended and the Owners thereof shall become subject to assessments and charges to at least the same amounts as those applicable to the Existing Property and the Owners thereof;

(c) no such Supplementary Declaration shall revoke, alter or amend the Covenants and Restrictions set forth in this Declaration with respect to the Existing Property or revoke, alter or amend the Covenants and Restrictions set forth in any previously recorded Supplementary Declaration with respect to the lands made subject thereto.

2.4. The Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the

votes of each class of Members who are voting in person or by proxy at a meeting called for this purpose, written notice of which shall be mailed to all Members at least ninety (90) days in advance of any action taken and shall set forth the purpose of the meeting.

2.5. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation of, or change or addition to, the Covenants and Restrictions established by this Declaration within the Existing Property except as hereinafter provided.

2.6. Cluster Associations may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each class of Cluster Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all Cluster Members at least ninety (90) days in advance of any action taken and shall set forth the purpose of the meeting.

2.7. Upon a merger of a Cluster Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Cluster Association as a surviving corporation pursuant to a merger.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall automatically be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separate from ownership of a Lot or a Living Unit which is subject to assessment.

3.2. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all those Owners as defined in paragraph 3.1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot and/or Living Unit in which they hold the interests required for membership by paragraph 3.1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, shall have the right to attend all meetings of the Association, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

(b) Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot and/or Living Unit in which he holds the interest required for membership by paragraph 3.1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;  
or
- (2) July 1, 1978.

(c) Provided, however, that the vote of any Owner or Owners of Living Units, other than condominium units, shall not be entitled to a weight greater than forty-nine (49%) per cent of the total vote expressed on any issue on which the Association votes.

3.3. For purposes of determining the votes allowed under this Article III, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

3.4. The voting rights of a corporation which is the Owner of a Lot or Living Unit shall be exercised only by a person named in a certificate signed by an officer of the corporation and filed with the clerk of the Association of which the corporation is a member. Any such certificate filed by a corporation shall be valid until revoked or superseded by a subsequent certificate, or until the corporation ceases to be a member of the Association.

3.5. Any Member who is in violation of this Declaration, as determined by the Board of Directors, or who fails to pay any annual or special assessment established by the Board of Directors or the Association shall not be entitled to vote during any period in which such annual or special assessment is due and unpaid or in which such violation continues.

ARTICLE IV  
ASSOCIATION

COVENANTS FOR MAINTENANCE ASSESSMENTS

4.1. Developer, for each Lot and Living Unit owned by him within The Properties, hereby covenants and each Owner of any Lot and/or Living Unit shall by the acceptance of a deed thereof, whether or not there shall be a reference to such covenant in the deed or other conveyance to such Owner, be deemed to covenant and agree to pay to the Association: (1) annual assessments and charges and (2) special assessments for capital improvements to be fixed, established and collected from time to time as hereinafter provided in this Article IV.

4.2. Annual and special assessments made pursuant to this Article IV, together with interest thereon and all costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land and a continuing lien upon the property against which such assessment is made and shall also be the personal obligation of the Owner of such property at the time the payment thereof shall become due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

4.3. All assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and Residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Land and of the dwelling units situated upon The Properties, including, but not limited to, the payment of taxes and insurance on Association owned property and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

4.4. Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment shall be Forty (\$40.00) Dollars per Lot or Living Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased each year not more than five (5%) per cent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased above five (5%) per cent by a vote of two-thirds

(2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of any action taken and shall set forth the purpose of the meeting.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

4.5. In addition to the annual assessments authorized in paragraph 4.4 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Land, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of any action taken and shall set forth the purpose of the meeting. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

4.6. The quorum required for any action authorized by paragraphs 4.4 and 4.5 hereof shall be as follows:

At the first meeting called, as provided in paragraphs 4.4 and 4.5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60%) per cent of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in paragraphs 4.4 and 4.5 hereof, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.7. The annual assessments provided for herein shall commence as to all Lots or Living Units on the first day of the month following the conveyance of Common Land to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

4.8. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot and/or Living Unit for each assessment period at least thirty (30) days in advance of each annual assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be

sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Association.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4.9. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

4.10. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum permissible FHA interest rate, and the Association may bring any appropriate action or proceeding for the collection thereof against the Owner personally obligated to pay the same or to foreclose the lien against the property, and in either event, the Association shall be entitled to recover all its costs of collection, including a reasonable attorney's fee.

