

## RADISSON DECLARATION

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Note 1: These schedules are part of the original Declaration and do not affect the governance of the RCA. They are not included in this mark-up.

DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
RADISSON

THIS DECLARATION, made as of the 27<sup>th</sup> day of 1975, by and between the NEW YORK STATE URBAN DEVELOPMENT CORPORATION. ("UDC"), a corporate governmental agency constituting a political subdivision and public benefit corporation of the State of New York, having its principal offices at 1345 Avenue of the Americas, New York, New York 10019 (hereinafter referred to as the "Developer"); and the RADISSON COMMUNITY ASSOCIATION. INC., a subsidiary corporation of Developer, organized and existing under the New York Not-For-Profit Corporation Law, having its principal offices at 8255 Willett Parkway, Baldwinsville, New York 13027 (hereinafter referred to as the "Association").

RECITALS:

A. In furtherance of the objectives of the New York State Urban Development Corporation Act of 1968 (the "Act"), UDC has prepared a program for the development of a new community in the Town of Lysander; acquired the fee interest in the Project Area (as defined in Article I herein); and undertook the Lysander New Community Multi-Purpose Project (the "Project") on the land within the Project Area generally outlined on the Project Map annexed hereto as Schedule A, and more fully described and set forth in the Project Description as Schedule B, annexed hereto and made a part hereof.

B. On March 19, 1971, the UDC Directors made findings pursuant to Section 10 of the Act with respect to the Project.

C. On May 17, 1971, a public hearing was held in Lysander on a General Project Plan (the "Project Plan") for the Project providing for the development of the Project Area as a new community now known as "Radisson", consisting of planned residential, commercial, industrial, cultural, educational, recreational and public service areas, buildings and facilities.

D. On June 29, 1971, the UDC Directors as required by Section 16(2) of the Act approved and affirmed the Project Plan.

E. Developer has caused the Association to be formed in order to perform, on behalf of the owners of property in, and the residents of Radisson. The duties and responsibilities designated (i) in this Declaration to be performed by the Association, and (ii) in the Certificate of Incorporation and By-Laws of the

Association; and the Association joins in this Declaration for the purpose of accepting such duties and responsibilities.

F. Developer desires to subject that portion of the Project Area (the "Property"), outlined on the Property Map annexed hereto as Schedule C and more fully described and set forth in the Property Description as Schedule D annexed hereto and made a part hereof, to the protective covenants, conditions and restrictions set forth in this Declaration.

G. Developer may from time to time hereafter, in the manner provided in Article II. Section 2 hereof, subject other portions of the Project Area to this Declaration.

NOW. THEREFORE, Developer and Association hereby declare that the Property described in Schedule D hereto and such additions thereto as may be made pursuant to Article II herein, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in and to any parcel or tract of land constituting any part of the Property and shall inure to the benefit of each owner thereof, his grantees, distributees, successors and assigns, and to the benefit of Developer, Association and of each Owner and Resident of the Property; and

## ARTICLE I - DEFINITIONS

### Section 1.

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

(1) "Act" - the New York State Urban Development Corporation Act of 1968 (Chapter 174, Section 1, Laws of 1968 of the State of New York) as amended.

(2) "Annual Assessments" - the assessments levied by the Board of Directors of the Radisson Community Association pursuant to and in accordance with the provisions of Article IV herein.

(3) "Assessable Property" - the Property together with all permanent structural improvements thereon, with the exception of the following which shall be exempt from any Assessments:

(a) All Common Property:

(b) all unimproved Lots and any partially improved Lots which shall not contain a completed Improvement; and

(c) all religious, educational & governmental facilities.

(4) "Assessment" - the Annual Assessments, as defined in this section 1, levied against "Assessable Property by the Radisson Community Association.

(5) "Association" - the Radisson Community Association, Inc., its successors and assigns.

(6) "Commercial Lot" - a Lot designated, pursuant to Article VI, Section 1 herein, for commercial use.

(7) "Committee" -The Architectural Standards Committee established by the Association pursuant to and for the purposes specified in Article V herein.

(8) "Common Property" - portions of the Property, described in Schedule C hereto, as the same may be supplemented, conveyed by Developer to the Association for the common use and enjoyment of Owners and Residents.

Notwithstanding any legal presumption to the contrary, the fee title to any land shown upon any filed or recorded map or plat of any part of the Project Area which shall be designated as "Common Property" shall be reserved to Developer until such time as such land shall be conveyed to the Association.

(9) "Community Facility/Institutional Lot" - a Lot, designated pursuant to Article VI, Section 1 herein, for religious, educational, charitable, civic, community, governmental, health care, recreational, cultural or similar uses.

(10) "Completed Unit" - any building situated upon the Project Area designed and intended for, and which is either occupied or ready for occupancy as, a residence for a single person, a family or a family-size group of persons.

(11) "Declaration" - this Declaration of covenants, conditions and restrictions in its original form and as it may be supplemented, extended or amended in the manner provided for in Article XIII herein.

(12) "Developer" - New York State Urban Development Corporation, its successors and assigns.

(13) "Development Period" - the period between the date on which these covenants, conditions and easements are recorded in the Onondaga County Clerk's Office and ten (10)years subsequent thereto unless otherwise specified in a supplemental declaration hereto.

(14) "Easement Area" - those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto, reserved for the purposes set forth in Article XIII hereof.

(15) "Improvement" - any thing or object (other than trees, shrubbery and landscaping) the placement of which upon any Lot may affect the appearance of such Lot, including, for purposes of illustration and not limitation, any building or part thereof, garage, porch, shed, patio, fence, curbing, wall or hedge more than two feet high, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters, or waters in any natural or artificial stream, from, upon, or across any Lot; and any change in the grade of any Lot of more than six inches from the grade existing at the time of purchase by each Owner.

(16) "Industrial Lot" - a Lot designated, pursuant to Article VI, Section 1 herein, for industrial use,

(17) "Lot" - any plot or parcel of land shown upon any filed or recorded map or plat of the Property, with the exception of the Common Property, together with all permanent structural improvements thereon.

(18) "Members" - those persons or entities entitled to membership in the Association pursuant to the Certificate of Incorporation or By-Laws of the Association.

(19) "Mixed Use Lot" - a Lot designated, pursuant to Article VI, Section 1 herein, for a combination of land use development activities.

(20) "Owner" - the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Improvement, which is subject to this Declaration and any supplement or amendment thereto or the record holder of any leasehold estate with respect to land within the Property area.

(21) "Project" - Lysander New Community Multi-Purpose Project.

(22) "Project Area" - as set forth in the map annexed hereto as Schedule A and more fully described in Schedule B and made a part hereof.

(23) "Project Plan" - the General Project Plan approved by Developer's Directors on June 29, 1971, as the same may be amended from time to time.

(24) "Property" - as set forth in the Map annexed hereto as Schedule C and more fully described in Schedule D and made a part hereof.



(25) "Radisson" - the development undertaken by Developer within the Town of Lysander as referred to in the Recitals herein.

(26) "Resident" - any person actually living upon any part of the assessable Property subject to this Declaration and any additions thereto as may hereinafter be made.

(27) "Referendum" - a procedure, to be utilized by the Association from time to time where specified in this Declaration or pursuant to its By-Laws, whereby the members of the Association are given the opportunity, subsequent to due notice thereof, to vote, in person or by proxy, pursuant to the provisions of the Association by-laws, on specific measures pertinent to the affairs of the Association.

(28) "Residential Lot" - a Lot designated, pursuant to Article VI, Section 1 herein, for residential use.

(29) "UDC" -New York State Urban Development Corporation, its successors and assigns.

(30) "Golf Course Property" – the Radisson Greens Golf Club, L.P., its successors and assigns.

## ARTICLE II PROPERTY SUBJECT TO DECLARATION

### Section 1 - Existing Property

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Lysander, County of Onondaga, State of New York; is delineated on the map attached hereto as Schedule C and more fully described in the description set forth in Schedule D hereto, both of said Schedules incorporated herein by reference thereto.

### Section 2 - Additions to Existing Property

Developer, its successors and assigns shall have the right to bring additional properties within the scheme of this Declaration.

The additions authorized herein shall be made by filing or recording a Declaration with respect to the additional properties which shall extend to such properties. Said extending Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be considered appropriate by Developer to reflect the

different character, if any of the added properties, provided the same are not inconsistent with the overall concept of this Declaration.

Nothing contained in this Declaration shall be construed as requiring Developer, or the Association, subject any land, other than the Property identified herein, now or hereafter owned by either of them to the provisions of this Declaration nor shall Developer, or the Association be prevented from subjecting such other lands to declarations similar to this Declaration.

### Section 3 - Common Property

#### A. CONVEYANCE OF COMMON PROPERTY

In accordance with and subject to the terms and conditions of this Declaration, Developer will, from time to time, as determined by Developer, convey to the Association portions of the Property for the common use and enjoyment of the Owners and Residents (the "Common Property"). Each such conveyance of Common Property may be without consideration or for consideration which is the lesser of (i) UDC's attributable cost plus 5% thereof, or (ii) fair market value, of such Common Property being conveyed at the time of each such conveyance.

#### B. DESIGNATION OF COMMON PROPERTY

At the time of each conveyance of Common Property to the Association by Developer, Developer shall, in each instrument of conveyance state that the portion of the Property being conveyed is Common Property subject to this Declaration and is primarily for the use of Owners and Residents. Such facilities may be made available for the use and enjoyment of the general public under rules and regulations promulgated by the Board of Directors of the Association.

