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OFFERING PLAN

THIS OFFERING PLAN RELATES SOLELY TO  
MEMBERSHIP IN THE

VILLAGE FAIRGROUNDS II  
HOME OWNERS ASSOCIATION, INC.

AND TO THE DECLARATION OF COVENANTS AND RESTRICTIONS  
APPLICABLE TO ALL 94 HOMES SOLD AT

VILLAGE FAIRGROUNDS II  
Route 9W  
Village of West Haverstraw  
Town of Haverstraw  
Rockland County, New York 10993

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APPROXIMATE AMOUNT OF OFFERING - \$460,000

(Cost of Common Properties and Facilities  
Included in the Purchase Price of the Homes)

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SPONSOR AND SELLING AGENT

FAIRGROUNDS II, INC.  
77 Maple Avenue  
New City, New York 10956

SPONSOR'S ATTORNEYS

CERTILMAN BALIN ADLER & HYMAN  
The Financial Center at Mitchel Field  
90 Merrick Avenue  
East Meadow, New York 11554

DATE OF THE OFFERING PLAN: FEBRUARY 8, 1991

THIS PLAN MAY NOT BE USED AFTER FEBRUARY 7, 1992 UNLESS EXTENDED  
BY AMENDMENT.

SEE PAGE (iii) FOR SPECIAL RISKS TO PURCHASERS.

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL MEMBERSHIP  
INTERESTS IN THE HOME OWNERS ASSOCIATION. NEW YORK LAW REQUIRES  
THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND  
TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR  
TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING  
WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR  
ANY OTHER GOVERNMENT AGENCY APPROVED THIS OFFERING.

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VILLAGE FAIRGROUNDS II HOME OWNERS ASSOCIATION, INC.

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## SPECIAL RISKS OF THIS OFFERING

1. The Sponsor will retain control of the Board of Directors until the fifth anniversary date of the recording of the Declaration of Covenants, Restrictions, Easements, Charges and Liens or until 90% of the Homes in the Development are closed, whichever shall first occur.

The Sponsor will also retain control over certain expenditures and fiscal actions of the Board of Directors so long as the Sponsor or its designee shall continue to own one or more of the Homes, or five (5) years after the date of the closing of title to the first Home, whichever shall first occur. See page 14.

2. The Declaration of Covenants and Restrictions (Exhibit A) requires each Home Owner to maintain adequate fire and extended insurance coverage of his Home and requires repair and reconstruction of a damaged Home within 30 days of receipt of the insurance proceeds. If the Home Owner fails to commence reconstruction of the Home, the Board of Directors is empowered to reconstruct the Home and the cost will be a special assessment against the owner of such Home. If such insurance policy has not been obtained by a Home Owner, the Board of Directors is empowered to obtain such insurance coverage and the cost of such premium will be an individual assessment against such owner. If such individual assessment is not promptly paid, the Board of Directors may have to revise the budget or issue a special assessment against all Home Owners to pay such premium until such time as the individual assessment is paid. See page 16 and Article X of Exhibit A.

3. The New York State Legislature adopted Article 36-B of the General Business Law which pertains to warranties on the sale of certain new Homes. This new law is applicable to the Homes offered for sale under this Plan. Pursuant to the terms of this law, the Sponsor is giving a Limited Warranty to Purchasers.

Certain of the limitations contained in the Limited Warranty are noted as follows: the Limited Warranty provides the First Year Basic Coverage and Two Year Major System Coverage for the first Home Buyer only (it is not extended to Owners who exclusively rent the Home); Sponsor's liability is limited to 75% of the purchase price of the Home less any insurance proceeds received by Purchaser; incidental and consequential damages are excluded; and detailed procedures must be followed for giving notice of a warranty claim to Sponsor, and for commencing a lawsuit against Sponsor.

See the complete terms of the Limited Warranty contained in the Rider to the Purchase Agreement set forth in Exhibit D-1. For details see the full text of the law set forth in Exhibit L.

4. The Purchase Agreement is contingent upon Purchaser obtaining mortgage financing from a lending institution located in Rockland County. In the event a mortgage commitment expires or is cancelled prior to closing and is not extended by the lending institution, the Purchase Agreement shall remain in full force and effect and Purchaser shall be obligated to proceed on an "all cash" basis.

5. Purchaser shall be required to pay at closing certain costs and adjustments, including New York State Real Estate Transfer Taxes (which are normally paid by Seller) at the rate of \$4.00 per \$1,000 of consideration. See the Purchase Agreement set forth as Exhibit D.

6. Purchasers shall pay a surcharge of \$250 to Seller if Purchaser uses a title abstract company other than McCall Abstract Corp., 399 North Main Street, New City, New York 10956. See the Purchase Agreement set forth as Exhibit D.

7. The Sponsor has not entered into any management contract to provide for management of the Common Properties. No representation is made as to the cost, terms, or availability of a managing agent.

The Board of Directors of the Association will be responsible for the management of the Association, and may perform this function itself or hire a managing agent. The duties of a managing agent usually include the following: bill and collect the annual maintenance charges, hire and fire employees, supervise alterations and repairs, maintain the Association's books and records, advise the Board of Directors of its proposed annual budget, provide each Home Owner annually with a Balance Sheet and Profit and Loss Statement prepared and certified by an independent public accountant, purchase supplies for the Association and generally perform the duties of a managing agent for residential property. In performing its duties, the Board of Directors or a managing agent employed by it, may engage contractors for the purpose of carrying out the maintenance and repair of the Common Properties. No representation is made as to the costs, terms or availability of a managing agent in the event the Board decides to hire one in the future.

8. The Sponsor will not be required to post any completion bonds or performance bonds with the municipality to insure completion of any portion of the Common Properties.

9. The Development is adjacent to Village Fairgrounds I, a separate homeowners association. All of the homes in Village Fairgrounds I have been sold. The two (2) developments do not share any systems. However, the principal of the sponsor of Village Fairgrounds I, Eric Bergstol, is the son of the principal of the Sponsor of Village Fairgrounds II.

10. Portions of the interior roadways that will be owned and maintained by the Association are subject to rights of way in favor of the owners of four (4) parcels of approximately one acre each contiguous to the Development. Such rights of way give the owners of such properties the right to use portions of the roadways owned by the Association for purposes of ingress and egress to the public highway (Route 9W) with no obligation to contribute to the maintenance and repair of such roadways. For further details see page 19.

## INTRODUCTION

This is an Offering Plan (the "Plan") for the sale of Homes (the "Homes") in a development known as Village Fairgrounds II (the "Development") located at Route 9W, Village of West Haverstraw, Town of Haverstraw, Rockland County, New York. The purpose of the Plan is to set forth all the terms of the offer for the benefit of prospective Purchasers. Fairgrounds II, Inc., a New York corporation (the "Sponsor" or "Developer"), acquired title to the Property by deeds dated August 16, 1990 and August 17, 1990. Although the Development is adjacent to Village Fairgrounds I, it does not share any systems with Fairgrounds I. All of the homes in Fairgrounds I have been sold.

In offering for sale the attached Homes in the Development, the Sponsor is simultaneously offering mandatory memberships in Village Fairgrounds II Home Owners Association, Inc. (the "Association"), a membership corporation which has been organized under the Not-for-Profit Corporation Law of the State of New York, to own and maintain the Common Areas in the Development including but not limited to the roadways, parking areas and natural and landscaped areas. See page 10 for complete details of the services to be provided by the Association. A purchaser of a Home in the Development will automatically assume the rights and obligations of membership in the Association upon closing title to his Home. Prospective Purchasers should be aware that if they resell their Homes, those who purchase from them will also automatically become members of the Association. The mandatory nature of membership in the Association is set forth in the Declaration of Covenants, Restrictions, Easements, Charges and Liens (the "Declaration") annexed as Exhibit A to this Offering Plan and is set forth in the Purchase Agreement and Deed annexed hereto as Exhibits D and E, respectively. A summary of the Declaration is set forth at pages 13 through 16.