4.11. The lien of the assessments provided for under this Article IV shall be subordinate and second in lien to the lien of any first mortgage now or hereafter placed upon a Lot and the improvements thereon or a Living Unit and held by a bank, insurance company, federal savings and loan association, bona fide lending institution or the United States of America or any agency or instrumentality thereof ("First Mortgage") or the successors and assigns of same; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale of such Lot or Living Unit or the title to such Lot or to a Living Unit vesting absolutely in said First Mortgagee pursuant to a judgment of foreclosure or other proceeding in lieu of foreclosure. No such sale or transfer shall relieve a Lot or Living Unit or the Owner thereof from liability for any assessments thereafter becoming due nor from the lien of any subsequent assessment.

4.12. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created pursuant to Article IV hereof: (a) all properties dedicated to and accepted by a public authority and devoted to public use; (b) all Common Land and Residential Cluster Reserved Areas; and (c) all properties exempt from taxation by the laws of the State of Connecticut, upon the terms and to the extent of such exemption. Notwithstanding any provision in this paragraph 4.12, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE V MEMBERSHIP AND VOTING RIGHTS IN THE CLUSTER ASSOCIATION

5.1. There shall be one (1) Cluster Association for each Residential Cluster within The Properties.

5.2. Each Cluster Association shall be organized to promote the social welfare, including the health, safety, education, culture, comfort and convenience of its Cluster Members, to determine the manner in which each Residential Cluster Reserved Area located within its bounds shall be used, enjoyed and improved and make and enforce rules and regulations with respect thereto, and to collect and disburse assessments; provided, each such Residential Cluster Reserved Area shall be devoted exclusively to non-commercial uses in furtherance of the Cluster Association.

5.3. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Cluster Association shall automatically be a Member of the Cluster Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Cluster Member. Cluster Membership shall be appurtenant to and may not be separate from ownership of a Lot or a Living Unit which is subject to assessment.

5.4. Each Cluster Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all those Owners as defined in paragraph 5.3 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot and/or Living Unit in which they hold the interests required for membership by paragraph 5.3. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, shall have the right to attend all meetings of the Cluster Association, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

(b) Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot and/or Living Unit in which he holds the interest required for membership by paragraph 5.3 provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;  
or

(2) The third anniversary of the filing of the Certificate of Incorporation of the Cluster Association with the Secretary of the State of Connecticut.

(c) Provided, however, that the vote of any Owner or Owners of Living Units, other than condominium units, shall not be entitled to a weight greater than forty-nine (49%) per cent of the total vote expressed on any issue on which the Cluster Association votes.

5.5. For purposes of determining the votes allowed under this Article V, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

5.6. The voting rights of a corporation which is the Owner of a Lot or Living Unit shall be exercised only by a person named in a certificate signed by an officer of the corporation and filed with the clerk of the Cluster Association of which the corporation is a member. Any such certificate filed by a corporation shall be valid until revoked or superseded by a subsequent certificate, or until the corporation ceases to be a member of the Cluster Association.

5.7. Any Cluster Member who is in violation of this Declaration, as determined by the Cluster Board of Directors, or who fails to pay any annual or special assessment established by the Cluster Board of Directors or the Cluster Association shall not be entitled to vote during any period in which such annual or special assessment is due and unpaid or in which such violation continues.

## ARTICLE VI CLUSTER ASSOCIATION

### COVENANTS FOR MAINTENANCE ASSESSMENTS

6.1. Developer, for each Lot and Living Unit owned by him within a Residential Cluster, hereby covenants and each Owner of any Lot and/or Living Unit shall by the acceptance of a deed thereof, whether or not there shall be a reference to such covenant in the deed or other conveyance to such Owner, be deemed to covenant and agree to pay to the Cluster Association: (1) annual assessments and charges and (2) special assessments for capital improvements to be fixed, established and collected from time to time as hereinafter provided in this Article VI.