#### C. RIGHTS IN AND TO COMMON PROPERTY

Every Resident and Owner and/or designated representative of such owner shall have a right and easement of enjoyment in and to all Common Property and such right and easement shall be appurtenant to an shall pass with every Lot upon transfer; and every Resident and Owner shall have a nontransferable privilege of enjoyment in and to all Common Property for so long as he shall be a Resident or Owner, subject to the right of any Owner to designate a representative for such purposes and provided that all such rights, easements and privileges shall be further subject to the right of the Association to:

- (a) promulgate rules and regulations relating to the operation and maintenance of the Common Property:

(b) deleted per Amendment 15

(c) suspend the right and easement of any Owner and the privilege of any Resident claiming through such Owner for any period during which the Assessments against such Owner remain overdue and unpaid and for a period not to exceed 60 days for any infraction of the Association's rules and regulations issued pursuant to this Declaration:

(d) deleted per Amendment 15

(e) grant, with respect to the Common Property, easements, rights-of-way and other similar rights to any municipality or other governmental body, agency or authority, or to any quasi- public agency or to any utility corporation:

(f) deleted by Amendment 13

(g) dedicate or transfer all or any part of or interest in the Common Property to any municipality or other governmental body, agency or authority, for such Purposes and subject to such conditions as may be agreed upon by the Association and such grantee; Provided, however, that no such dedication or transfer shall be effective unless authorized and approved by the membership of the Association pursuant to an affirmative vote, at a referendum held for such purposes, of at least two-thirds of the Classes of Members in existence at the time of such referendum provided that one of the Classes of Members constituting the two-thirds majority voting in the affirmative must be the Class A Members thereof; and provided further, that no dedication or transfer shall be made in violation of any deed restrictions affecting the Common Property so dedicated or transferred. An "affirmative vote" of the Class Members, pursuant hereto shall be deemed to have been obtained only upon the affirmative vote of at least two- thirds of such Class Members voting in person or by proxy at said referendum.

(h) deleted per Amendment 15

(i) exercise all the powers of a corporation organized under the Not-for-Profit Corporation Law of the State of New York and do each and every thing necessary or appropriate for, or in connection with, or incidental to, the accomplishment of any one or more of the purposes of the Association as set forth in its Certificate of Incorporation.

No violation of any of the covenants, conditions, restrictions and easements contained herein shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any Lot, provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to the covenants, conditions, restrictions and easements contained herein as fully as any other Owner of any Lot subject hereto.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

#### Section 1. Membership

The entire membership of the Association, who shall automatically become members thereof, shall consist of the following:

##### CLASS A MEMBERS – RESIDENTS

Every person eighteen (18) years of age or older, including property owners and tenants, who maintains a fixed, principal residence on land within Radisson subject to this Declaration or other similar Declarations, to which such person always intends to return regardless of where such person may be temporarily located.

##### CLASS B MEMBERS - MULTI-FAMILY HOUSING OWNERS

Every person or entity, who is a record owner of a fee interest in any building, construction of which has been completed, located on land within Radisson subject to this Declaration or other similar Declaration which contains two (2) or more units, each of which is designed and intended for use and occupancy as a residence by a single person, family or family-size group of persons.

##### CLASS C MEMBERS - OWNERS OF COMMERCIAL, INDUSTRIAL, INSTITUTIONAL OR COMMUNITY FACILITIES

Every person or entity who is a record owner of a fee interest in any building, construction of which has been completed, located on land within Radisson subject to this Declaration or similar Declaration and which has been designated for commercial, industrial, institutional or community facility use.

##### CLASS D MEMBERS - DEVELOPER

New York State Urban Development Corporation, its successors and assigns.

## CLASS E MEMBERS – Golf Course Property Owners

Owners of golf courses located on land within Radisson which has been designed for golf course use subject to this Declaration or other similar Declarations

### Section 2. Voting Rights

#### CLASS A MEMBERS -RESIDENTS

Each Class A Member shall be entitled to one vote.

#### CLASS B MEMBERS - MULTI-FAMILY HOUSING OWNERS

Each Class B Member shall be entitled to one vote for each dwelling unit within a Multi-Family Structure owned by such member. Provided, however, that each Class B Member who is an individual person, and not a corporation, partnership, cooperative or other form of non-individual entity, shall be entitled to a total of one vote only as provided for in the New York Not-For-Profit Corporation Law.

#### CLASS C MEMBERS - OWNERS OF COMMERCIAL, INDUSTRIAL, INSTITUTIONAL OR COMMUNITY FACILITIES

Each Class C Member shall be entitled to one vote for each Ten Thousand (10,000) square feet, or major portion thereof, of building area contained in such commercial, industrial, institutional or community facilities structure owned by such member. Provided, however, that each Class C Member who is an individual person and not a corporation, partnership, cooperative or other form of non-individual entity, shall be entitled to a total of one vote only as provided for in the New York Not-For-Profit Corporation Law.

#### CLASS D MEMBERS -DEVELOPER

UDC, its successors and assigns shall be entitled to one vote.

In no event shall Developer be deemed a Class A, Class B, or Class C Member nor shall Developer be entitled to voting rights other than Class D voting rights. However, such restriction shall not apply to any subsidiary of Developer and such subsidiary shall be entitled to exercise voting rights derived by it as a result of otherwise qualifying as a Class A, Class B, or Class C Member.

If any Multi-Family Housing Structure, Industrial Structure or Non-Residential Facility is owned of record as a joint tenancy, tenancy-in-common, tenancy by the entirety, condominium or any other form of joint or common ownership, all such joint or common owners shall share between them all membership and voting rights in the Association. In such event, the joint or

common owners shall be entitled to exercise in whole, but not in part, all voting rights to which they are entitled in whatever manner they jointly determine.

Owners of Religious, Educational and Governmental facilities which are exempt from assessments hereunder shall not be entitled to any voting rights in the Association.

#### CLASS E MEMBERS – GOLF COURSE PROPERTY OWNER

The Class E Member shall be entitled to one (1) vote for each Ten Thousand (10,000) square feet, or major portion thereof, of building area contained in such commercial, industrial, institutional or community facilities structure owned by such member. In no event shall the Class E Member be entitled to less than one (1) vote.

#### Section 3. Board of Directors

The Association shall be managed by a Board of Directors comprised of not less than five (5) nor more than nine (9) persons. Each Director shall serve for a term of two (2) years unless such directorship shall become vacant by resignation, removal, death or otherwise. Except for such Directors as may be appointed or elected by the Class D Member, no Director may serve for more than four (4) terms in succession. The Board of Directors shall, subsequent to February 26, 1986, be comprised of not more than eleven (11) persons.

#### (1) ELECTION BY CLASS A MEMBERS - RESIDENTS

Upon completion of construction and occupancy of the first one hundred (100) dwelling units, the Class A Members shall be entitled to elect one (1) Director. For each additional one thousand (1,000) dwelling units completed and occupied or ready for immediate occupancy and located on land subject to this Declaration or similar Declaration, and in existence on the date of the election, the Class A Members shall be entitled to elect One (1) Director. In no event, however, shall the number of Directors elected by Class A Members and serving at the same time exceed five (5) in number. As of February 26, 1986 and thereafter, the Class A Members, regardless of how many dwelling units have been completed, occupied or ready for occupancy as of such date, shall be entitled to elect seven (7) directors.

#### (2) ELECTION BY CLASS B MEMBERS - MULTI-FAMILY HOUSING OWNERS

Class B Members shall be entitled to elect one (1) Director at such time as there are one thousand (1,000) dwelling units located in multi-family structures and a total of three thousand one hundred (3,100) dwelling units, including said 1,000 multi-family units, on property subject to this Declaration or

other similar Declaration, construction of which has been completed and the units occupied or ready for immediate occupancy as of the date of said election. No more than one (1) Director at any given time shall be elected by the Class B Members.

(3) ELECTION BY CLASS C AND E MEMBERS -OWNERS OF COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR COMMUNITY FACILITIES AND GOLF COURSE PROPERTY

Class C and E Members shall be collectively entitled to elect one (1) Director at such time as the construction of one million (1,000,000) square feet of commercial, industrial, institutional and community facility space located on property subject to this Declaration or other similar Declaration has been completed and occupied or ready for occupancy as of the date of said election. At such time as the construction of two million (2,000,000) square feet of such commercial, industrial, institutional and community space has been completed and occupied or ready for occupancy as of the date of said election and three thousand one hundred (3,100) residential dwelling units have been completed and are occupied or ready for occupancy, the said Class C Member shall be entitled to elect a second (2nd) Director. In no event shall the number of Directors elected by such Class C and Class E Members collectively and serving at the same time exceed two (2) in number.

(4) ELECTION BY CLASS D MEMBERS -DEVELOPER

The Class D Member shall be entitled, upon incorporation of the Association, to appoint the first five (5) Directors. Subsequent thereto, the Class D Member shall be entitled to appoint successors to the Directors initially appointed. However, commencing at the time the total number of Directors elected by the Class A, B and C Members exceeds four (4), one (1) of the Directors initially appointed to the Board, or the successor thereto, by the Class D Member shall automatically thereupon relinquish such position on the Board for each Director in excess of four (4) elected by the said Class A, B and C Members provided that, in no event, shall the number of Directors appointed to the Board by the Class D Member and serving thereon at any given time be less than one (1). In any event, however, if by October 1, 1985, the total number of Directors elected by the Class A, B and C Members does not exceed four (4) in number, Directors initially appointed to the Board by the Class D Member, or the successor thereto, shall automatically, at the next Annual Meeting of the Association, relinquish their positions in sufficient numbers that will result in the Class D Member appointing one less Director than the total number of Directors the Class A, B and C Members are, as of that date entitled to elect. Thereafter, the election of Directors shall continue to take place in accordance with the procedures set forth in this Section. As of February 26, 1986 and thereafter, the number of directors appointed to the Board by the Class D member and serving thereon at any given time shall be one (1).

#### Section 4. Restrictions on Voting

Any member who is in violation of these Protective Covenants, Conditions and Restrictions, as determined by the Board of Directors of the Association shall not be entitled to vote during any period in which such violation continues. If any Member is in default in the obligation to pay the Annual Assessment levied by the Association as specified herein, such member shall not be entitled to cast the votes which such Member would otherwise be entitled to so cast during the period in which such default continues.

#### Section 5. Assignment of Right to Vote

UDC may assign its membership in the Association to any person, corporation, or other entity acting as successor in interest to UDC as Developer of the Project and any future assignee of such membership shall be entitled to make similar successive assignments.