The Development is part of an overall plot of land (hereafter referred to as "the Properties") consisting of approximately 12.246 acres of land as shown on the Exhibit F, Site Plan.

If the Properties are fully developed, the Association will own an approximately 9.785 acre portion of the above mentioned 12.246 acres of land (the "Common Properties" or "Common Areas") including natural and landscaped areas, parking areas, and internal roadways for use by Association members. The Sponsor will deed the Common Properties to the Association free and clear of all mortgages prior to the closing to the first Home in the Development. See page 17. A full description of the Common Properties is set forth at page 10.

Upon the recording of the Declaration in the Rockland County Clerk's Office, the Common Properties will become subservient to and have only minimal value separate and apart from the Homes. The Sponsor estimates that, absent the effect of the recording of the Declaration, the Common Properties would have a market value of approximately \$460,000.

Commencing with the recording of the Declaration, each Home Owner will become responsible for the payment of a pro rata portion of the expenses of the Association arising from the operation and maintenance of the Common Areas, snow plowing of the roadways, and other expenses including premiums for liability insurance covering the Common Areas, and the creation of such reserves for contingencies as the Board of Directors of the Association may deem proper. There is no minimum number of Homes which must be sold before the Sponsor may commence conveying titles. The Sponsor will control the Board of Directors for a period of five years from the recording of the Declaration of Covenants, Restrictions, Easements, Charges and Liens or until 90% of the Homes are closed, whichever occurs first. See page 14. The estimated charges for the first full year of operation of the Association are set forth on page 4. Such charges include refuse removal and maintenance of the private roadways in the Development. The Association is responsible for procuring liability insurance covering the Common Areas but fire and liability insurance for each Home must be carried by the individual Purchasers. See Article X of the Declaration of Covenants, Restrictions, Easements, Charges and Liens for details. Purchasers will be required to pay monthly maintenance charges in advance, the first of which will be due upon the acquisition of title to each Home. See page 19. See the Section of the Offering Plan entitled, "The Association" at page 13 and the By-Laws of the Association annexed hereto as Exhibit C.

Police protection for the Development will be provided by the Town of Haverstraw Police Department. The Volunteer Fire Department of the Village of West Haverstraw will provide fire protection for the Properties. The cost of police and fire protection services is included in the real estate taxes for each Home.

Water will be supplied to each Home by the Spring Valley Water Company which will bill the Owners directly. The Town of Haverstraw will provide sewage disposal, the cost of which will be included in the real estate taxes for each Home.

This Offering Plan relates solely to the rights and obligations of Purchasers as members of the Association and as contained in the annexed Declaration. This Offering Plan does not relate to the purchase of land or Homes other than as set forth above and should not be relied upon except for the specific purposes set forth herein.



The purpose of the Plan is to set forth all the terms of the offer concerning the Association. The Plan may be amended from time to time by an amendment filed with the New York State Department of Law. Amendments will be served upon Purchasers and members.

The Plan as presented to prospective Purchasers contains all of the detailed terms of the transaction as it relates to the Association. Parts A, B, and C of the Exhibits delivered to the Department of Law contain all of the documents referred to in the Plan. Copies of the Plan and Parts A, B, and C of the Exhibits will be available for inspection without charge to prospective Purchasers and their attorneys at the office of the Sponsor during normal business hours.

THE PURCHASE OF A HOME ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOME OWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A PURCHASE AGREEMENT.

SCHEDULE A

PROJECTED BUDGET FOR THE FIRST YEAR OF OPERATION OF  
VILLAGE FAIRGROUNDS II HOMEOWNERS ASSOCIATION, INC.

(94 HOMES)

EFFECTIVE OCTOBER 1, 1991

PROJECTED INCOME:

Association Fees (\$644.40 per Home per year  
payable monthly at \$53.70 based on 94 Homes) (1) \$60,571.00

TOTAL: \$60,571.00

PROJECTED EXPENSES:

Utilities (2)	2,169.00
Reserve for Replacement of Roads and Parking Area (3)	1,200.00
Landscaping and Snow Removal (4)	19,440.00
Insurance (5)	14,238.00
Accounting & Legal (6)	1,450.00
Taxes: (a) Franchise & Corporate (7)	800.00
(b) Real Estate Taxes for Common Areas (8)	1.00
Refuse Removal (9)	6,768.00
Management (10)	-0-
Supplies and Office Equipment (11)	2,505.00 ✓
Contingency (12)	<u>12,000.00</u>

TOTAL \$60,571.00

In the event the estimated first year differs from the actual commencement of the budget by six (6) months or more, Sponsor will amend the Plan to include a revised budget. See explanatory footnotes at page 5. If the amended budget exceeds this budget by 25% or more, the Sponsor will offer all Purchasers the right to rescind their Purchase Agreement and have their deposits returned with interest, if any.

## FOOTNOTES TO SCHEDULE A

1. Association Fees - The annual assessment for an individual Home is determined by dividing the total budget by 94.
2. Utilities - The estimate is based upon a projection dated October 2, 1990 by Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977, and includes the cost of electricity for the street lighting located on the Common Areas.
3. Reserve for Replacement of Roads and Parking Area - This figure will provide for a fund that will be used to construct new roads and a new parking area when the current roads and parking area reach the end of their useful life, which has been calculated to be twenty-five (25) years by the Sponsor. At the end of 25 years, this reserve fund will be \$30,000, which will be an amount sufficient to construct new roads and a new parking area as determined by the Sponsor.
4. Landscaping and Snow Removal - The estimate is based on a proposal by Peter Adams Landscaping, 5 Huffman Road, Valley Cottage, New York 10989. It includes the cost of cutting grass, pruning shrubs and fertilizing for the Common Areas, as well as the cost of spring and fall cleanup. Grass will be cut at a height of 2½" to 3" as conditions dictate. Grass adjacent to curb and sidewalks will be edged eight (8) times per season. The estimate also includes removal of snow and spreading of ice and snow pellets for ice control on roadways and parking areas. There is no minimum amount of snow required for snow removal and no maximum number of trips included in the fee. The estimate does not include snow removal from sidewalks.
5. Insurance - The coverage includes a comprehensive general liability insurance policy for the Common Areas covering bodily injury and property damage for \$500,000 per occurrence and an aggregate of \$1,000,000. Officers' and directors' liability insurance for \$1,000,000 aggregate and \$500,000 per claim is also included. This figure is based on an estimate dated October 10, 1990 by Miller and Miller Associates, Inc., 43 S. Liberty Drive, Stony Point, New York 10980.
6. Accounting and Legal - The amount of this item allocated to accounting expenses is \$1,200.00, and the amount allocated to legal expenses is \$250. The accounting fee includes the cost of preparing an annual certified financial statement and the Association's New York State and Federal tax returns. This figure is based on an estimate dated September 14, 1990 from Schulman and Black, Certified Public Accountants, 475 Route 304, New City, New York 10956. The legal fee is a contingency

set aside for use by the Board of Directors to retain an attorney as needed for routine matters and is based on an estimate from William E. Sherwood, Esq., Mt. Ivy Plaza, Pomona, New York 10970 dated October 4, 1990. If the Association becomes involved in litigation additional assessments may be required.