6.2. Annual and special assessments made pursuant to this Article VI, together with interest thereon and all costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land and a continuing lien upon the property against which such assessment is made and shall also be the personal obligation of the Owner of such property at the time the payment

thereof shall become due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.3. All assessments levied by the Cluster Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and Residents in the Residential Cluster and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Residential Cluster Reserved Areas and of the dwelling units situated within the Residential Cluster, including, but not limited to, the payment of taxes and insurance on Cluster Association owned property and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

6.4. Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment shall be Forty (\$40.00) Dollars per Lot or Living Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased each year not more than five (5%) per cent above the maximum assessment for the previous year without a vote of the membership of the Cluster Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment may be increased above five (5%) per cent by a vote of two-thirds (2/3) of the Cluster Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Cluster Members at least thirty (30) days in advance of any action taken and shall set forth the purpose of the meeting.

(c) The Board of Directors of the Cluster Association may fix the annual assessment at an amount not in excess of the maximum.

6.5. In addition to the annual assessments authorized in paragraph 6.4 hereof, the Cluster Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Residential Cluster Reserved Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Cluster Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Cluster Members at least thirty (30) days in advance of any action taken and

shall set forth the purpose of the meeting. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

6.6. The quorum required for any action authorized by paragraphs 6.4 and 6.5 hereof shall be as follows:

At the first meeting called, as provided in paragraphs 6.4 and 6.5 hereof, the presence at the meeting of Cluster Members, or of proxies, entitled to cast sixty (60%) per cent of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in paragraphs 6.4 and 6.5 hereof, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.7. The annual assessments provided for herein shall commence as to all Lots and Living Units on the first day of the month following the conveyance of the Residential Cluster Reserved Areas to the Cluster Association. The first annual assessment shall be adjusted according to the number of the months remaining in the calendar year.

6.8. The Board of Directors of the Cluster Association shall fix the amount of the annual assessment against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of each annual assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Cluster Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Cluster Association.

The Cluster Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Cluster Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

6.9. If the assessments are not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

6.10. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delin-

quency at the maximum permissible FHA interest rate, and the Cluster Association may bring any appropriate action or proceeding for the collection thereof against the Owner personally obligated to pay the same or to foreclose the lien against the property, and in either event, the Cluster Association shall be entitled to recover all its costs of collection, including a reasonable attorney's fee.

6.11. The lien of the assessments provided for under this Article VI shall be subordinate and second in lien to the lien of any first mortgage now or hereafter placed upon a Lot and the improvements thereon or a Living Unit and held by a bank, insurance company, federal savings and loan association, bona fide lending institution or the United States of America or any agency or instrumentality thereof ("First Mortgagee") or the successors and assigns of same; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale of such Lot or Living Unit or the title to such Lot or to a Living Unit vesting absolutely in said First Mortgagee pursuant to a judgment of foreclosure or other proceeding in lieu of foreclosure. No such sale or transfer shall relieve a Lot or Living Unit or the Owner thereof from liability for any assessments thereafter becoming due nor from the lien of any subsequent assessment.

6.12. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created pursuant to Article VI hereof: (a) all properties dedicated to and accepted by a public authority and devoted to public use; (b) all Residential Cluster Reserved Areas; and (c) all properties exempt from taxation by the laws of the State of Connecticut, upon the terms and to the extent of such exemption. Notwithstanding any provision in this paragraph 6.12 no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

6.13. The Developer hereby covenants that, in the event he conveys any Lot or Living Unit shown as being located within a Residential Cluster, he shall first cause a Cluster Association to be incorporated for the area encompassed by said Residential Cluster.

## ARTICLE VII RIGHTS IN COMMON LAND AND RESIDENTIAL CLUSTER RESERVED AREAS

7.1. Every Member shall have a right and easement of enjoyment in and to the Common Land and every Cluster Member of each Cluster Association shall have a like easement in respect of the Residential Cluster Reserved Areas within the Residential Cluster in which he owns a Lot or Living Unit, which easements shall be appurtenant to and shall pass with the title to every Lot and Living Unit.

7.1a. All Residents residing within the Properties shall have a non-transferable privilege to use and enjoy all the Common Land for so long as they are Residents within the previously defined meaning of that term.

7.1b. All Residents residing within a Residential Cluster shall have a non-transferable privilege to use and enjoy all of the Residential Cluster Reserved Areas within the Residential Cluster in which they reside for so long as they are Residents within the previously defined meaning of that term.