In addition. UDC or its successor in interest may assign its right to vote on a specific issue or at a particular meeting to any Member, within any Class of Members, of the Association and such assignment shall be valid only for the specific and limited purpose which shall be specified, in writing, in such assignment.

All other Members of the Association shall, within the limitations specified herein, be entitled to assign the right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made to another Member within the same class of Member as the party making the assignment and such assignment is made Pursuant to the By-Laws of the Association. The By-Laws shall require that the assignment specify the meeting or issue to which the assignment applies.

In the case of the corporate Member, votes may be cast by an appropriate officer of such corporation.

#### Section 6. Termination of Membership

Membership in the Association and the right to vote of any person, corporation or other entity shall terminate automatically at such time as the status of such person, corporation or other entity as Resident, Multi-Family Housing Owner, Owner of Commercial, Industrial, Institutional or Community Facilities or Golf Course Property ceases.



## Section 7. Voting Regulations

The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-For-Profit Corporation Law of the State of New York as it deems advisable for all matters concerning the conduct of meeting and voting procedures.

## ARTICLE IV ASSESSMENTS

### Section 1- Covenant to Pay Assessments; Liens

Each owner, for himself, his distributees, legal representatives, successors and assigns, by acceptance of a deed or other conveyance of a Lot or other Assessable Property, whether or not the covenants contained herein shall be expressed in any such deed or other conveyance, is hereby deemed to covenant and agree to pay to the Association all assessments, which shall be levied by the Association against each Lot or other Assessable Property owned by him at the time of any such levy, (hereinafter referred to as the "Assessment", which term shall mean the Annual Assessments as defined in Section 3 herein and any Special Assessments against Residential Lots as defined in Sections 8 and 9 herein.) Each Owner (by such acceptance and whether or not so expressed) is hereby deemed to covenant and agree to be personally liable for all Assessments which fall due while he is the Owner of each Lot being assessed, and all such Assessments, in addition to constituting a binding, personal obligation of such Owner, shall be a continuing charge and lien upon each Lot or other Assessable Property against which such Assessments are made..

### Section 2. Purpose and Levy of Assessments

Assessments shall be used for the purposes of promoting the health, education, safety, recreation, cultural enrichment and welfare of the Owners and Residents, including but not limited to the maintenance, improvement, use and enjoyment of the Common Property, the costs and expenses of the operation of the Association, the operation of programs and the provision of services related to such purposes and the enforcement of the provisions of this Declaration. All Assessments shall be levied against Assessable Property on a uniform basis applicable to all improved Lots within each specified land use category (residential, commercial, industrial, community/institutional, mixed uses). All Special Assessments shall be levied against Residential Lots on an equitable basis in accordance with Sections 8 and 9 of this article. The Board of Directors of the Association, however, shall have the right, in its discretion, to provide for abatement of Assessments to be levied against residential units financed under Section 236 of the Housing and Urban Development Act of 1968 or comparable Federal or State program.

### Section 3. Annual Assessments; Budgets

The Board of Directors of the Association shall levy an annual assessment (the "Annual Assessment") in the following manner:

#### (a) Initial Annual Assessments

Until October 31st. of the calendar year in which the first Lot is conveyed to an Owner the maximum Annual Assessment shall be equal to nine (9) cents (\$.09) per square foot of occupied space for each Residential improvement designed for the use of one family; six (6) cents (\$.06) per square foot of space for each Commercial, Golf Course Property, Community and Institutional improvement; and four (4) cents (\$.04) per square foot of space of each Industrial improvement. Occupancy of any portion of a commercial, golf course property, community, institutional or industrial improvement shall constitute occupancy of the entire area of such facility for purposes of computing the Annual Assessment on such Assessable Property. A mixed use facility, combining two or more of the use classifications specified herein, shall, for purposes of computing Annual Assessments hereunder, be deemed to be that of the use which occupies the most amount of the space within such facility.

For purposes of use classifications of improvements pursuant hereto, office facilities shall be considered commercial improvements.

For purposes of computing annual assessments, "occupied space" shall be determined in the following manner:

#### a. Single Family Detached Units

Gross area of each floor measured at outside perimeter of exterior walls (including, but not limited to, bedrooms, living rooms, dining rooms, family rooms, bath rooms, lavatories, "mud" rooms, kitchens, closets, storage areas and rooms, exterior and interior walls, dens, finished basements and other spaces not specifically stated herein to be excluded from such measurement. Areas to be excluded from measurement are outbuildings, unfinished garage, unfinished basement, unfinished attic and unheated porch and balcony areas only.

#### b. Multi-Family Units

Gross area of living space on each floor measured at outside of perimeter walls (exclusive of unfinished basement space and garage space, common hallways, common laundry, common storage and common utility rooms; elevator shafts).

c. Industrial, Commercial, Golf Course Property, Community & Institutional Facilities

Gross area of space on each floor measured at outside of perimeter walls (excluding out buildings housing mechanical equipment exclusively but including out buildings enclosed on 4 sides, used for storage and similar use and buildings containing mechanical equipment but staffed with permanent operating personnel).

(b) Maximum Residential Annual Assessments

From and after November 1st of the year in which the first Lot is conveyed to an Owner, the maximum Annual Assessment levied with respect to a Residential Lot may be increased each year (i) not more than five percent (5%) over the Annual Assessment for the previous year or an amount equal to the increase in the Consumer Price Index for such preceding year whichever is greater without any vote of the Class A Residential members or (ii) more than five percent (5%) over the Annual Assessment for the previous year by an affirmative vote of two-thirds (2/3) of Class A Residential members who are voting in person or by written proxy at a Referendum duly called for such purpose.

(c) Maximum Commercial, Industrial, Community Golf Course Property, Facility or Institutional Annual Assessments

From and after November 1 of the year in which the first Lot is conveyed to an Owner, the maximum Annual Assessment levied with respect to Commercial, Industrial, Community Facility or Institutional improvements may be increased each year, with or without any vote of the Members, provided that no such increase shall be more than five percent (5%), over the Annual Assessment for the previous year, and in no event more than the percentage increase under (b) above for the same year.

(d) Budgets

The Board of Directors of the Association shall prepare and publish, in March of each year, commencing in 1986, the Association's projected budget for the next fiscal year which shall run from April 1 to March 31 and to concurrently prepare and publish a statement of the Association's revenue and expenses for the then-current fiscal year

The Association shall be authorized to levy a separate annual capital assessment for the purpose of replacing capital reserve fund expenditures. The annual capital assessment shall be based on an equal rate per residential unit and payable to the Association in the same manner as the regular annual assessment. Only Class A and Class B Property Owners shall pay the annual

capital assessment. The capital assessment shall be accounted for separately from regular annual assessments.

The initial annual capital assessment per residential unit shall be \$38.00 which is due and payable on April 1, 1995. In establishing future capital assessments, any increase shall be limited to an amount not to exceed \$5.00 with the annual capital assessment limited to a lifetime cap of \$43.00, as adjusted for inflation.

The annual capital assessment rate shall be determined by the RCA Board of Directors after a review by the Finance Committee.

#### Section 4. Notice of Assessments

In the month of March of each year, the Board of Directors, within 15 days of the publication of the Association's budget as provided for herein, shall send a written bill to each Owner stating the amount of the Annual Assessment imposed against each parcel of Assessable Property owned by the Owner; the method used to determine such amount; the time period for payment thereof and the interest rate to be charged for late payments thereof. Each Annual Assessment shall be due and payable as of April 1, in the same year in which such Annual Assessment is levied and billed. Class A (Residents), Class B (Multi-Family Housing Owners) and Class D (Developer) Members owning Assessable Property, as well as Class C Members owning Commercial Facilities shall have the option of paying such Annual Assessment in equal quarterly installments or on such other terms as may be acceptable to the Association. Class C Members owning Industrial, Institutional or Community Facilities shall have no option of paying such Annual Assessments on any basis other than in one (1) lump payment following the billing as of November 1 of each year, as provided for in this section.

#### Section 5. Late Payments; Liens

The Board of Directors may from time to time establish or change the rate of interest which shall be charged for the payment after the due date of any portion of an Assessment, provided that such interest rate shall not exceed the maximum legal Interest rate then authorized by law. In the event that an Owner shall fail to pay completely a portion of an Assessment within 90 days following the due date thereof, the obligation with respect to such unpaid amount and the lien therefore established pursuant to Section 1 of this Article shall be enforceable pursuant to the provisions of Article XII hereof.

#### Section 6.

An additional charge shall be added to each annual assessment of single family residential properties (excluding condominium properties) for the purpose of providing standard, weekly curbside collection and disposal of solid waste and recyclable materials. This service is to be provided by a contracted collection

company, not by the RCA. The amount of such charge shall be apportioned and assessed equally to all residential Lots, at cost (it being the intent to merely pass through the cost of such collection service to the Lot owners). The Board of Directors shall notify Residents at least 30 days in advance of any increased disposal charge. This charge shall not include any additional services that the Lot owner may request; such additional charges to be solely the responsibility of that Lot owner.

#### Section 7. Commencement of Assessments; Additional Procedures.

Improvements on a Lot shall become subject to Assessments on the first day of the month following (a) for a Residential Lot designed for the use of one family, the date on which title is first transferred to any such family member, (b) for a Residential Lot designed for the use of more than one family, the date on which the first family takes occupancy, (c) for a Commercial, Golf Course Property, Industrial, Community Facility, Institutional or Mixed Use Lot, the date on which the first user thereof takes occupancy. Assessments on each improvement shall be adjusted and pro-rated according to, the number of months remaining in the fiscal year of the Association. The Board of Directors shall have the right to adopt procedures for the purpose of levying, billing and collecting Assessments, provided that such procedures are not inconsistent with the provisions hereof.

#### Section 8. Special Assessments

The Board of Directors may levy special assessments against Residential Lots for the purposes set forth in Section 2 of this Article IV ("Special Assessments"). Special Assessments shall be separate from and shall not be included in the Annual Assessment.