7. Franchise and Corporate Taxes - In the Opinion of Counsel there is a reasonable basis to conclude that the Association will not be subject to Franchise Taxes. However, the minimum tax has been budgeted. See the Opinion of Counsel for details.
8. Real Estate Taxes - Real Estate Taxes have been budgeted at \$1.00 because the assessed valuation of the Common Areas will be reflected in the assessed valuation of the individual Homes. Based on a letter dated October 1, 1990 from the Assessor's Office Town of Haverstraw, 1 Rosman Road, Garnerville, New York 10923.
9. Refuse Removal - This estimate is based upon a proposal from Capasso Carting Co., Nanuet, New York dated September 27, 1990 and includes supplying necessary containers and picking them up twice each week. The quoted price is based on the current tipping fee from the Clarkstown Landfill. Any increase in the tipping fee will be passed on to the Association.
10. Management - No funds have been budgeted for a professional managing agent. The Association will be required to maintain books and records, including payment and disbursements on the Common Areas, and members of the Association will be required to perform the necessary work.
11. Supplies and Office Equipment - This item will be used to provide for stationery, pencils and pens, stamps, and other miscellaneous office supplies.
12. Contingency - The purpose of this item is to provide for various unanticipated expenses of the Association. A large portion of this fund (\$6,000) is to provide for an anticipated increase in the cost of refuse removal if the Clarkstown Landfill is closed. The Sponsor has also allocated \$5,000 if the Association desires to consult with a professional managing agent.

CERTILMAN BALIN ADLER & HYMAN

THE FINANCIAL CENTER AT MITCHEL FIELD

90 MERRICK AVENUE

EAST MEADOW, NY 11554

IRA J ADLER  
HERBERT M BALIN  
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JAY M HERMAN  
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NORMAN J LEVY  
COUNSEL

November 30, 1990

Fairgrounds II, Inc.  
77 Maple Avenue  
New City, New York 10956

Re: Village Fairgrounds II Home Owners Association, Inc.

Gentlemen:

We have examined the Offering Plan and various supporting pages for the above captioned Home Owners Association. It is our opinion that the Declaration of Covenants and Restrictions, annexed as Exhibit A to the Offering Plan will, when recorded in the Rockland County Clerk's Office, be legal and valid and that persons purchasing Homes in the Village Fairgrounds II development shall automatically become members of the Village Fairgrounds II Home Owners Association, Inc. (the "Association"), assuming all rights and obligations of membership.

Under present law, it is our opinion that members of the Association will not be entitled to deduct any portion of their annual Association assessment payments, as presently constituted, for Federal or New York State income tax purposes.

Section 528 of the Internal Revenue Code, ("the Code") affords certain Home Owner Associations, substantially all of whose homes are used for residences, the opportunity to elect to be treated as tax exempt organizations. In order to qualify, sixty percent or more of the gross income must consist of amounts received as membership dues, fees or assessments from the Home Owners and 90 percent or more of the expenditures must be for the acquisition, construction, management, maintenance and care of the Home Owner Association property, which property, as defined in Section 528 of the Code, include property held by the Home Owners Association, property commonly held by the members of the Home Owners Association or property within the Home Owners Association held by the members of the Home Owners Association.

Based upon our examination of the Offering Plan and subject to the Home Owners Association actually satisfying the minimum percentage income and expenditure criteria set forth above, it is our opinion that the Home Owners Association will be eligible to elect to be treated as a tax exempt organization under Section 528 of the Code.

Such an election will exempt from Federal and New York State Income Taxation all amounts received by the Home Owners Association from the Home Owners as membership dues, fees or assessments. The Home Owners Association will be taxed, however, on any excess of income over expenses from unrelated sources. Examples of unrelated sources income include interest earned on reserve funds, income from concessions and income from dues or fees received from persons other than the Home Owners. In the event the Home Owners Association fails to qualify for and elect Section 528 taxation status in any year, it may, to the extent it has any income from unrelated sources or from accumulated revenues received by virtue of dues, fees and assessments received from Home Owners not expended in any taxable year, be subject to Federal and New York State Income Taxation (see Rev. Ruling 74-99, 1974-1 CB131).

We are also of the opinion that there is a reasonable basis for the Association to conclude that it is not subject to the New York State franchise tax imposed on business corporations. The foregoing opinion is rendered notwithstanding the advisory opinion issued to Cornhill Commons Homeowners Association, Inc. on March 9, 1982 to the contrary. In its opinion to Cornhill, the State Tax Commission stated that the exemption from taxation is not applicable if any part of the net earnings of the homeowners association inures to the benefit of its members. Through an examination of the analogous Federal Statute Section 528(c)(1)(D) of the Internal Revenue Code, the State Tax Commission determined that the provision of management, maintenance and care of common property by the association constituted an inurement of the net earnings to its members. "The implication is clear that for federal income tax purposes the provision of management and maintenance and care of association property constitutes an 'inurement of net earnings' of the homeowners association to the benefit of its members. Such interpretation is applicable herein". However, this conclusion was reached without any reference to or mention of Treasury Regulation 1.528-7, which specifically states that "to the extent that members receive a benefit from the general maintenance, etc., of association property, this benefit generally would not constitute inurement". In view of the Treasury Regulation, the conclusion of the State Tax Commission appears to be misguided.

Since "inurement" apparently does not include the benefit received by members of an association from the general maintenance, etc., of association property for federal income tax purposes, it

CERTILMAN BALIN ADLER & HYMAN

is our opinion that the same conclusion may reasonably be reached for state income tax purposes. The State Tax Commission may not agree with this conclusion and in light of its opinion to the Cornhill Commons Homeowners Association, Inc., may determine that the Association is subject to the New York State franchise tax. Although the Association may contest such a determination, no assurances may be given that the Association will be successful in such a contest. Moreover, if the State Tax Commission successfully contends that the Association is subject to the franchise tax in addition to being liable for New York State franchise taxes for each year of its existence, the Association may also be liable for interest and penalties.

We have examined the Declaration of Covenants, Restrictions, Easements, Charges and Liens to be placed on the property. It is our opinion that such Declaration when recorded will be binding on all Home Owners at Village Fairgrounds II.

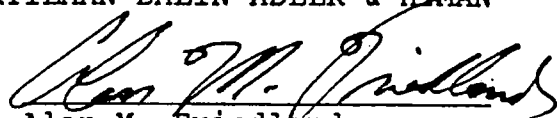
We note that as of the date of presentation of the Offering Plan, the Planning Board of the Village of West Haverstraw, by resolution dated October 10, 1990, approved the Site Development Plan, thereby permitting the development of the project. In addition, the Planning Board of the Village of West Haverstraw granted approval of the subdivision map of the development on November 26, 1990 which has been filed in the Rockland County Clerk's Office, and all necessary building permits were issued. It is our opinion that the plan for development of Village Fairgrounds II as outlined in the Offering Plan will conform to such approvals.

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel bases this opinion will not change. In no event will the Sponsor, the Sponsor's counsel, the Association, counsel to the Home Owners Association, or any other person be liable if by reason of future changes in fact or applicable law, regulation, decisional law or Internal Revenue Service rulings the tax status should cease to meet the requirements contained in this opinion.

We have been advised that you intend to use this letter as part of the Offering Plan and we consent to its inclusion in the Plan.

Very truly yours,

CERTILMAN BALIN ADLER & HYMAN

By:   
Alan M. Friedlander

**DESCRIPTION OF COMMON AREAS AND FACILITIES  
TO BE OWNED OR MAINTAINED BY THE HOME OWNERS ASSOCIATION**

**1. SITE:**

The site is located on the east side of Route 9W, West Haverstraw, Rockland County, New York. The parcel consists of approximately 12.246 acres.

On the site there are 94 lots for one family attached Homes. This area to be owned by the Home Owners totals 2.461 acres. There will be sixteen (16) structures on the site, six (6) of which will contain six (6) attached Homes, four (4) of which will contain eight (8) attached Homes, four (4) of which will contain four (4) attached Homes and two (2) of which will contain five (5) attached Homes. The remaining acres will be owned by the Association as the Common Areas.

**2. ROADWAYS:**

All interior roadways will be owned and maintained by the Association. All street work, materials, construction methods and workmanship will conform with standard specifications of the Village of West Haverstraw, Rockland County, New York. Each road will be twenty-four (24) feet wide, except the access road to Samsondale Avenue will be eighteen (18) feet wide and the access road to Old Route 9W will be thirty (30) feet wide. All roads will contain a top course of one and one-half inches of asphalt concrete, a base course of four inches of asphalt concrete, and a subbase course of three-quarters of an inch of crushed stone.