7.2. The rights, privileges and easements of enjoyment in the Common Land created hereby shall be subject to:

(a) the right of the Association, in accordance with its Certificate of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Land and in aid thereof to mortgage said properties;

(b) the right of the Board of Directors, as hereinbefore provided, to suspend such enjoyment rights of any Member (and the privilege of each Resident claiming through such Member) for any period during which any assessment for which such Member is liable remains delinquent, for any period during which there exists a violation of this Declaration by the Member or Resident claiming through such Member, as determined by the Board of Directors, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations relating to the use of the Common Land and the facilities thereon by the Member, his guests or Resident claiming through such Member; and

(c) the right of the Association to dedicate or transfer all or any part of the Common Land to the State of Connecticut, City of Middletown, or any subdivision of either, the Federal Government or any agency or instrumentality thereof, or to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to purposes or as to conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of Membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

(d) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Land.

(e) the right of the Association to limit the number of guests of Members and Tenants in or upon the Common Land or any facilities located thereon.

(f) the right of the Association to grant easements or rights of way to any public utility corporation or public agency.

7.3. The rights, privileges and easements of enjoyment in the Residential Cluster Reserved Areas created hereby shall be subject to:

(a) the right of each Cluster Association, in accordance with its Certificate of Incorporation and By-Laws, to borrow money for the purpose of improving its Residential Cluster Reserved Areas and in aid thereof to mortgage said property;

(b) the right of the Cluster Board of Directors of each Cluster Association, as hereinabove provided, to suspend such enjoyment rights of any Cluster Member (and the privilege of each Resident claiming through such Cluster Member) for any period during which any assessment for which such Cluster Member is liable remains delinquent, for any period during which there exists a violation of this Declaration by the Cluster Member or Resident claiming through such Cluster Member, as determined by the Cluster Board of Directors, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations relating to the use of its Residential Cluster Reserved Areas and the facilities thereon by the Cluster Member, his guests, or Resident claiming through such Cluster Member;

(c) the right of each Cluster Association to dedicate or transfer all or any part of its Residential Cluster Reserved Areas to the State of Connecticut, City of Middletown, or any subdivision of either, the Federal Government or any agency or instrumentality thereof, or to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by its Cluster Members, provided that no such dedication or transfer, determination as to purpose or as to conditions thereof, shall be effective unless an instrument signed by Cluster Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to all of its Cluster Members at least ninety (90) days in advance of any action taken.

(d) the right of each Cluster Association to charge reasonable admission and other fees for the use of any recreational facility situated upon its Residential Cluster Reserved Areas.

(e) the right of the Cluster Association to limit the number of guests of Cluster Members or Tenants in or upon the Residential Cluster Reserved Areas or any facilities located thereon.

(f) the right of the Association to grant easements or rights of way to any public utility corporation or public agency.

**ARTICLE VIII**  
**ARCHITECTURE AND LANDSCAPE REVIEW COMMITTEE**

8.1. An Architecture and Landscape Review Committee ("the Committee") having five (5) members and appointed as hereinafter provided shall have the exclusive authority to administer the provisions set forth in Articles IX and X hereof.

8.2. The Architecture and Landscape Review Committee shall be appointed by the Board of Directors.

8.3. Members of the Committee need not be Members of the Association.

8.4. All appointments to the Committee and all replacements of members of the Committee shall be by written instrument executed by Developer and/or the Secretary of the Association in the same manner as that required by law for the conveyance of interests in real property, which written instrument shall set forth the name and address of each person thereby appointed to the Committee and shall be recorded in the same land records in which this Declaration is recorded, or if any such instrument shall not be lawfully so recordable, then a copy thereof shall be mailed, postpaid, to each Owner at his last known address.