#### Section 9. Amenities Equalization Special Assessment

The Board of Directors shall have the authority to levy a Special Assessment, not to exceed one-half of one percent (0.5%), on the purchase price paid by any person or entity (the "Purchaser") for any Residential Lot. Any Purchaser who has been the Owner of another Residential Lot which has served as said Purchaser's principal residence for two consecutive years immediately preceding the purchase of the subject Residential Lot shall be exempt from this Special Assessment with respect to the subject Residential Lot provided said purchaser sell the other Residential Lot within 90 days of the purchase of the subject Residential Lot pursuant to a bona fide contract. Any person who has been a full time resident of an apartment within Radisson during the entirety of the two (2) consecutive years immediately preceding the purchase of the subject Residential Lot shall be exempt from this Special Assessment; provided,

however, that this sentence shall not apply to the purchase if the Purchaser is the owner of one or more other Residential Lots at the time of the purchase of the subject Residential Lot. On or before July 1<sup>st</sup> of each year, the Board of Directors shall state the rate at which this Special Assessment shall be imposed, which Special Assessment may be changed by the Board of Directors from time to time. The purpose of the Amenities Equalization Special Assessment shall be to expand and/or improve common areas and common amenities.

ARTICLE V  
ARCHITECTURAL STANDARDS COMMITTEE

Section 1. Composition and Appointment

As soon as is practicable following the recording of this Declaration, the Board of Directors of the Association shall establish an Architectural Standards Committee (the "Committee") consisting of five (5) individual members appointed by the Association's Board of Directors for terms of one (1) year each. As of February 26, 1986 and thereafter, the Architectural Standards Committee shall be increased in size from five (5) individual members to seven (7) individual members. Thereafter, the Board of Directors of the Association shall annually appoint all members to the Committee for one (1) year terms. There shall be no limitation on the number of terms an individual can serve as a member of the Committee.

In addition to the seven members of the Committee, the Board shall use its best efforts to retain, at all times, an architect ("Architect"), duly licensed in the State of New York, to sit on the Committee as a non-voting member thereof, who may or may not be a Resident of Radisson. The failure or inability of the Board to make such an appointment, however, shall not impair or negate the actions of the Committee acting without the Architect.

Following occupancy of Two Thousand Five Hundred (2,500) dwelling units, a majority of the members of the Committee must thereafter be Residents of the New Community. Prior to occupancy of such 2,500 units, the members of the Committee may or may not be Residents.

If any vacancy shall occur in the Membership of the Committee by reason of death, resignation, removal or otherwise, the Board of Directors of the Association shall as soon as is practicable, fill such vacancy.

Any Committee member may resign at any time by giving written notice thereof to the Chairman of the Committee and such resignation shall take effect on receipt thereof by the Chairman.

Any member of the Committee may be removed, with or without cause, by majority vote of the Board of Directors of the Association.

Section 2. Officers and Compensation; Consultants

The Board of Directors of the Association shall appoint a Chairman from among the members of the Committee. The members of the Committee, from among their number, may appoint such other officers as they shall determine appropriate and the Chairman of the Committee may establish such sub-committees as he or she deems appropriate from time to time and appoint

members thereto from among the members of the Committee. The members of the Committee shall receive no compensation for their services as members thereof but shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance their duties as members of the Committee. The Committee may from time to time recommend to the Association that consultants it deems necessary or appropriate be retained and compensated by the Association.

### Section 3. Conflicts of Interest

Each member of the Committee shall inform the Committee in writing of any financial or other relationship which he may have with any applicant before the Committee.

### Section 4. Meetings

The Committee shall hold regular meetings at least once every three (3) months and as provided for by Resolution duly adopted by the Committee. Special meetings of the Committee may be called by the Chairman thereof and shall be called by the Chairman upon the written request of a majority of the members of the Committee. Regular and special meetings of the Committee shall be held at such time and at such place as the members of the Committee shall specify. Notice of each regular or special meeting of the Committee shall be mailed or delivered to each member thereof at his residence or at his usual place of business at least three days before the date on which the meeting is to be held. Notice of special meetings only shall specify the purpose or purposes for which the meeting is called. At each meeting of the Committee a presence of a majority of the members then in office shall be necessary to constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of members of the Committee present at the time and place of the meeting may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

The Committee shall maintain both a record of votes and minutes for each of its meetings. The Committee shall make such records and minutes and current copies of its rules and regulations available at reasonable places and times for inspection by Members of the Association.

### Section 5. Manner of Acting.

The Committee shall adopt or promulgate rules, regulations, and policy statements and will, as required, make findings, determinations, rulings and orders. The Committee shall, as required, issue permits, authorizations or approvals pursuant to directions and authorizations contained herein. Any one of the members of the Committee may be authorized to exercise the full authority of



the Committee with respect to the review of plans and specifications pursuant to the provisions of this Article V, and with respect to all other specific matters as may be specified by resolution of the Committee. The action of a member with respect to the foregoing shall be final and binding upon the Committee, subject, however, to appeal to the Committee as a whole. Any applicant for such approval, permit or authorization or any member of the Committee may, within ten days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the entire Committee. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed as soon as possible by the entire Committee. Thereafter, the decision of a majority of the members of the Committee with respect to such matter shall be final and binding.

#### Section 6. Jurisdiction

Except as may be otherwise provided for in this Article, the Committee shall have no powers, authority, or jurisdiction with respect to the initial construction of improvements upon any portion of the Property subject to this Declaration, as the same may be supplemented and amended from time to time. Upon completion and occupancy of any improvement constructed on any portion of the Property area, the Committee shall have the power and authority to initiate remedies to remove violations of the conditions, controls and restrictions specified in this Declaration as the same may apply to such completed and occupied improvement in accordance with the provisions of Section 8 of this Article.

No existing improvement upon any Lot other than Industrial, Golf Course Property, and Commercial Lots shall be altered in any way which materially changes the exterior appearance thereof nor shall any Lot or Improvement, other than an Industrial, Golf Course Property, or Commercial Lot, be used for a purpose other than that for which it was originally designed or constructed unless plans and specifications (including a description of any proposed new use) therefore shall have been Submitted to and approved by the Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee. In any case in which 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, if requested, shall make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval. In the event that the Committee shall fail 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 by the Committee shall be required.

With respect to any improvement constructed on any Industrial, Golf Course Property, or Commercial Lot, the Committee shall have the right to review and approve plans and specifications, in accordance with the above specified procedures, for any alteration to such Improvement which affects the exterior appearance thereof except for such alterations which shall be deemed to constitute an addition to such Improvements or construction of a new facility on such Industrial, Golf Course Property, or Commercial Lot. The Committee shall have no power to review and approve plans respect to such additional or new construction on an Industrial or Commercial Lot nor shall it have any review powers with respect to proposals which change the purpose for which Improvements on Industrial, Golf Course Property, or Commercial Lots were originally designed or constructed.

The Developer shall be solely responsible for approving improvements on any Industrial, Golf Course Property, or Commercial Lot as well as any additions and new construction on such Industrial, Golf Course Property, or Commercial Lots. In the event a question arises, the Developer shall decide whether a proposed change is an alteration which affects exterior appearances, or an addition to an improvement on an Industrial or Commercial Lot.

#### Section 7. Rules, Regulations and Policy Statements

The Committee may adopt, promulgate and enforce rules and regulations for the purpose of governing the form and content of plans and specifications to be submitted for approval hereunder or for the purpose of enabling the Committee to exercise any of the powers granted to it herein. The Committee may issue statements of policy with respect to the approval or disapproval of architectural styles, details of construction or such other matters as may be presented for approval. Such rules, regulations and such statements of policy may be amended or revoked by the Committee at any time, provided that no change of policy shall affect the finality of any approval granted prior to such change.

#### Section 8. Violations

Except as may otherwise be provided for in this Article with respect to Industrial, Golf Course Property, and Commercial Lots, if any Improvement shall be altered, modified or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with the plans and specifications approved by the Committee pursuant to the provisions of this Article such alteration, maintenance or use shall be deemed to have been undertaken in violation of this Article V and without the approval required herein; and, upon written notice from the Committee, any such Improvement so altered, modified or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same within 20 days after the mailing of the notice of violation, then the Association shall have the Right of Abatement as provided

in Article XII Section 3 hereof. Failure to adhere to any of the general covenants and restrictions contained in this Declaration or of any of the rules, regulations and policy statements enacted by the Association or the Committee shall be deemed a violation and the Association shall have enforcement rights to remedy such violation as provided herein.

#### Section 9. Certificate of Compliance

Upon completion of the alteration of any Improvement in accordance with plans and specifications approved by the Committee, as required herein, the Committee shall, upon written request of the Owner of such Improvement, issue a Certificate of Compliance, identifying such Improvement and the Lot upon which such Improvement is placed, and stating that the plans and specifications, the location of such Improvement, alteration or modification and the use or uses to be conducted thereon have been approved and that such Improvement as altered or modified complies with the plans and specifications.

#### Section 10. Fees

Deleted by Amendment 15

#### Section 11. Inspection Rights

Any agent of the Association or the Committee may at any reasonable time or times enter upon any Lot for the Purpose of ascertaining whether the maintenance of such Lot or the construction, alteration or exterior maintenance of any Improvement thereon is in compliance with the provisions hereof. Such inspection rights shall also be exercised by the Association or the Committee upon application by a member for a certificate of compliance for the resale of their lot and improvements. Such inspection rights shall extend to the interior of the residential improvements on a member's lot for computing the annual assessment on the occupied space of such improvements. Such inspection shall include the right to measure occupied space and finished living areas as those terms are defined herein. Such inspection shall be done at reasonable times and upon reasonable notification to such member. A refusal by a member to allow such inspection shall be deemed a violation pursuant to Article XII of the Declaration.