**3. PARKING:**

Each of the Homes at Village Fairgrounds II will have two (2) parking spaces in front of the Home. There will also be several parking areas with forty-seven (47) spaces. All parking areas will be part of the Common Properties and will be maintained by the Association.

**4. UTILITIES:**

Electric and gas services for the Common Areas will be provided by Orange and Rockland Utilities, Inc. Telephone service will be provided by the New York Telephone Company. The cost of electricity for the Common Areas will be a common expense of the Association. The cost of electricity and telephone for each Home will be an individual expense of each Home Owner.



## **5. WATER and SEWAGE:**

Each Home will be connected to the Spring Valley Water Company water system by the Sponsor via private connections. All water consumed in the Homes will be billed directly to each individual Home Owner. Water will not be supplied to the Common Properties. Each Home Owner will be responsible for watering the lawn immediately contiguous to his Home.

The Town of Haverstraw, Rockland County, New York will provide sewage disposal, the cost of which will be included in the town taxes to be paid by the Home Owners.

All sanitary sewer piping situated in the roadways will be of eight-inch polyvinyl chloride as approved by the local building code. Eighteen (18) sewer manholes will be constructed in pre-cast concrete with cast-iron covers. All sanitary sewers will discharge into the main sewer system provided by the Joint Regional Sewer Board, Town of Haverstraw, Rockland County, New York. Each building group will have a separate connection to the private sewer. The sewer plan for the new sanitary sewer to be constructed was approved by the Joint Regional Sewer Board of the Town of Haverstraw.

Maintenance of the sanitary and storm water lines and common sewer connections situated with the Development itself will be the responsibility of the Joint Regional Sewer Board.

## **6. REFUSE REMOVAL:**

Refuse removal will be provided by a private carting company and collections will be made as per the applicable collection schedule. The cost of refuse removal for each Home will be included in the Association fees to be paid by each Home Owner.

## **7. SITE LIGHTING:**

Street lights for the common areas will be installed in accordance with the specifications of Orange and Rockland Utilities, Inc. which will be responsible for their maintenance.

## **8. RECREATION AREA**

The recreation area will consist of a childrens playground that will be maintained by the Association. The playground will contain a jungle gym, seesaw, swing set and a sandbox. There will also be several benches.

**LANDSCAPING:**

The landscaping of the Development will consist of grass plantings and fencing pursuant to the landscaping plan adopted by the Village of West Haverstraw.

The Sponsor will make periodic visits to the Development at regular intervals to correct any defects in the construction of the improvements forming the Common Properties due to poorer workmanship or material substantially at variance with the Offering Plan on condition that it is notified or becomes aware of such defects within one year from the date of substantial completion of the Common Properties.

WEST HAVERSTRAW  
VILLAGE  
OFFERING PLAN  
NO. 1  
1978  
ARTICLE  
SECTION  
11  
11.10  
LANDSCAPING

## THE ASSOCIATION

### A. Declaration of Covenants, Restrictions, Easements, Charges and Liens

Prior to the closing of title to any Home in the Development, the Sponsor will record the Declaration of Covenants, Restrictions, Easements, Charges and Liens, together with the By-Laws annexed thereto and made a part thereof, with the Office of the Clerk of the County of Rockland. This Declaration and the annexed By-Laws have been included in this Offering Plan as Exhibits A and C.

The Sponsor has organized the Village Fairgrounds II Home Owners Association, Inc. under the provisions of the New York Not-for-Profit Corporation Law, for the purpose of owning and maintaining the parking areas, interior roadways, and natural and landscaped areas comprising the Common Properties. The Declaration of Covenants, Restrictions, Easements, Charges and Liens provides the framework and procedures by which the Association will maintain and administer said land and improvements. The Common Properties will be conveyed to the Association prior to the closing of title to the first Home, free and clear of any mortgage.

Upon the sale and conveyance of a Home by the Sponsor, the purchaser thereof will automatically become a "Member" of the Association (as membership is included in the price of the Home) subject to the Association rules and regulations and liable for its assessments as hereinafter provided.

The Declaration of Covenants, Restrictions, Easements, Charges and Liens gives each Member of the Association an easement in and to the recreation area, roadways, and walks located on the Common Properties for himself and his guests. The instrument also makes provision for various easements in favor of the Association and the Sponsor including, in the case of the Sponsor, the retention of easements necessary for the completion of construction and sale of up to 94 attached Homes in the Development.

The Declaration of Covenants, Restrictions, Easements, Charges and Liens provides that the Association shall have architectural control over any exterior addition, change or alteration. In addition, the use of a Home and the Common Areas are subject to various covenants and restrictions. See Article XI of the Declaration for a full description of such restrictions.

The Members' right to the use and enjoyment of the Common Properties, which expires on December 31, 2040, will be automatically extended for successive ten year periods, unless 66 2/3% of the Owners of Homes constructed on The Properties agree to

change the Declaration of Covenants, Restrictions, Easements, Charges and Liens in whole or in part.

#### **B. Management and Operation of the Association**

The affairs of the Association shall be governed by a Board of Directors, consisting of no less than three, nor more than five members, each of whom, subsequent to those designated or elected by the Sponsor, must be a Member of the Association. The Sponsor will designate an initial Board of Directors consisting of three Directors to serve until the first annual meeting of the Association. The Sponsor has initially designated Leif Bergstol, Kenneth Bergstol and Dora Capio as the first Board of Directors. The initial Board members are all affiliated with the Sponsor.

At the first annual meeting and at all subsequent annual meetings, the membership will elect five Directors to serve for one-year terms. The first meeting will be held within six months of the closing of title to the first Home. Cumulative voting will be employed in the election of Directors. Each voting Member will be entitled to cast as many votes as equal the number of Directors to be elected and a Member may **not cast more than one vote** for any single Director. Directors, other than Sponsor designated Directors, may be removed by the affirmative vote of a majority of the members.

#### **C. Control by Sponsor**

Notwithstanding the provisions of Paragraph "B" above, the Sponsor will have the right to designate three Directors at any annual meeting of the Association members until the fifth anniversary date of the recording of the Declaration of Covenants, Restrictions, Easements, Charges and Liens applicable to the Development or until 90% of the Homes in the Development are closed, whichever occurs first. During this period the Board of Directors will consist of five members. Thereafter, the Sponsor will have the right to designate one Director for so long as it owns at least one Home. The Sponsor may not cast its votes to elect any Directors in addition to the designated Directors set forth above. When Sponsor no longer owns any Homes, it may no longer designate any Directors. However, so long as the Sponsor or its designee shall continue to own one or more of the Homes, but in no event later than five (5) years from the closing of title to the first Home, the Board of Directors may not, without the Sponsor's prior written consent, (i) make any addition, alteration or improvement to the common areas, or (ii) assess any Association charge for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund, or (iii) enter into any service or maintenance contract for work not covered by contracts in existence on the date that the said Plan is declared effective or (iv) borrow money on behalf of the Association, or (v)

increase or decrease the services or maintenance set forth in Schedule A of Village Fairgrounds II Home Owners Association, Inc. Offering Plan, or (vi) purchase any materials, equipment or other goods costing in excess of \$1,000. Sponsor will not use its control of the Board of Directors or veto powers to reduce the level of services described in the Plan, prevent required capital repairs or prevent expenditures required to comply with applicable laws or regulations while Sponsor is in control of the Board of Directors. No mortgage liens will be placed on the Common Area without the consent of at least 51% of the Home Owners excluding Sponsor or Sponsor's nominees. While Sponsor is in control of the Board of Directors, certified financial statements will be provided each year to members. The Board of Directors will also provide such statements when Sponsor is no longer in control of the Board of Directors, although the statements are not required to be certified.