8.5. All matters requiring Committee action shall be decided by a majority vote of the Committee.

**ARTICLE IX**  
**ARCHITECTURAL CONTROL**

**COVENANTS FOR MAINTENANCE**

9.1. No structure or other improvement of any kind or description, the placement of which upon any Lot, Common Land, Residential Cluster Reserved Area, or any other portion of The Properties (for the purposes of Articles IX and X herein, hereinafter called, collectively, "Lot" or "Lots") may affect the appearance of such Lot, including by way of illustration and not limitation, any building (including accessory buildings) trailer, tennis court, fence, hedge, wind-break, swimming pool, statuary, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, clothesline, (hereinafter referred to as "Structure" or "Structures") shall be commenced, erected, placed, moved on to or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance thereof (including any alteration in the exterior color thereof), nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in

writing by the Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee, but in any event shall include (i) a site plan of the Lot showing the nature, exterior color scheme, kind, shape, height, materials and location with respect to the particular Lot (including proposed front, rear and side set-backs and free spaces, if any are proposed) of all Structures, the location thereof with reference to Structures on adjoining portions of The Properties, and the number and location of all parking spaces and driveways on the Lot; and (ii) a grading plan and the general plan of landscaping for the particular Lot.

9.2. The Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

(a) the failure of such plans or specifications to comply with any of the Covenants and Restrictions;

(b) failure to include information in such plans and specifications as may have been reasonably requested;

(c) objection to the exterior design, appearance or materials of any proposed Structure;

(d) incompatibility of any proposed Structure or use with existing Structures or uses upon other Lots in the vicinity;

(e) objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;

(f) objection to the grading plan for any Lot;

(g) objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Structure;

(h) objection to parking areas proposed for any Lot on the grounds of (i) incompatibility to proposed uses and Structures on such Lot or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Lot; or

(i) any other matter which, in the judgment of the Committee, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of The Properties or with Structures or uses located upon other Lots in the vicinity.

In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon

specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

9.3. Upon approval by the Committee of any plans and specifications submitted hereunder, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

9.4. The Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the Covenants and Restrictions, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

In the event that the Committee fails to approve or disapprove any plans and specifications as herein provided within sixty (60) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required. The applicant, however, shall be entitled to receive a certificate signed by a member of the Committee and evidencing such approval.

9.5. If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance

with plans and specifications approved by the Committee pursuant to the provisions of this Article IX such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article IX and without the approval required herein, and, upon written notice to the Owner of said structures and to the holder of any mortgage thereon from the Committee, any such Structure so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If sixty (60) days after the notice of such a violation the Owner of the Lot or the holder of any mortgage thereon upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and the cost thereof, including interest thereon to the date of payment at the maximum permissible FHA interest rate, which costs and interest thereon and all costs of collection, including a reasonable attorney's fee, shall be a binding, personal obligation of such Owner as well as a continuing lien enforceable in the same manner as assessments levied hereunder upon the Lot in question.

9.6. Upon completion of the construction or alteration of any Structure in accordance with plans and specifications approved by the Committee, the Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Structure and the Lot on which such Structure is placed, and stating that the plans and specifications, the location of such Structure and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this paragraph 9.6 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein comply with all the requirements of this Article IX, and with all other requirements of this Declaration as to which the Committee exercises any discretionary or interpretive powers.

9.7. The Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to this Article IX, payable at the time such plans and specifications are so submitted, provided, that such fee shall not exceed fifty (50%) per cent of the amount chargeable by the appropriate governmental authority for the application for and processing of building permits for structures on the Lot with regard to which such plans and specifications are submitted.

9.8. Any agent of the Association or the Committee may at any reasonable time or times enter upon and inspect any Lot and any improvements

thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof, provided, however, that such entry and inspection shall not interfere with the quiet enjoyment of the Lot by the Owner or occupant thereof; and neither the Association nor the Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

9.9. No tree having a diameter of two (2) inches or more at a point one (1) foot above the surround ground level shall be destroyed or removed without the prior written consent of the Committee.

9.10. The exterior of all structures located on any Lot which are visible from any point on any adjacent Lot shall be maintained by the Owner in good repair and appearance and if any Owner shall fail so to do, the Committee by its agents or employees may, at its option, and on not less than one hundred eighty (180) days notice to the Owner and the holder of any mortgage on said structures, go upon the Lot and take such action as may be necessary to put the structures thereon in a state of good repair and appearance.