#### Section 12. Liability of Committee

The rights and responsibilities of the Committee provided for in this Declaration shall be only for purposes of assuring development in accordance with the Project Plan, and any action taken by the Committee pursuant to this Declaration shall not entitle any person to rely thereon with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of the Project Area or any Lot or part thereof, and all claims,

demands or causes of action arising out of any such action by the Committee shall be deemed to be hereby waived. Neither UDC, the Association, the Committee, nor their successors or assigns shall be liable for any damages to anyone submitting plans to them for approval or to any owner or Resident or any other person, by reason of mistakes in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve any plans. Every person who submits plans to any of such entities, their successors or assigns, for approval, agrees, by submission of such plans, and every Owner or Resident is deemed to hereby agree that he will not bring action or suit against any of such entities, their successors or assigns, to recover any such damages.

## ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

All of the General Covenants and Restrictions set forth in this Article VI shall apply to all Lots within the Property.

### Section 1. Designation of Lots by Use

Developer shall designate on final site plans each Lot of the Property to be for (a) residential, (b) commercial, (c) industrial, (d) community/institutional, (e) mixed uses or (f) Golf Course Property. Following such designation there shall not be any change in the use designation of each such Lot except with the prior written consent of the Owner thereof and of the Committee. A map indicating such Lot use designations shall be filed and kept up to date in the Onondaga County Clerk's Office.

### Section 2. Change in Use of Building or Structures

Subsequent to completion of construction, no building or structure shall be used for any purpose other than for the general category of use originally designated for such building or structure at the time the Lot therefore was sold, without the prior written approval of the Committee.

### Section 3. Approval for Construction of Additions to and Alterations of Existing Structures.

No existing building or structure on any Lot, other than an Industrial, Golf Course Property or Commercial Lot, may be added to or altered in any way which materially affects the exterior appearance thereof unless plans and specifications have been approved by the Committee.

Any material exterior alteration or modification to an existing building or structure on an Industrial, Golf Course Property or Commercial Lot, other than alterations or modifications which constitute an addition to such existing structure

or construction of a new facility on such Industrial, Golf Course Property or Commercial Lot, shall require approval of the Committee.

All alterations or modification which constitute an addition to existing structures or construction of a new facility on any Industrial, Golf Course Property or Commercial Lot must receive the prior written approval of the Developer, provided, however, that the Developer, in its discretion, shall have the right to assign such approval powers to its successor in interest as developer of the Property; the Association; or the Committee. .

#### Section 4. Maintenance of Property

Each Owner shall keep and maintain all Lots and Improvements owned by him in good condition and repair including but not limited to: the seeding, watering, and mowing of all lawns: the pruning and trimming of all trees, hedges, shrubbery and other planting so that the same are not detrimental to adjoining Lots, obstructive of a view of street traffic or unattractive in appearance; and the repairing and painting (or other appropriate external care) of all Improvements. Each Owner shall also maintain all lawns, shrubbery and trees located in the street right-of-way adjacent to such Owner's Lot. The Architectural Standards Committee shall be authorized to (1) establish clear and objective architectural standards and policies for the exterior maintenance of single family attached homes or cluster units (townhouses, patio homes, duplexes) and (2) make determinations and, if necessary, cite violations to cause owners of attached units to make needed repairs for any exterior maintenance condition affecting any or all units in a cluster unit building. Further, that such determinations made by the Committee and subject to RCA Board approval, shall be enforceable under the provisions of the Radisson Declaration including the right of the Association to enter the property for the purpose of causing necessary exterior repairs to be made to any or all affected units. All costs, including legal fees incurred by the Association, shall become a lien upon the property and the Owner(s) unless they are paid in full to the Association. Where a residential unit has been constructed as a detached unit on a lot within a cluster unit neighborhood, the detached unit shall be considered as an attached unit for architectural standards purposes.

#### Section 5. Advertising and Signs

No sign or other advertising device of any nature shall be placed on display to the public view on any Lot or other parcel of land shown as open space on any filed or recorded map, including temporary signs advertising property for sale or rent, without the written permission of the Committee, except for signs or other advertising devices erected by or with the permission of the Developer in connection with the original construction, lease or sale of buildings, Lots or other parcels of the Property. The Committee may, in its discretion, adopt and

promulgate additional rules and regulations relating to signs which may be employed.

Following completion of construction and in addition to such signs and advertising devices that may have been approved by Developer in conjunction with the original construction, sale or lease of such property, signs and other advertising devices may be erected and maintained upon any portion of the Property designated for industrial or commercial uses upon further approval of the Developer as to the color, location, nature, size and other characteristics of such signs and devices. However, Developer, in its discretion, shall have the right to assign such post-construction approval powers to its successor in interest as developer of the Property; the Association; or the Committee.

#### Section 6. Animals, Birds and Insects.

Except for dogs, cats and other common household pets kept as pets, and except as the Committee may otherwise approve in writing, no animals, birds, reptiles or insects shall be kept or maintained on any portion of the Property.

#### Section 7. Trailer, Boat, Non-Operable Motor Vehicle and Snowmobile Storage

As of February 26, 1986 and thereafter, recreational vehicles, motor homes and vehicles which would not fit in an Association Member's garage in addition to boats, boat trailers, house trailers, trailers, campers, snowmobiles, junked, non-operable or non-registered motor vehicles, or similar items shall not be permitted to be parked overnight or otherwise stored on any outside portion of any Lot covered by the Declaration, except as may be approved by Developer with respect to Industrial Lots. Developer, in its discretion, shall have the right to assign such approval powers to its successor in interest as developer of the Property; the Association; or the Committee.

#### Section 8. Fences, Walls and Other Appurtenances

Except as may be permitted by Developer in conjunction with construction, sale or lease on or of any Lot, no fence, wall, pole, mailbox, newspaper delivery receptacle or similar improvement shall be erected, begun or permitted to remain on any portion of the Property unless approved by the Committee.

#### Section 9. Sewage Disposal Systems

Except as may be permitted by Developer in conjunction with the construction, sale or lease on or of any Lot, no individual sewage disposal system shall be permitted on any portion of the Property without the express and prior written approval of such system from the Committee.

#### Section 10. Above Surface Utilities

Except during the construction of improvements on a Lot and except for high tension lines and switch gear boxes required in conjunction with the underground installation of utility lines and pad mounted transformers, no facilities including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground without the prior written approval of the Committee.

The location of all switch gear boxes and pad mounted transformers required to be placed above ground surface not previously approved by Developer in conjunction with plans and specifications for development within the Property must be approved by the Committee prior to their installation.

#### Section 11. Party Walls

Each wall that is built as a part of the original construction of any building located on the Property which is placed on the dividing line between two or more Lots shall constitute a party wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty any owner who has used the wall may restore it and if the other owners thereafter make use of the wall they shall contribute to the cost of restoration in proportion to such use, which right of contribution shall, however, be without prejudice to the right of any owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this paragraph, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. In the event any dispute arises concerning a party wall, each owner shall choose one arbitrator, who shall choose an additional arbitrator, and their decision with respect to the dispute shall be by a majority and shall be binding upon the owners and enforceable in any court having jurisdiction over them.

#### Section 12. Pipes, Oil and Mining Operations

Except during construction of improvements on a Lot, no water pipe, gas pipe, sewer pipe or drainage shall be installed or maintained on any portion of the Property above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No portion of the Property shall be used except by Developer for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing natural gas, oil or other hydrocarbons, minerals, gravel or earth.

#### Section 13. Protective Screening

Where protective screening areas, screen planting, fences, or walls exist, the same shall be maintained by the owner of the property upon which such

screening areas, screen planting, fences or walls are located for the protection of adjacent property. No building or structure, except such planting, fence or wall, shall be placed or permitted to remain in such area. No vehicular access shall be permitted over such area except for the purpose of installing and maintaining screening utilities and drainage facilities, if any.

#### Section 14. Residence Not in Dwelling House

No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other structure not a dwelling house shall be used, temporarily or permanently, as a residence on any portion of the Property.

#### .Section 15. Refuse Near Parks and Water Courses

Except for duly authorized waste receptacles, no material or refuse shall be placed or stored on any portion of the Property within twenty feet of the Property line of any park or the edge of any water course or body of water or any walkway.

#### Section 16. Sight Obstructions to Vehicular Traffic

No fence, wall, tree, hedge, or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

#### Section 17. Television and Radio Antennas

As of February 26, 1986 and thereafter, satellite "dishes" are included within the definition of outside television or radio antenna. No outside television or radio antenna shall be erected on any portion of the Property unless and until permission for the same has first been granted by the Committee.

#### Section 18. Community Antenna Television Cables

Except for such connections as may be necessary to service individual buildings, no community antenna television cables or other similar facilities shall be erected or installed on any portion of the Property except under the easement and right-of-way referred to in Article VIII of this Declaration.

#### Section 19. Tree and Wildlife Preservation

Except as may be permitted by Developer in conjunction with construction, sale or lease on or of any Lot, no tree having a diameter of four (4) inches or more, as measured from a point two feet above ground level, shall be removed from any portion of the Property without the express written authorization of the Committee. The Association in its discretion, may adopt and rules and regulations regarding the preservation of trees and other natural resources and



wildlife upon the Property. If it shall deem it appropriate, the Committee may designate certain trees regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, the Association and the Committee and the respective agents of each may come upon any portion of the Property during reasonable hours for the Purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Association nor the Committee, nor their respective agents, shall be deemed to have committed a trespass or wrongful act by reason of such entry or inspection. Notwithstanding anything to the contrary contained in this Declaration with respect to Golf Course Property, trees that are located on the Golf Course Property that may interfere with the operation of the Golf Course Property may be removed without the express written authorization of the Committee.

#### Section 20. Use and Maintenance of Slope Control Areas

Within any slope control area shown on any filed map or plat, no structure, planting, or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot or other parcel of the Property and all improvements thereon shall be maintained continuously by the owner of the Lot or parcel, except in those cases where a public authority or utility company is responsible for such improvements.

#### Section 21. Water Supply Systems

Except as may be permitted by Developer in conjunction with construction, sale or lease on or of any Industrial Lot, no individual water supply system shall be permitted on any Lot.