#### **D. Expenses of Operating the Association**

The costs and expenses of operating the Home Owners Association and of making capital improvements, if any, shall be allocated equally among the 94 Homes in the Development. The Developer's obligation for such assessments on unsold Homes (whether built or unbuilt), and lots subject to the Declaration will be limited to the difference between the actual operating costs of the Association, including reserves on the Common Properties and on Homes to which title has been conveyed, and the assessments levied on Owners who have closed title on their Homes. In no event, however, will the Developer be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on unsold Homes.

By his acceptance of a deed, each Home Owner subject to the Declaration will be deemed to covenant and agree to pay to the Home Owners Association such assessments as are fixed by its Board of Directors. Any sum assessed by the Board but unpaid, together with interest and reasonable collection costs, will constitute a personal obligation of the person who was the owner of the property when the assessment fell due, as well as a charge on the land and a continuing lien on the property against which the assessment is made. In no event may voting rights be suspended for non-payment of assessments.

As the Home Owners Association will be an automatic Home Owners Association, no member may exempt himself from contributing toward the expenses of the Home Owners Association by waiver of the use of the improvements maintained by the Association.

Set forth at page 4 is an estimate of the receipts and operating expenses of the Association for its first full year of operation.

At the closing of title to a Home a purchaser will contribute two months' Association assessments to the Association as initial working capital. During the period that Sponsor is in control of the Board of Directors, the working capital fund will not be used to reduce Association assessments. Although Sponsor is of the opinion that the working capital fund and the reserve fund set forth in the budget should be sufficient to cover foreseeable capital expenditures, no representation is or can be made that unforeseeable expenditures or additional capital expenditures desired by the Board of Directors in the future may not require the imposition of an additional assessment.

#### Membership and Voting Rights in the Association

The Association shall have one class of membership interest. The Owner of each Home in the Development shall be a Member whether such ownership is joint, in common or tenants by the entirety. The vote of sixty-six and two-thirds (66 2/3%) percent of the members is required to amend the Declaration or By-Laws.

Each Member is entitled to one vote. See page 14 for Sponsor's right to designate three Directors until the fifth anniversary of the recording of the Declaration or until 90% of the Homes have been sold. Other than as set forth above, no member shall split or divide its votes on any motion, resolution or ballot other than in the cumulative voting procedure employed in the election of Directors.

#### MUNICIPAL APPROVAL

The Planning Board of the Village of West Haverstraw approved the final site plan of the Development on October 10, 1990. The subdivision map was approved by the Planning Board on November 26, 1990 and was filed in the Rockland County Clerk's Office on November 27, 1990 in Book 112, page 50 as Map No. 6518. The plans for the sanitary sewer system have been approved by the Joint Regional Sewer Board of the Town of Haverstraw.

## FIRE AND CASUALTY INSURANCE ON HOMES, RECONSTRUCTION

Article X of the Declaration provides that each member shall be required to obtain and maintain adequate fire, flood (if required) and extended coverage insurance of his Home which shall insure the property for its full replacement value, with no deductions for depreciation, against loss by fire or other hazards. Article X of the Declaration of Covenants and Restrictions also requires that each Member is required to supply the Board of Directors with evidence of insurance coverage which complies with the foregoing requirements.

If such insurance has not otherwise been adequately obtained by each owner, then the Board shall obtain such insurance coverage and the cost of such premium will be an individual assessment against such owner. Insurance obtained by the Board of Directors shall be written in the name of the Association as Trustee for the benefit of each Home Owner. The proceeds of all insurance claims must be deposited in a lending institution subject to withdrawal only upon the signature of an authorized agent of the Board of Directors.

The Declaration further provides that repair or reconstruction of the damaged homes must commence within 30 days of receipt of the insurance proceeds. The sole obligation of a member is to either repair the damage or to remove the debris and clean up the affected area. In the event such reconstruction is not commenced for any reason (including the situation where a mortgagee of a home retains the insurance proceeds to reduce the mortgage as permitted by Section 254 of the Real Property Law), the Board of Directors is empowered to reconstruct the home and the cost thereof will be a special assessment against the Owner of such Home. Until such time as the owner pays the special assessment, the Board of Directors may be required to borrow funds or impose a special assessment against all Association members to pay for such reconstruction.

## OBLIGATIONS OF SPONSOR

Prior to the conveyance of title to any Home, the Sponsor will arrange for the Home to be released from the provisions of any land or construction loan mortgage encumbering the Development. The Common Areas will be released from the lien of all mortgages prior to their conveyance by the Sponsor to the Association. The Sponsor will substantially complete the construction of all roadways directly serving a Home before conveying title to the Home. The Sponsor will convey title to the Common Areas to the Association prior to the closing of title to the first Home. Landscaping will be completed prior to the closing of title to the last Home or the following planting season. The Sponsor's obligations to complete the construction of the Common Properties will survive their conveyance to the Association. Sponsor anticipates completion of all Common Areas by approximately June 1, 1992 or earlier. Prior

to the first Home closing, the Sponsor may abandon the Plan for any reason whatsoever and return all monies, with interest, if any, to Purchasers. **THE SPONSOR WILL NOT BE REQUIRED TO POST ANY COMPLETION OR PERFORMANCE BOND WITH THE MUNICIPALITY TO INSURE COMPLETION OF THE COMMON PROPERTIES.**

Sponsor will complete the Common Area improvements in accordance with the plans and specifications filed with the Village of West Haverstraw. Sponsor reserves the right to substitute equipment or material and make modifications of design, provided, however, that Sponsor may not substitute equipment or materials of lesser quality or design.

At the time of the transfer of title of the Common Properties by the Sponsor to the Association, the Sponsor will furnish the Association with a fee title policy covering the lands comprising the Common Properties. This fee policy of title insurance will be issued by a reputable title insurance company licensed to do business in the State of New York, and shall be in the amount of \$460,000. Any proceeds of such title policy arising out of a claim of defective title, pertaining to land being conveyed to the Association, will be held for the benefit of, and delivered to the Association.

The Sponsor agrees to pay for the authorized and proper work involved in the construction, establishment and sale of all Association property. Sponsor is obligated to complete construction of all Common Area improvements under the Plan and agrees to cause all mechanics' liens with respect to such construction to be promptly discharged or bonded.

Sponsor has an obligation to defend any suits or proceedings arising out of Sponsor's acts or omissions and to indemnify the Board of Directors against such acts or omissions.

The Sponsor agrees to deliver a set of "as-built" plans of Common Property improvements to the Board of Directors, including specifications of roads, sewer system, and/or water lines and a representation that the plans or specifications are in substantial compliance with the terms of the Offering Plan. If Sponsor has reserved an easement to complete construction of the Property and use the Common Areas in connection with the sale of Homes, Sponsor will be obligated to repair any damage to the Common Area caused by its construction.

Sponsor is obligated to pay Association assessments on unsold Homes in the manner set forth at page 15.

The Sponsor may be liquidated at any time after completion of the Homes and Common Area improvements. In no event will Sponsor's obligations under the Plan be diminished.



While Sponsor is in control of the Board of Directors it will secure, at the Association's expense, an annual certified Profit and Loss Statement and Balance Sheet of the Association prepared by an independent public accountant.

#### PROCEDURE TO PURCHASE

A person desiring to purchase a Home in the Development will be required to execute a Purchase Agreement in the form set forth as Exhibit D of this Plan and to return it to the Selling Agent, together with a check in the amount of up to 10% of the total purchase price. In addition, a Purchaser is required to pay certain costs and adjustments at closing, including, but not limited to, New York State Real Estate Transfer Tax; final survey costs of \$150; two months' Association assessments as initial working capital; and recording fees. Sponsor reserves the right to decline to sell more than one Home to any purchaser. No Purchase Agreement may be entered into unless purchaser has received a copy of the Offering Plan at least three (3) full business days prior to the execution of the Purchase Agreement. The Purchase Agreement provides that the closing of title will not be scheduled on less than ten (10) days' written notice to the purchaser and that purchaser will have ten (10) days to cure any default under the Purchase Agreement.