9.11. Each Owner of a Lot shall maintain the grounds thereof in a neat and attractive manner and upon the failure of the Owner, so to do, the Committee, by its agents or employees, may, at the option of the Committee, and on not less than thirty (30) days notice to the Owner, enter upon the Lot as often as the Committee shall deem necessary and cut down the weeds, grass and other vegetation thereon and remove dead trees and shrubbery therefrom.

9.12. The Board of Directors may advance funds of the Association to the Committee to cover the expenses of the operations of the Committee.

9.13. The Owner of any Lot upon which the Committee shall perform services or supply materials pursuant to paragraphs 9.10 and 9.11 hereof shall, upon demand, reimburse the Committee for the cost thereof with interest thereon to the date of payment at the maximum permissible FHA interest rate, which costs and interest thereon and all costs of collection thereof, including a reasonable attorney's fee, shall be the personal obligation of the Owner and a charge and continuing lien upon all the Lots and Living Units of the Owner and shall be enforceable in the same manner as assessments levied hereunder.

9.14. The decision of the Committee as to whether the exterior of any structure located on any Lot has been maintained in good repair and appearance and whether the grounds of any Lot have been maintained in a neat and attractive manner shall be final and conclusive.

9.15. Lots may be subdivided only with the prior written approval of the Committee.

9.16. Structures located on a Lot may be moved to another location on the same Lot only with the prior written consent of the Committee.

9.17. The consent or approval of the Committee to any matter requiring Committee consent or approval may be proved conclusively by a certificate signed by any member of the Committee.

9.18. Each Cluster Association shall keep all Residential Cluster Reserved Areas owned by it and all improvements therein or thereon, in good order and repair, including but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the 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. If in the opinion of the Committee, any Cluster Association fails to perform the duties imposed by the preceding sentence, the Committee, after fifteen (15) days written notice to the Cluster Association to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Residential Cluster Reserved Areas in question and to repair, maintain, repaint and restore said Residential Cluster Reserved Areas and the cost thereof, including interest thereon to the date of payment at the maximum permissible FHA interest rate, which costs and interest thereon and all costs of collection, including a reasonable attorney's fee, shall be a binding personal obligation of such Cluster Association as well as a continuing lien enforceable in the same manner as assessments levied hereunder.

## ARTICLE X USE RESTRICTIONS

10.1. The following restrictions are imposed upon each Lot and Living Unit for the benefit of every other Lot and Living Unit included in The Properties and may be enforced by the Developer, the Association, the Cluster Associations and any Owner:

- (a) Living Units shall be used for residential purposes only;
- (b) Tanks for the storage of fuel maintained on any Lot shall be buried;

(c) No poultry house or yard, or rabbit hutch shall be constructed or maintained on any Lot. No fowl or animals, other than a reasonable and usual number of unobjectionable household pets, shall be kept on any Lot or in any Living Unit. The Committee, in its discretion, may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot or in any Living Unit;

(d) No garbage, rubbish, junk, cuttings, or other refuse shall be deposited or permitted to remain on any Lot unless placed in a closed container.

The Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type containers permitted and the manner and location of storage of the same on the Lot;

(e) No building material of any kind or character shall be placed upon any Lot except in connection with construction approved by the Committee as hereinbefore provided;

(f) Clothes lines and drying racks shall be screened or so located as not to be visible from any point on adjacent Lots;

(g) Boats, boat trailers, camping trailers, camping vehicles and the like kept on any Lot shall be kept entirely inside a garage or screened so as not to be visible from any point on adjacent Lots;

(h) There shall not be installed, kept or maintained on any Lot or Living Unit an antenna or aerial of any kind or description which is visible from any point on an adjacent Lot, provided, however, Developer shall have the right to erect master antenna towers or aeriels;

(i) No sign of any kind shall be displayed on any Lot or structure or from the windows of any structure, except one (1) painted sign not more than two hundred (200) square inches in size setting forth only the name and the profession, if any, of the Owner or Tenant at the time residing thereon and except for signs erected by Developer in connection with the construction, lease or sale of buildings and Lots or other parcels of The Properties;

(j) No excavation shall be made on any Lot, the Common Land, or any Residential Cluster Reserved Area except in connection with construction or grading approved by the Committee;

(k) Telephone and power lines and other utilities shall be connected to structures located on The Properties only by underground conduit;

(l) No unregistered or inoperable motor vehicle shall be moved onto or kept on any Lot in such manner as to be visible from any point on an adjacent Lot or the street;

(m) No motor vehicle or trailer of any kind shall be disassembled, serviced or repaired on any Lot in such manner as to be visible from any point on an adjacent Lot or the street;

(n) No motor vehicle other than passenger cars shall be parked on any Lot in such manner as to be visible from any adjacent Lot or the street.