#### Section 22. Operation of Snowmobiles

As of February 26, 1986 and thereafter, no motorcycle, trail bike and all-terrain vehicle, in addition to snowmobile or similar recreational motor vehicle shall be permitted be operated on any Property (excluding dedicated public roads) subject to the Declaration without permission of the Architectural Standards Committee .

#### Section 23. Driveways

Except as may be permitted by Developer in conjunction with construction, sale or lease on or of any Lot, no driveways shall be developed, maintained or extended on any Lot without the prior written approval of the Committee.

## Section 24. Non-Discrimination

No Owner nor anyone authorized to act for an Owner shall refuse to sell or rent, after the making of a bona fide offer, or refuse or negotiate for the sale or rental of, or otherwise make unavailable or deny any part of the Property or improvements thereon to any person or persons because of race, color, religion, creed, sex or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time.

## Section 25. General Prohibition Against Noxious or Offensive Uses

Except during the construction of improvements on a Lot, no activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight, shall be permitted upon any Lot, nor shall anything be done thereon, which may be or become a nuisance or annoyance to the neighborhood, or to the residents or occupants therein.

## Section 26. Environmental Performance Standards

The following Environmental Performance Standards shall be deemed to be imposed on all Lots within the Property and all buildings, structures and Improvements constructed thereon and are intended to be supplemental to and not in limitation of any Federal, State or local law applicable thereto:

### A. Solid Wastes

The term "solid waste" as used herein shall be deemed to include garbage, rubbish, bulk items (including building demolition materials, street sweeping and other large bulk materials) and toxic and hazardous wastes (pesticides, acids, radioactive, flammable or explosive material and similar chemical and harmful wastes requiring special handling and disposal to protect and conserve the environment.)

Except for building materials during the course of construction of any approved structure or on a temporary basis pending pick-up as specified below, no solid waste shall be kept, stored, or allowed to accumulate on any Portion of the Property.

All containers for the deposit of garbage and rubbish shall completely confine such waste, be rodent and insect proof and kept in a sanitary condition at all times.

If solid wastes are to be disposed of by being picked up and carried away on a regularly scheduled basis, containers may be placed in the open on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all other times, such containers shall be stored in such a manner so that they can not be seen from adjacent and surrounding property. Enclosures for garbage containers will be required in all multi-family residential areas. .

All incinerators or other equipment for the storage or disposal of solid wastes shall be kept in a clean and sanitary condition.

The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of placement and location thereof on the Property and, with respect to all non-Industrial Lots, the means of collecting solid waste materials.

#### B. Air Quality

The emission of smoke, soot, fly ash fumes, dust and other types of air pollution shall be controlled so that the rate of emission and quantity deposited in the air shall not be detrimental to or endanger the public health, safety, comfort or welfare or adversely affect property values.

#### C. Liquid Wastes

Storm water, surface water, ground water, roof runoff, sub-surface drainage, cooling water and unpolluted industrial process water shall be discharged to such sewers as are specifically designated as storm sewers; or to a natural outlet, in a manner consistent with the classifications and standards governing the quality and purity of the waters of the State of New York. No polluted matter of any form may be discharged into a waterway, other natural outlet or storm sewer system.

#### D. Radioactive or Electrical Disturbances

Radioactive emission or electro-magnetic radiation disturbances which adversely affect any person or equipment within or beyond the boundaries of the Property shall not be permitted.

#### E. Noise

The sound pressure level as measured at the edge of a Lot and which is produced by a mechanical, electrical or vehicular operation on the Lot, where said Lot is adjacent to a residential area, shall not exceed the average intensity of the street traffic noise in that residential area. In any event no

sound shall have objectionable intermittence, volume, beat frequency or shrillness characteristics.

F. Glare

The use of high intensity light sources shall be so controlled so that neighboring properties, and the vision of the drivers of moving vehicles shall not be adversely affected by glare or excessive light spillage.

G. Vibrations

All operations which create earth-borne vibrations shall be controlled to prevent vibrations, perceptible without the aid of instruments, beyond property boundaries of their origination.

H. Heat, Movement of Air and Humidity

There shall be no operation permitted whose exhaust gas stream temperature, humidity or movement will cause any undue or exaggerated affects on the ambient atmosphere, human, plant and animal life, or adjoining property. Operations subject to emergency releases of exhaust gases of high heat, temperature, or humidity shall have the exhaust outlet of these processes located in a manner that emergency releases will have no undue effect on receptors at the property line.

Section 27. No Division of Lots Without Approval

No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise without the prior written approval of the Developer, provided, however, that Developer in its discretion, shall have the right to assign such approval powers to its successor in interest as Developer of the Property; the Association; or the Committee.

ARTICLE VII  
RESIDENTIAL PROTECTIVE COVENANTS  
AND RESTRICTIONS

The Covenants and Restrictions contained in this Article shall apply only to Lots within the Property designated for residential use.

Section 1. Residential Use Only

A. Generally

Property designated for residential purposes shall be used only for residential purposes and purposes incidental and accessory thereto except that, with the written approval of the Developer, any Lot may be used for a model home or for a real estate office during the Development Period. No commercial, industrial, Golf Course Property, community/institutional or mixed use shall be maintained on a Residential Lot nor shall any non-residential Improvement be erected on a Residential Lot except as may be permitted under Section 2 herein.

#### B. Rentals

Without exception, no Owner or Resident shall lease, sublease or rent their residence, which is subject to this Declaration, for a period of less than thirty (30) days. Every Owner, Resident, Tenant and Subtenant must sign and file with the Executive Director of the RCA such documentation as the Board may, from time to time require, including, but not limited to, an acknowledgment of the rules and regulations regarding the use of common property and the RCA amenities and agree to abide by those terms. The Board may set such fines and assessments for the violation of this provision as it may, from time to time, deem appropriate.

#### Section 2. Commercial and Professional Activity on Residential Property

No profession or home industry shall be conducted in or on any part of a Lot or in any improvement thereon on the Property without the specific written approval of the Committee. The Committee in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered by the Committee to be compatible with a high quality residential neighborhood. At the discretion of the Committee, day nurseries and schools may be considered compatible with and may be permitted in multi family residential areas only.

#### Section 3. Machinery

No machinery shall be placed or operated upon any residential Lot except such machinery as is used in the maintenance of a private residence or as may be located indoors and used in the pursuit of any home hobby.

#### Section 4. Repair Work

No extensive repair work, including, but not limited to, dismantling of any motor vehicles, boats, machines of any kind shall be permitted outdoors on any Residential Lot.

ARTICLE VIII  
COMMERCIAL, INDUSTRIAL, GOLF COURSE PROPERTY, COMMUNITY  
AND  
INSTITUTIONAL FACILITIES PROTECTIVE COVENANTS AND  
RESTRICTIONS

The covenants and restrictions contained in this Article shall pertain and apply only to all Lots within the Property designated for commercial, industrial, Golf Course Property, community facilities, or institutional uses.

Section 1. Prohibition Against Other Uses

No residential use shall be maintained on a Commercial, Industrial, Golf Course Property, Community or Institutional Facility Lot nor shall any residential Improvement be erected on such Lot. No use other than a community or institutional facility shall be permitted on a Community or Institutional Facility Lot.

Section 2. Landscaping and Maintenance.

Development of Commercial, Industrial, Golf Course Property, Community and Institutional Facility Lots shall be planned to achieve a visually attractive area; maximize the survival of existing plant material and preserve a natural setting for each facility. Development of such Lots shall be planned so as to cause the least disturbance to existing features, including natural topography, drainage patterns, trees and shrubs. High priority shall be given to preserving desirable existing trees.

With the exception of areas containing a concentration of trees, all areas on Commercial, Industrial, Community or Institutional Facility Lots not actually used for buildings, improvements or paved parking or walkways shall be landscaped so as to enhance the appearance of the site and shall at all times be maintained in a neat condition, with hedges trimmed and lawns mowed and adequately sprinkled in summer. All such landscaped areas as well as the areas containing tree concentrations, shall be kept free at all times from debris, papers, excessive leaves, branches, trash and refuse of all kinds.

Section 3. Storage

The open storage of materials and products will be allowed only in those areas of the Property approved by Developer and only when properly screened from public view by buildings, plant material, earth forms or other devices. Design of such screening shall be approved by the Developer. Developer, in its discretion, shall have the right to assign such approval powers to its successor in interest as Developer of the Property; the Association; or the Committee.

#### Section 4. Parking

A paved, dust free parking surface shall be provided by the developer of each Commercial, Industrial, Golf Course Property, Community or Institutional Facility Lots with adequate capacity for off-street parking for all employees and visitors and for the movement of all vehicles and traffic.

Parking areas to be used at night-time shall be lighted but in such a manner as not to produce glare on public rights-of-way or adjoining properties. All plans for parking areas shall be subject to the approval of the Developer, provided, however, that Developer, in its discretion shall have the right to assign such approval powers to its successor in interest as developer of the Property; the Association, or the Committee.

#### Section 5. Exterior Lighting

The design, location and direction of all exterior lighting shall be subject to the approval of the Developer, provided, however, that the Developer, in its discretion, shall have the right to assign such approval powers to its successor in interest as Developer of the Property; the Association; or the Committee.

#### Section 6. Loading and Unloading

All loading and unloading areas shall be paved. Appropriate ingress, egress and circulation shall be provided in addition to the loading and unloading space. All such loading and unloading space shall be adequately screened from public view by building, plant materials, earth forms or other devices and plans for such screening shall be subject to the approval of the Developer. The Developer, however, in its discretion, shall have the right to assign such approval powers to its successor in interest as Developer of the Property; the Association; or the Committee.

#### Section 7. Signs

Only signs identifying the name of the firm occupying the premises shall be permitted. No billboards or advertising signs shall be allowed. Signs offering the premises for sale or lease and construction signs will be permitted only with the prior approval of the Developer.

No signs shall have moving parts or contain or be subject to any flashing or internal illumination. No part of the sign shall extend above the roofline. Signs indicating a Company's name will be allowed on no more than two facades and must be appropriately scaled and designed for the structure. A front yard sign near the Street will also be allowed when appropriate. No private signs other than directional signs shall be allowed in dedicated public rights-of-way.