Purchaser shall acquire title to his Home and Lot subject to the following title exceptions: (a) any state of facts an accurate survey or a personal inspection may show, provided title is not rendered unmarketable thereby; (b) building restrictions and regulations of all municipal authorities in effect at the date of closing; (c) easements for sewer, water, gas, drainage, electric, cable TV, telephone and other similar utility easements or other easements required by municipal agencies, if any, granted or to be granted; (d) The Declaration of Covenants, Restrictions, Easements, Charges and Liens set forth in Exhibit A which Sponsor will record in the Rockland County Clerk's Office; (e) fence or other encroachments, if any, of less than 12 inches; (f) Restrictions in Liber 235 cp 188 and Liber 240 cp 175 that prohibit the manufacture or sale of alcoholic beverages at the Properties; and (g) the filed subdivision map of the Development and any amendments thereto.

Portions of the interior roadways that will be owned and maintained by the Association are subject to rights of way in favor of the owners of four (4) parcels of approximately one acre each contiguous to the Development. Such rights of way give the owners of such contiguous properties the right to use portions of the roadways owned by the Association for purposes of ingress and egress to the public highway (Route 9W) with no obligation to contribute to the repair and maintenance of such roadways. Such rights of way are recorded in Liber 520 cp 644, Liber 235 cp 188, Liber 308 cp 80, Liber 721 cp 824, Liber 284 cp 2967 and Liber 547 cp 95. The Common Properties are also subject to easements for

sewerage and sewerage disposal in favor of the Village of West Haverstraw recorded in Liber 351 cp 317, Liber 352 cp 468 and Liber 352 cp 469 and as depicted in a map filed in Book 29 of Maps, page 617 as Map #680. Finally, the right of way recorded in Liber 308 cp 80 contains an easement in favor of the Association to install a water pipe to be connected with the main of the water company which leads to the Village of West Haverstraw with the right to erect electric light poles along such right of way.

The Sponsor has been advised by its counsel that none of such rights of way and easements will interfere with a Home Owners quiet use and enjoyment of his Home because they only affect the Common Properties that will be owned by the Association. However, the underlying documents concerning the exceptions to title will be available to a Purchaser's attorney for inspection at the office of the Sponsor for six (6) years from the initial date of the Offering Plan.

The Sponsor reserves the right to negotiate with Purchasers in connection with all aspects of the purchase price, including but not limited to: improvements to the Home or the fixtures or equipment contained therein or credits or allowances therefor; treatment of reduced and/or split down payment; financing contingency; extension of period to secure financing; payment of all or part of Purchaser's acquisition or financing costs such as, but not limited to: closing costs, attorneys' fees, origination fees, commitment fees and transfer taxes; and any and all other costs relating to the cost of acquiring title to the Home. Furthermore, the Sponsor reserves the right to amend the Plan from time to time to add and/or delete negotiable terms pursuant to Section 352-e of the General Business Law.

#### TRUST FUNDS

The Sponsor will hold all monies received directly or through its agents or employees in trust until the closing of title or Sponsor will post a surety bond issued by a New York insurance company or a letter of credit issued by an institutional lender securing repayment of such funds in the event the purchaser is entitled to such amount under the terms of the Offering Plan or Purchase Agreement. If a surety bond or letter of credit is posted, this Plan will be amended to disclose such fact. If no bond or letter of credit is posted, such funds will be held as trust funds pursuant to Section 352-h and Section 352-e(2)(b) of the General Business Law, in a special non-interest bearing account entitled "Fairgrounds II Escrow Account" or similar in The Savings Bank of Rockland, 155 Main Street, Nyack, New York 10960. The signature of a member of the firm of Johnson, Johnson & Tanz, Esqs., 53 Burd Street, Nyack, New York 10960 as attorneys for the Sponsor, shall be required to withdraw any of such funds. Such funds will be payable to the Sponsor upon the closing of title to

the Home covered by the Purchase Agreement. In the event of default by the purchaser under such Purchase Agreement, which default continues for ten (10) days after notice of such default from the Sponsor to the purchaser, the down payment of up to 10% of the purchase price plus the actual cost of any optional items ordered may be released to the Sponsor from such account as liquidated damages and thereafter neither party shall have any rights or obligations to or against the other.

#### **MANAGEMENT AGREEMENT AND OTHER CONTRACTUAL ARRANGEMENTS**

The Sponsor has not entered into any management contract to provide for management of the Common Properties. No representation is made as to the cost, terms, or availability of a managing agent.

The Board of Directors of the Association will be responsible for the management of the Association, and may perform this function itself or hire a managing agent to bill and collect the annual maintenance charges, hire and fire employees, supervise alterations and repairs, maintain the Association's books and records, advise the Board of Directors of its proposed annual budget, provide each Home Owner annually with a Balance Sheet and Profit and Loss Statement prepared and certified by an independent public accountant, purchase supplies for the Association and generally perform the duties of a managing agent for residential property. In performing its duties, the Board of Directors or a managing agent employed by it, may engage contractors for the purpose of carrying out the maintenance and repair of the Common Properties. No representation is made as to the costs, terms or availability of a Managing Agent in the event the Board decides to hire one in the future.

#### **IDENTITY OF PARTIES**

The Sponsor, Fairgrounds II, Inc., is a New York corporation that will construct the entire Development. The Sponsor will also serve as the Selling Agent. The sole shareholder of the Sponsor is Leif Bergstol, who is also President of the corporation. Mr. Bergstol has been actively engaged in real estate construction in Rockland County, New York for the past ten (10) years. The Sponsor and Mr. Bergstol have not personally participated or been a principal in any public offering for cooperative or condominium interests in real estate.

All legal matters in connection with the establishment of the Association, the opinions of counsel contained herein, and the preparation of the Offering Plan have been passed upon for the Sponsor by Certilman Balin Adler & Hyman, Esqs. The Financial

Center at Mitchel Field, 90 Merrick Avenue, East Meadow, New York 11554. The Sponsor will be represented by Jerome Johnson, Esq., Johnson, Johnson & Tanz, 53 Burd Street, Nyack, New York 10960 for the individual closings of each Home.

The firm of Atzl & Scatassa, P.C., surveyors and planners, 248C North Main Street, New City, New York 10956, prepared the Report and Certification for same included in Part II. Such firm also prepared the Report and Certification for the Offering Plan for Village Fairgrounds.

#### **REPORTS TO MEMBERS**

All members of the Association will receive annually (within four months of the end of each fiscal year) at the expense of the Association, copies of a Balance Sheet and a Profit and Loss Statement of the Association prepared and certified by an independent public accountant, a statement regarding taxable income attributable to the members, if any, and a notice of the holding of the annual meeting of the Association.

#### **DOCUMENTS ON FILE**

In accordance with Section 352-e(9) of the General Business Law, copies of this Offering Plan and Parts A, B, and C of the Exhibits and documents referred to herein will be available for inspection by prospective Purchasers and by any person who has purchased a membership interest offered by this Plan or who has otherwise participated in this Offering at the offices of the Sponsor at the address indicated on the front cover of this Offering Plan, and will remain available for such inspection for a period of six years from the initial date of the Offering Plan.

#### **GENERAL**

This Offering Plan contains a fair summary of the material facts of this Offering and does not knowingly omit any material fact or contain any untrue statement of any material fact.

There are no lawsuits or other proceedings now pending or any judgments outstanding, either against the Sponsor or the Association or any person or persons which might become a lien against the Development or which materially affect this Offering or Sponsor's capacity to perform all of its obligations under the Plan or operation of the Association.

In accordance with the provisions of the laws of the State of New York, the Sponsor represents that it will not discriminate against any person because of his race, sex, age, creed, color, national origin or ancestry in the sale of homes in the Development and in the simultaneous offering of memberships in the Association under this Offering Plan.