## ARTICLE XI RESERVED EASEMENTS

11.1. Developer reserves to himself, his heirs, successors and assigns, easements in, on, over and under the "easement area" as hereinafter defined, of The Properties for all or any of the following uses and purposes:

(a) Service boxes, wires and conduits for the transmission of electricity, telephones and other purposes and for the necessary attachments in connection therewith;

(b) Storm water drains, sewer, water and gas mains and pipes;

(c) Any other method of conducting and performing any public or quasi-public utility or service function over or beneath the surface of the ground;

(d) Community antenna services for television; and

(e) Installing, replacing, repairing and servicing any of the foregoing.

11.2. The term "easement area", as used herein, shall mean and refer (i) to those areas of The Properties with respect to which easements are shown on a recorded subdivision plat or other plat thereof and relating thereto; or (ii) if no easements are shown on any such plat or plats, to a strip of land within the lot lines of each Lot shown on a recorded subdivision plat three (3) feet in width in the front and rear of the Lot and three (3) feet in width on each side, each said distance being measured in each case from the lot line toward the center of the Lot.

11.3. Developer, his agents, heirs, successors and assigns, shall have the right to enter upon The Properties for any of the purposes for which said easements and rights of way are reserved, provided, however, that such entry shall not unreasonably interfere with the quiet enjoyment thereof by the Owners, occupants or users thereof.

11.4. Notwithstanding any provision in this Article XI, none of the rights herein reserved shall be exercised without the prior written consent of all bona fide lending institutions holding mortgages on premises to be affected by said rights, which consent shall not be unreasonably withheld.

## ARTICLE XII AMENDMENTS

12.1. The Covenants and Restrictions set forth herein or in any declaration supplementary hereto may be amended at any time during the first twenty (20) years following the recording of this Declaration in the Middletown Land

Records by a vote of nine-tenths (9/10) of the votes of the Members who are voting in person or by proxy, and thereafter by a vote of three-fourths (3/4) of the votes of the Members who are voting in person or by proxy, provided:

(a) No such amendment shall be effective unless written notice of the proposal thereof shall be sent to every Member of the Association at least ninety (90) days in advance of the meeting at which the same is considered;

(b) No such amendment shall effect or alter paragraphs 4.11, 6.11, 7.1a and 7.1b herein; and

(c) An instrument setting forth such amendment and signed by the Secretary of the Association in the same manner required for the conveyance of real property is recorded in the land records of each town or city in which this Declaration is recorded.

#### ARTICLE XIII MISCELLANEOUS

13.1. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, which shall be deemed the agent for all its members for such purpose, by the Cluster Associations, which shall be deemed the agents for all their respective members for such purpose, and by the Owner of any land subject to this Declaration or any declaration supplementary hereto, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of three-fourths (3/4) of the Lots and Living Units has been duly recorded agreeing to change said Covenants, Conditions and Restrictions in whole or in part (for purposes of meeting the three-fourths (3/4) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted); provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

13.2. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed in a sealed envelope postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

13.3. Violation or breach of any Covenant or Restriction herein contained shall give the Association, the Cluster Associations and the Committee, their respective legal representatives, heirs, successors and assigns, in addition to all

other remedies, the right to enter upon the land upon or as to which such violation or breach exists, and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. Nothing herein contained shall be deemed to affect or limit the rights of the Owners of Lots or Living Units within The Properties to enforce the Covenants and Restrictions by appropriate judicial proceedings.

13.4. The failure of the Association, the Cluster Associations, the Committee or the Owner of any Lot or Living Unit included in The Properties, their respective legal representatives, heirs, successors and assigns, to enforce any Covenant or Restriction herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

13.5. No Covenant or Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

13.6. The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

13.7. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

13.8. Any part to a proceeding who succeeds in enforcing a Covenant or Restriction or enjoining the violation of a Covenant or Restriction against an Owner of a Lot or Living Unit may be awarded a reasonable attorney's fee against such Owner.