The design, lighting characteristics, colors and location of all signs must be approved by the Developer.

Developer, in its discretion, shall have the right to assign such approval powers specified herein to its successor in interest as Developer of the Property; the Association; or the Committee.

Section 7. Signs, shall not apply to Golf Course Property with respect to interior, cautionary and directional signs on or about the Golf Course Property. All other signs on the Golf Course Property must be approved by the Developer, its successors or assigns.

#### Section 8. Access

The number of driveways serving a given Commercial, Industrial, Golf Course Property, Community or Institutional Facility Lot shall be held to a minimum to increase the efficiency of the street.

#### Section 9. Fences

No Fence may be erected without the approval of the Developer, provided, however, Developer, in its discretion, shall have the right to assign such approval power to its successor in interest as Developer of the Property; the Association; or the Committee.

Notwithstanding anything to the contrary contained in this Declaration, the Developer shall be solely responsible for approving structural improvements, as well as any additions and new construction on the Golf Course Property

### ARTICLE IX MIXED USES

All Lots designated as Mixed Use Lots shall be developed in accordance with the Protective Covenants and Restrictions set forth in this Declaration applicable to each type of use, Residential, Industrial, Golf Course Property, Commercial, Community or Institutional Facility, developed on such Mixed Use Lot as well as those General Covenants and Restrictions applicable to all Lots on the Property.

### ARTICLE X WATERFRONT AREAS AND WATERWAYS

Section 1. Additional Restrictions on Waterfront property and Waterways.



Any Lot which shall abut upon any lake, stream, creek, brook, canal, or other waterway, hereinafter collectively referred to as "Waterways", shall be subject to the following additional restrictions:

(a) Erection of Docks. Etc.

No wharf, pier, dock, bulkhead, barge, piling, float or other structure shall be built or maintained upon any waterfront site without the specific written approval of the Committee.

(b) Construction of Canals.

No boat canal or any other facility or device which shall in any way alter the course of natural or established boundaries of any Waterway or which shall involve or result in the removal of water from any Waterway, shall be constructed on any Lot without the specific written approval of the Committee.

(c) Boat Storage.

All boat and boat trailer storage on any Lot shall be in accordance with the provisions of Section 7 of Article VI hereof and such rules and regulations as the Association may establish from time to time.

(d) Vehicle Parking and Storage

No vehicle shall be parked or stored within fifty (50) feet of the waterfront without the approval of the Committee.

(e) Boat Mooring.

No boat shall be moored so as to obstruct navigation on any Waterway.

(f) Refuse

No garbage, trash or other refuse of any kind shall be dumped, disposed or placed into any Waterway.

## Section 2. Boats

No boat shall be operated upon any Waterway without the consent of the Committee.

The operation, type and size of all boats shall conform to such rules and regulations concerning the use and size of boats as the Association may establish from time to time.

### Section 3. Use of Waterways

All use of Waterways, including, but not limited to boating, swimming, ice skating, water skiing, fishing and as a source of water for landscape maintenance shall be subject to the rules and regulations of the Association.

## ARTICLE XI WALKWAYS

### Section 1. No Vehicles.

No power vehicle of any kind, including, but not limited to automobiles, trucks, snowmobiles or cycles of any kind shall be parked or operated on any Walkway dedicated to public or common use except as may be:

(a) authorized by the Association.

(b) required for the health, safety and protection of the residents and guests within the New Community.

### Section 2. Refuse

No garbage, trash or other refuse of any kind shall be dumped, disposed of or placed upon any Walkway.

### Section 3. Use

All use of Walkways, including but not limited to use for walking, running, assemblage and bicycling shall be subject to the rules and regulations of the Association.

## ARTICLE XII ENFORCEMENT, AMENDMENT, DURATION AND INTERPRETATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### Section 1. Duration of Controls and Beneficiaries

This Declaration and the covenants, conditions, restrictions and easements contained herein shall run with and bind the Property and shall inure to the

benefit of and shall be enforceable by Developer, the Association, the Committee and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns, and by any Resident until December 31, 2013, after which time the covenants, conditions, restrictions and easements contained herein shall be automatically renewed for successive periods of ten (10) years, unless prior to December 31, 2013, or prior to the expiration of any such renewal period, an instrument terminating this Declaration shall be executed by the proper Association officers and recorded in the Onondaga County Clerk's Office or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution to such effect adopted at a duly constituted meeting of the Members of the Association by a two-thirds vote of the membership voting thereat as tabulated pursuant to the provisions of the By-Laws of the Association.

## Section 2. Amendment

Except as hereinafter provided for, this Declaration may not be amended in any respect except by the recording, as aforesaid, of an instrument executed by the proper Association officers and authorized by the membership of the Association pursuant to a resolution to such effect adopted by a two-thirds vote of the membership voting thereat as tabulated pursuant to the provisions of the By-Laws of the Association.

This Declaration may not be amended as it relates to Industrial Lots and improvements on Industrial Lots in any respect, except by a recording, as aforesaid, of an instrument executed by the appropriate Association Officer and authorized by a vote of three-fourths of the Class C Industrial Members as defined in Article III, section 2 hereof. This Declaration may not be amended as it relates to Commercial Lots and improvements on Commercial Lots in any respect, except by a recording, as aforesaid, of an instrument executed by the appropriate Association Officer and authorized by a vote of three-fourths of the Class C Commercial Members as defined in Article III, Section 2 hereof.

This Declaration may not be amended as it relates to the Golf Course Property and improvements on the Golf Course Property in any respect, except by a recording, as aforesaid, of an instrument executed by the appropriate Association Officer and authorized by an affirmative vote of the Class E Member.

## Section 3. Right of Abatement

In the event of a violation or breach of any covenant, condition, restriction or easement contained in this Declaration, the Developer, and the Association, their respective legal representatives, successors and assigns shall each have, subject to the notice to Owner provisions hereinafter set forth, and in addition to any and all other rights provided by law or in equity, the Right of Abatement. Such Right of Abatement shall be deemed to mean that the Developer, and the

Association, and their respective legal representatives, successors and assigns, through their agents and employees shall have the right, upon giving due notice to the owner as specified hereinafter, to enter at all reasonable times upon any Lot, as to which a violation, breach or other condition to be remedied exists and take the actions specified in the notice to the Owner necessary to abate, extinguish, remove or repair such violation, breach or other condition which may be or exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried on in accordance with the provisions of this Section. The cost of such entry and such actions including administrative costs, attorney fees and court costs shall be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 5 herein.

In the event of a violation or breach of any covenant, condition, restriction or easement contained in this declaration, written notice thereof shall be given to the Owner by the Developer, or Association or their successors or assigns setting forth in reasonable detail the nature of such violations or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to remedy such violation or breach within twenty (20) days after the mailing of such notice then, the said Developer, Association or their successors or assigns shall have, in addition to any and all other rights provided by law or in equity, the right to exercise the Right of Abatement reserved and granted herein. Before any action under this article can be imposed on an Owner by the Association or its successors or assigns, the following steps must take place in sequence:

- 1) A violation is reported to be in existence on Owner's property;
- 2) Violation is recorded by the Association office and reviewed and validated by the Association's Architectural Standards Committee;
- 3) Owner is contacted by Architectural Standards Committee in order to resolve the violation;
- 4) If the violation is not resolved by the first contact, a 20-day violation letter is initiated, placing the owner on notice to rectify the violation by a certain date (Owner retains the right to appeal to the Architectural Standards Committee);
- 5) If the Owner corrects the violation or successfully appeals case, the violation is closed;
- 6) If the violation is not resolved and continues past the 20 day suspense date or if the appeal was unsuccessful, the case is referred to the Associations Board of Directors for final review. If approved, the Associations Board of Directors shall instruct the Association's Executive Director to begin legal action through the Association's attorneys;
- 7) The Association's attorneys shall write to the Owner requiring a response in 10 days. Depending on the response, a solution may be possible if the Owner decides to work out an amicable solution with

the Architectural Standards Committee. The Committee will not negotiate the violation, but only its correction. Automatic administrative and attorney fees will be charged to the Owner at this point;

- 8) If the Owner fails to respond to the Association's attorney's letter, or if a satisfactory solution cannot be accomplished, immediate litigation exercising the Association's Right to Abatement or other remedy available to it under the Declaration or New York State law shall be initiated through the courts and/or a daily fine of Twenty Dollars (\$20.00) per day would commence. The Owner will be notified as to which course of action the Association is following by the Association's attorney and, if applicable, of the date on which the fines will begin accruing against the Owner. Said fine will be imposed until the date the violation is corrected, but shall not exceed Six Thousand Dollars (\$6,000.00). The Executive Director or his designee shall record the continuing presence of the violation.
- 9) If the violation is removed after the notice that the fine process is to begin or has begun, but such violation reappears, the fine rate will begin again immediately upon verification of the Architectural Standards Committee without the requirement of repeating any of the specified procedures for the Owner's initial violation as indicated above. The Owner shall receive notice of the continuation of this action from the Association;
- 10) Upon removal of the violation or if the monetary damages incurred by the Association reaches the maximum allowable amount hereunder (or such lesser amount selected by the Association's Board of Directors) the Association shall petition the Town of Lysander Town Court for judgment of monetary damages, all court costs, administrative costs, attorney fees and, if applicable, ordering the removal of said violation; In lieu of, or in addition to, the enforcement rights specified herein, the Association may establish procedures to levy and collect fines not to exceed \$500.00 for any violation of the covenants and restrictions contained herein.
- 11) The Board of Directors is hereby authorized to levy a fine, up to the maximum amount of \$5,000.00 for any resident who blatantly disregards the ASC application and approval process. Blatant disregard means either (1) a resident completes an exterior modification/alteration/addition to his/her/their home after receiving a final denial on the application for said exterior modification/alteration/addition and/or (2) completes an exterior modification/alteration/addition without having sought ASC approval after having been notified to submit an application for said exterior modification/alteration/addition.