Investor-purchasers of more than one Home for resale rather than occupancy are required to register pursuant to GBL Section 352-e and to provide prospective purchasers with the Offering Plan.

This property was not the subject of any prior public offering. As of the date of first presentation of this Plan, neither the Sponsor nor any of its agents or representatives has raised funds or made any preliminary offering or binding agreement to or with prospective Home Owners.

The Plan may be amended at any time and from time to time provided that, if the amendment is a material and substantial modification of the Plan which adversely affects Purchasers of shares, then anyone who has theretofore executed a Purchase Agreement shall be given not less than thirty (30) days after a copy of the duly filed amendment is mailed or otherwise delivered to them to cancel the Purchase Agreement by giving written notice to the Sponsor and Selling Agent and to obtain a refund, in full, of the down payment made herewith.

No person has been authorized to make any representation which is not expressly contained herein. This Offering Plan may only be changed or modified by a duly filed amendment to this Plan.

Dated: February 8, 1991  
East Meadow, New York

FAIRGROUNDS II, INC.  
Sponsor

DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS

DECLARANT: FAIRGROUNDS II, INC.

DATE OF DECLARATION:

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CERTILMAN BALIN ADLER & HYMAN  
Attorneys for the Sponsor  
The Financial Center at Mitchel Field  
90 Merrick Avenue  
East Meadow, New York 11554

EXHIBIT A

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**DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS**

Declaration made as of this      day of                      , 199 , by Fairgrounds II, Inc., a New York corporation with offices at 77 Maple Avenue, New City, New York hereinafter referred to as "Developer."

**W I T N E S S E T H:**

**WHEREAS**, Developer is the owner of the real property described in Article II of this Declaration and shown on the filed subdivision map which Declarant desires to develop as a residential community with various permanent open spaces and other common facilities for the benefit of said Community; and

**WHEREAS**, Developer desires to provide for the preservation of the values and amenities in said Community and for the maintenance of the open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said Community to create an agency to which should be delegated and assigned the powers of maintaining and administering the Community property and improvements and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer has incorporated Village Fairgrounds II Home Owners Association, Inc. under the not-for-profit corporation laws of the State of New York for the purpose of exercising the aforesaid functions;

**NOW THEREFORE**, the Developer, for itself, its successors and assigns, declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

**ARTICLE I. DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to Village Fairgrounds II Home Owners Association, Inc., a New York Not-for-Profit corporation.

(b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration.

(c) "Home" shall mean and refer to all units of residential housing situated upon The Properties.

(d) "Owner" shall mean and refer to the record owner of fee simple title to any Home, including the Developer with respect to any unsold Home. Every Home Owner shall be treated for all purposes as a single owner for each Home held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, a majority vote of such owners shall be necessary to cast any vote to which such owners are entitled, but with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such home.

(e) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article III.

(f) "Development" shall mean Village Fairgrounds II a residential Home development being constructed on The Properties.

(g) "Developer" shall mean and refer to Fairgrounds II, Inc., a New York corporation, and its successors and assigns, if such successors and assigns should acquire an undeveloped or a developed but unsold portion of the Properties from the Developer for the purpose of development.

(h) "Common Properties" or "Common Areas" shall mean and refer to certain areas of land other than individual lots as shown on the filed subdivision map and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(i) "Lot" shall mean and refer to any plot of land intended and subdivided for residential uses shown on the subdivision map of the Properties but shall not include the Common Areas as herein defined.

(j) "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support of each adjoining property, situate or intended to be situate, on the boundary line between adjoining properties.

## ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

**Section 1. Properties.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in the Village of West Haverstraw, Town of Haverstraw, County of Rockland and State of New York, being more particularly bounded and described in Exhibit "A" annexed hereto.

## ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

The Association shall have one class of membership interest. The owner of each dwelling unit on The Properties subject to this Declaration shall be a member.

Each member is entitled to one vote regardless of the number of Homes owned by such member. When more than one person or entity holds such interest in any Home, the one vote attributable to such Home shall be exercised as such persons mutually determine but with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such Home. For purposes of this section the word "home" shall have the same meaning as "lot" and therefore if there is no home constructed on a particular lot in the Development, the owner of such lot will still be considered a Member entitled to cast the one vote as set forth above. No member shall split or divide its votes on any motion, resolution or ballot other than in the cumulative voting procedure employed in the election of Directors.

## ARTICLE IV. PROPERTY RIGHTS IN THE PROPERTIES

**Section 1. Members' Easement of Enjoyment.** Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Properties and such easement shall be appurtenant to and shall pass with the title to every Home.

**Section 2. Title to Common Properties.** Prior to conveyance of title to the first Home on the Properties, the Developer shall convey to the Association legal title to the Common Properties subject, however, to the following covenant which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

X  
 In order to preserve and enhance the property values and amenities of the Development, the Common Properties and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to interior roadways and site lighting.

This section shall not be amended, as provided for in Article XII, Section 2, to reduce or eliminate the obligation for maintenance and repair of the Common Properties.

**Section 3. Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, as provided in its By-Laws to suspend the enjoyment rights of any Member for a period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members and their mortgagees entitled to cast eighty (80%) percent of the eligible votes has been recorded agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least ninety (90) days in advance of any action taken.

(c) The right of the Developer and of the Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television and other utilities, and the right of the Developer to grant and reserve easements and rights-of-way, in, through, under, over, upon and across the Properties for the completion of the Developer's work under Section 1 of Article V.

**ARTICLE V. DEVELOPMENT OF VILLAGE FAIRGROUNDS II**

**Section 1. Village Fairgrounds II.** Developer intends to build up to 94 attached Homes on a portion of land comprising the Properties.

**Section 2. Easement.** Developer does hereby establish and create for the benefit of the Association and for all Owners from

time to time of Homes subject to this Declaration and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

(i) Right-of-way for ingress and egress by vehicles or on foot, in, through, over, under and across the streets, roads and walks in the Properties (as shown on the filed map as they may be built, relocated, or changed in the future) for all purposes;

(ii) Rights to connect with, maintain and make use of utility lines, wires, pipes, conduits, cable television lines, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of the Properties.

**Section 3. Reservation of Easements.** Developer reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Properties, for the purpose of completing and/or repairing its work under Section 1 above and towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, gas, electric, and other utilities and for any other materials or services necessary for the completion and/or repair of the work. Such easements, licenses, rights and privileges shall exist as long as Developer has an obligation to any municipality having jurisdiction hereof or to the Association, and as long as Developer has any bonds or contracts of indemnity securing the performance or completion of the improvements, whichever is longer. Developer also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads of other areas of the Properties. In addition, Developer and any Selling Agent retained by Developer reserves the right to continue to use the Properties and any roadways, walks, sales offices, model homes, unsold Homes, signs and recreation area located on the Properties in its efforts to market homes constructed on the Properties. This paragraph may not be amended without the written consent of Developer.

**Section 4. Encroachments on Lots.** In the event that any portion of any roadway, walkway, parking area, driveway, patio, water lines, sewer lines, electric or gas meter, utility lines, sprinkler system, building or any other structure as originally constructed by Developer encroaches on any lot or the Common Areas, it shall be deemed that the owner of such lot or the Association has granted a perpetual easement to the owner of the adjoining lot or the Association as the case may be for continuing maintenance and use of such encroaching roadway, walkway, driveway, patio, parking area, water line, sewer line, electric or gas meter, utility line, sprinkler system, building or structure. The

foregoing shall also apply to any replacements of any such roadway, walkway, driveway, patio, parking area, water lines, electric or gas meter, sewer lines, utility lines, sprinkler system, building or structure if same are constructed in substantial conformance to the original plans. The encroachment for sewer lines and utility lines shall also apply to sewer lines which may run under the building and utility lines which run through the attic area of the building. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

**Section 5. Easement for Emergency Access.** Developer does hereby establish an easement of ingress and egress over the roadways in the Development for the benefit of all emergency vehicles and personnel including but not limited to police, fire, and medical purposes.