13.9. The Committee where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of the Committee and that of any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Committee when acting as set forth above.

The Committee to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, deter-

mination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Committee shall take into consideration the best interests of the Owners and Tenants and of the Properties to the end that The Properties shall be preserved and maintained as a high quality community.

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

13.10. No violation of any of these Covenants and Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of The Properties, provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Covenants and Restrictions as fully as any other Owner of any portion of The Properties.

13.11. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot or Living Unit, whether or not the same incorporates or refers to these Covenants and Restrictions, covenants for himself, his heirs, successors and assigns, to observe, perform and be bound by these Covenants and Restrictions and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

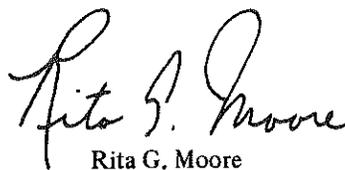
13.12. These Covenants and Restrictions shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, deeds, leases or these Covenants and Restrictions shall be taken to govern and control.

#### ARTICLE XIV TITLE HEADINGS

14.1. The title headings as to the contents of particular Articles are inserted only as a matter of convenience and for reference, and in no way are, or are they intended to be, a part of this Declaration nor in any way define, limit or describe the scope or intent of the particular section or clause to which they refer.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of July, 1971.

Signed, sealed and delivered  
in presence of

  
Rita G. Moore

  
George J. Achenbach

  
Chester J. Dzialo

STATE OF CONNECTICUT:  
: ss. Middletown  
COUNTY OF MIDDLESEX:

On this the 23rd day of July, 1971, before me, Chester J. Dzialo, the undersigned officer, personally appeared George J. Achenbach known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained as his free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand.



CHESTER J. DZIALO  
NOTARY PUBLIC.

Declaration of Covenants, Conditions and Restrictions  
By George J. Achenbach - Dated July 23, 1971

NOTE: In accordance with ARTICLE IV Section 4.4.(b) Westlake Association, Inc. Declaration of Covenants, Conditions and Restrictions, a dues increase was voted at the 1973 Annual Meeting which places dues currently at \$90.00 per year, \$85.00 to go to the Highlands at Westlake Association, Inc. and \$5.00 to go to the Westlake Association. This dues increase was approved by a vote of 120 to 12 at the aforementioned meeting. The dues are collected in June for the period January through June and are collected in December for the preceding July through December.

NOTE: The Board of Directors will fill any vacancies of resigned Board members under the procedures as listed in ARTICLE V Highlands at Westlake Association By-Laws and under any particular procedures as the Board may from time to time establish.

Signed



Carl Wallace  
President, Highlands at Westlake  
Association, Inc.

SCHEDULE A

All those certain pieces or parcels of land, together with all buildings now or hereafter placed thereon, situated on the northerly side of Smith Street, in the Town of Middletown, County of Middlesex and State of Connecticut, shown and designated as (1) Lots Nos. 1 through 150, inclusive, and Lots Nos. 152 through 202, inclusive, (2) "Brookside Drive", (e) "Inverness Lane", (4) "Inverness Square", (5) "Highlands Crescent", (6) "Stirling Court", (7) "Braeburn Lane", (8) "Heather Square", (9) "Afton Terrace", (10) "Area To Be Dedicated as Part of Public Street", and (11) "Residential Cluster No. 1 Reserve Area" on the following entitled maps: (a) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" = 40', Date: March 26, 1971, Sheet 1 of 3", (b) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" - 40', Date: March 26, 1971, Sheet 2 of 3", and (c) "The Highlands at 'Westlake', Residential Cluster No. 1 Portion of Property of George J. Achenbach, Off Smith Street, Middletown, Conn. Raymond V. Kotowski, P.E., L.S. Conn. 6670 Old Saybrook, Connecticut, Scale 1" = 40', Date: March 26, 1971, Sheet 3 of 3", which maps are on file in the Middletown Town Clerk's Office as (i) Map No. 3232, (ii) Map No. 3233, and (iii) Map No. 3234, respectively, to which maps reference is hereby made and may be had for a more particular description and location of said premises.