In lieu of, or in addition to, the enforcement rights, specified herein, the Association may establish procedures to levy and collect fines not to exceed \$500 for any violation of the covenants and restrictions contained herein.

The Association may, upon such conditions as it may determine, waive, in writing, any violation of the provisions of this Declaration when, in the sole discretion of the Board of Directors of the Association, determined by an affirmative vote of at least two-thirds of the members thereof, such waiver does not adversely affect the policies of the Association and the purposes of this Declaration.

#### Section 4. Specific Performance

Nothing contained herein shall be deemed to affect or limit the rights of Developer, the Association, the Owners, or the Residents to enforce the covenants, conditions, restrictions and easements hereof by appropriate judicial proceedings. However, the parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration, and, therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

#### Section 5. Liens

Any lien imposed under this Declaration, including, without limitation, the obligation to pay Assessments, may be enforced by the Association to the same extent, including a foreclosure sale and deficiency judgment, and subject to the same procedures, as in the case of the foreclosure of a real property mortgage under the laws of the State of New York. In such event, the amount which may be recovered by the Association shall include the Assessment, cost or charge, as the case may be, plus the costs of any enforcement proceedings, including reasonable attorneys' fees and interest. The enforcement of such a lien shall not operate to affect or impair any real property tax liens or the lien of any first mortgage then existing upon any such Lot. The foreclosure of a lien or the acceptance of a deed in lieu thereof shall extinguish such lien as to such charges as shall have accrued prior to the date of such foreclosure or acceptance of a deed in lieu thereof.

#### Section 6. No Waiver

The failure of Developer, the Association or any Owner, his or its respective legal representatives, heirs, successors and assigns, or any Resident to enforce any covenant, condition, restriction or easement 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 any violation or breach occurring prior or subsequent thereto.

#### Section 7. Additional Rules

The Association, and the Committee to the extent specifically provided herein, may adopt and promulgate reasonable rules, and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules, and procedures, or in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, and rules, the Association and the Committee shall take into consideration the best interest of the Owner and Residents to the end that the Project Area shall be preserved and maintained as a community of high quality.

#### Section 8. No Reverter

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

#### Section 9. Invalidity

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

#### Section 10. Interpretation

The Association and 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, such 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 Association or the Committee and that of any other person or entity entitled to enforce the provision hereof shall be resolved in favor of the construction or interpretation of the Association or of the Committee, as the case may be. Any such conflict in construction and interpretation between the Association and the Committee shall be resolved in favor of the Association.

#### Section 11. Standards

Where the Association or the Committee shall adopt or promulgate rules, regulations and policy statements, make findings, determinations, rulings and orders, issue permits, authorizations or approval, and review plans and specifications, all as provided in this Declaration, such actions shall be taken on the basis of standards which the Association or the Committee may reasonably

decide are relevant to such matter. Such standards may include, but are not limited to provision of adequate light and air; the facilitation of adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; prevention of excessive noise, odor, glare, danger of flooding, panic, fire, explosion or other hazards, traffic or parking congestion; the preservation of property values; harmony with adjacent development or proposed development; the suitability of the site for the proposed use; consistency with the General Plan for Radisson and the objectives of the Radisson Declaration, and such other criteria or standards as may be promulgated or adopted by the Association or the Committee as may be deemed appropriate or applicable to the specific matter.

## ARTICLE XIII - MISCELLANEOUS

### Section 1. Easements

Whenever it shall be deemed necessary and/or appropriate, the Developer and the Association and their respective successors and assigns, shall have the right to expressly reserve easements in, on, over and under the Easement Area, defined in Article I herein for the following purposes:

a. The erection, installation, construction, maintenance and repair of underground utility lines and related facilities required in connection with the transmission of electricity, telephone, community antenna television cables and other utilities and similar facilities; above surface high tension lines; above surface switch gear boxes required in conjunction with the underground installation of utility lines; and such temporary and similar services during the construction of any improvements on a Lot within the Property, provided such easement areas are so designated on a recorded deed, map, or plat prior to or concurrently with conveyance of such Lot by the Developer, and the Association, or their respective successors and assigns.

b. The erection, installation, construction, maintenance, and repair of storm-water drains, land drains, public and private sewers, pipelines for supplying gas, water and heat and for any other public or quasi-public facility, service or function, whether above ground or underground, provided such easement areas are so designated on a recorded deed, map or plat prior to or concurrently with conveyance of such Lot by the Developer, and the Association or their respective successors and assigns.

c. Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by Developer or which might change, obstruct, or retard drainage flow, provided such easement areas within a Lot are so designated as a "Slope Control Easement" on a recorded deed, map or plat, prior to or concurrently with



conveyance of such Lot by the Developer, and the Association or their respective successors and assigns.

d. Planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature on any portion of an Easement Area so designated on a recorded deed, map or plat as a "Screen Planting Easement", prior to or concurrently with conveyance of such Lot by the Developer, and the Association or their respective successors and assigns.

e. The erection, installation, construction, maintenance and repairs of drainage facilities on any portion of a Lot so designated as a "Drainage Easement" on a recorded deed, map or plat prior to or concurrently with conveyance of such Lot by the Developer, and the Association or their respective successors and assigns.

Such easements and rights-of-way shall include the right of the Developer, and the Association and their respective successors and assigns at all times to enter upon all parts of the Easement Area for any of the purposes for which such Easement Area is reserved, provided that any damage resulting from the erection, installation, construction, maintenance and repair of any of the facilities or improvements thereon shall be promptly repaired or replaced at the expense of the corporation or other entity which directed such entry.

In the event that, subsequent to conveyance of a Lot by it, the Developer, and the Association or their respective successors and assigns determines that an easement within such Lot for any of the purposes specified herein is necessary and/or appropriate, it must acquire such easement from the owner of the Lot and thereafter designate such easement area on a recorded deed, map or plat.

Subject to all of the other covenants and restrictions contained in this Declaration each Owner shall have the right to use the Easement Area of his Lot in any manner not inconsistent with the purposes for which such Easement Area is reserved.

## Section 2. Zoning and Other Municipal Laws

Unless Developer has taken appropriate action pursuant to Section 16(3) of the New York State Urban Development Corporation Act or other pertinent statutory authority for purposes of permitting such result, this Declaration shall not be construed as permitting any action prohibited by applicable zoning laws or by the laws, rules or regulations of any governmental authority or by specific restrictions imposed by any deed, lease, contract or other written instrument. In the event of any conflict, the most restrictive provision of such laws, rules,

regulations, deeds, leases, other written instruments or this Declaration shall govern and control.

### Section 3. Change of Conditions

No change of conditions or circumstances shall operate to automatically amend any provisions of this Declaration and the same may be amended only in the manner provided for herein.

### Section 4. Future Owners Bound

Each grantee accepting a deed, lease or other written instrument conveying any interest in any Lot or any portion of the Property, whether or not said deed, lease or other instrument incorporates or refers to these Protective Covenants, Conditions and Restrictions, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by the Protective Covenants, Conditions and Restrictions set forth herein including responsibility for the payment of all charges that may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate these Protective Covenants, Conditions and Restrictions by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

### Section 5. Inspection Rights

Any agent of the Developer, and the Association and the Committee or their respective successors or assigns, may at any reasonable time or times enter upon and inspect any lot and the exterior of 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 these Protective Covenants, Conditions and Restrictions and neither the Developer, and the Association, the Committee, their respective successors or assigns nor the agent thereof shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

### Section 6. Subordination of Maintenance Assessment Lien to Mortgages

The lien of the assessments provided for in Article IV, Section 1 herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to said assessments.

### Section 7. Right of Association to Contract Duties

The Association shall be entitled to contract with any person, firm, corporation or other entity for the performance of various duties imposed on said Association pursuant to the terms of this Declaration.

#### Section 8. Right of Association to Maintain Surplus

The Association shall not be obligated in any calendar or fiscal year to spend all monies collected in such year by way of maintenance assessments, or otherwise, and may carry forward as surplus any balances remaining at the end of such year.

The Association shall not be obligated to apply any such surpluses to the reduction of the amount of the maintenance assessment in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its sole discretion may determine to be desirable for the greater financial security and effectuation of the purposes of the Association.

#### Section 9. Right of Association to Transfer and Obligations of its Successor in Interest

Notwithstanding any other provision herein that could be construed to the contrary, the Association shall, at all times, have the absolute right to transfer, convey and assign its rights, obligations, interest and title acquired under and pursuant to this Declaration to any successor not-for-profit corporation or other non-profit entity and upon such transfer, conveyance or assignment the successor entity shall have all the rights and be subject to all of the duties and obligations of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof to the same extent as if the successor entity had been an original party thereto. Any such transfer shall be accepted by the successor entity under a written agreement pursuant to which the successor entity expressly assumes all the duties and obligations of the Association.

If, for any reason the Association shall cease to exist without having first assigned its rights hereunder to a successor entity, the covenants, easements, charges and liens, imposed hereunder shall nevertheless continue and any Owner or Resident may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a non-profit corporation or other non-profit entity to take over the duties and responsibilities of the Association, subject to the conditions provided for herein with respect to a transfer of interest by the Association and delegation to a successor entity.

#### Section 10. Invalidity of Declaration

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

IN WITNESS WHEREOF, the undersigned have caused their corporate seals to be hereto affixed and Declaration to be signed by their duly authorized officers as of the day and year written above.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

### **DISCLAIMER**

The preceding is a redacted/amended version of the Radisson Declaration and not an “official” version. It is redacted/amended in that the language pertaining to the governance of the Radisson Community Association contained in all amendments through Amendment 49 of the original document has been incorporated into this document. Any amendment language pertaining only to the addition of properties included under the declaration has been redacted.

The purpose of this document is to aid the user in understanding the governance provisions of the declaration by consolidating, clarifying and incorporating the governance provisions contained in several amendments since the original Declaration was approved. While not “official”, it accurately reflects the language of the declaration. If however, a question should arise regarding the declaration, the original with amendments, should be consulted.