#### **ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation.** The Developer, for each Home owned by it within the Properties, hereby covenants and each Owner of any Home by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association such assessments as are fixed by the Association's Board of Directors and assessed to the Members as hereinafter provided. All sums assessed to the Association but unpaid, together with such interest thereon as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property owned by such Member against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, as hereinafter provided shall be a personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**Section 2. Purpose of the Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties as a community and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the Homes situated upon the Properties, including, without limiting the foregoing, the payment of taxes (if any), insurance thereon, and repair, replacement and additions thereto, and the cost of labor, equipment, materials, services, management and supervision thereof.

**Section 3. Assessments.** The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and

adequate for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Member prior to assessing the Members thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual requirements and any supplemental requirements shall be allocated between, assessed to, and paid by the Members as follows:

Each Member shall pay a portion of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Homes on the Properties subject to this Declaration: ninety-four (94). The Developer's obligation for such assessments on unsold Homes subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including reserves on the Common Properties, and on Homes to which title has been conveyed and the assessments levied on owners who have closed title on their homes. In no event, however, will the Developer be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on unsold Homes. The sum due the Association from each individual Home Owner shall constitute an assessment of the Board of Directors and unpaid assessments shall constitute liens on the individual Homes, subject to foreclosure as hereinafter provided.

**Section 4. Due Dates; Duties of the Board of Directors.** All Assessments shall be payable monthly in advance as ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Home and shall prepare a roster of the Homes and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid charges due from such Member.

**Section 5. Effect of Non-Payment of Assessment, The Personal Obligation of the Member; The Lien, Remedies of the Association.** If an assessment is not paid on the date when due, as fixed by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Member's Home which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Home by the taxing subdivision of any governmental authority, including but not

limited to State, County, Town and School District taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering the Home. The personal obligation of the Member who was the Owner of the Home when the assessment fell due to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum permissible rate in the State of New York and the Association may bring an action at law against the Member or former Member personally obligated to pay the same and may foreclose the lien against the property. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court together with the cost of the action.

#### **ARTICLE VII. ARCHITECTURAL CONTROL**

No building, fence, wall or other structure, or change or alteration to the exterior of the Homes, patios, walkways, driveways, party fences, or in the landscaping of the Common Areas and individual lots shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to, or change or alteration thereto, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by the Board. The provisions of this Paragraph shall not apply to Developer. As set forth in Article XIV, Section 3 of the Association By-Laws, a two-thirds majority of a quorum of the Board of Directors or Architectural Committee shall be required for approval of any addition, change or alteration.

#### **ARTICLE VIII. PARTY WALLS OR PARTY FENCES**

**Section 1. General Rules of Law to Apply.** To the extent not inconsistent with the provisions of this Article VIII, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply to each party wall or party fence which is built as part of the original construction of the Homes upon the Properties and any replacement thereof.



In the event that any portion of any structure, as originally constructed by the Developer, including any party wall or fence, shall protrude over an adjoining lot, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements of any structures, party walls or fences if same are constructed in conformance with the original structure, party wall or fence constructed by the Developer. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall or party fence is destroyed or damaged by fire or other casualty, and such damage is not otherwise covered by insurance as set forth in Article X, any Owner who has used the wall or fence must restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provisions of this Article, 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.

**Section 5. Right to Contribution Runs with Land.** The right of any owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The decision of the arbitrators shall be binding and conclusive upon the parties.

**Section 7. Authorization for Association to Make Repairs and Replacement.** In the event that the Owners of two or more Homes who share a party wall or party fence fail to properly maintain and/or replace said wall or fence in a manner satisfactory to the Board

of Directors, the Association shall do so in the manner specified in Section 2 of Article IX of this Declaration. The cost of any such replacement shall be apportioned and assessed between or among the Owners of the Homes affected by the Board in such a manner as the Board shall deem equitable and such costs shall be added to and become a part of the assessments to which such Homes are subject.

#### **ARTICLE IX. EXTERIOR MAINTENANCE**

**Section 1. Exterior Maintenance.** The Association shall be responsible for snow removal and maintenance of the interior roadways and parking areas. Each Home Owner is responsible for the exterior maintenance of his Home, maintenance of the lawn area immediately contiguous to his lot, and for snow removal of his own driveway and walk.

**Section 2. Disrepair of Lots.** In the event the Owner of any Home in The Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, including but not limited to the situation where such maintenance functions are not otherwise directed by the provisions of this Declaration to be performed by the Association, upon direction of the Board of Directors, it shall have the right, through its agents and employees to enter upon the lot upon which said Home is located and to repair, maintain and restore the lot and the buildings and any other improvements erected thereon. The cost of such maintenance shall be added to and become part of the assessments to which such Home is subject.

**Section 3. Access at Reasonable Hours.** For the purpose solely of performing the maintenance required by this Article the Association, through its duly authorized agent and employees, shall have the right on notice to enter upon any Home Owner's lot at reasonable hours, on any day except Sundays and holidays (except that in an emergency situation such notice need not be given, and may be made anytime).

#### **ARTICLE X. INSURANCE**

**Section 1. Common Areas.** The Board of Directors shall maintain public liability insurance, to the extent obtainable covering each Association Member, lessee and occupant and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Properties. To the extent obtainable, the Board of Directors shall also be required to obtain workmen's compensation insurance. All insurance premiums for such coverage shall be paid for by the Association.

**Section 2. Homes.** Each Home Owner shall be required to obtain and maintain adequate insurance of his Home which shall insure the property for its full replacement value with no deductions for depreciation against loss by fire or other hazards. Such insurance shall be sufficient to cover the full replacement value, or for necessary repair or reconstruction work. Such insurance shall be written in the manner designated by the Association. Each policy shall contain a loss payment provision which provides that the proceeds of any loss shall be payable to the Board of Directors which shall hold such funds in trust to insure that the repairs are made as hereafter set forth. Each Owner shall be required to supply the Board of Directors with evidence of insurance coverage on his home which complies with the provisions of this Section.

A. Adequate Insurance Not Obtained. If the insurance provided under this Section has not otherwise been adequately obtained by each owner, as determined by the Board of Directors, then the Board shall obtain such insurance coverage. Such insurance shall be sufficient to cover the full replacement cost or necessary repair or reconstruction work. Insurance obtained by the Board of Directors shall be written in the name of the Association as Trustee for the benefit of each Home Owner. Premiums for insurance obtained by the Board of Directors, as provided hereinabove, shall not be a part of the common assessment or expense but shall be an individual assessment payable in accordance with the provisions of Article VI of this Declaration.

B. Repair or Replacement of Damaged or Destroyed Property. Each Owner shall be required to reconstruct or repair any home destroyed by fire or other casualty. The insurance proceeds on policies secured either by the Home Owner or the Board of Directors shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature of an agent duly authorized by the Board of Directors. If no repair or rebuilding has been contracted for, or otherwise substantially started by the Owner, with the cooperation of the Board of Directors within thirty (30) days of the receipt of the insurance proceeds, the Board of Directors shall itself initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Home, in a good and workmanlike manner in conformance with the original plans and specifications. The Board of Directors may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contractor or contractors selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding. In the event the insurance proceeds are insufficient to fully pay the costs of repairing and/or rebuilding the damaged or destroyed portions in a good and workmanlike manner, the Board of Directors shall levy a special assessment against the owner in whatever amount sufficient to make up the deficiency. If the insurance proceeds exceed the cost of repairing and/or rebuilding, such

excess shall be paid over to the respective owner and/or owner's mortgagee in such portions as shall be independently determined by those parties.

#### ARTICLE XI. USE OF PROPERTY

The use of a Home by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Directors and the following covenants and restrictions:

(a) The Home and area restricted to the Member's use shall be maintained in good repair and overall appearance. All repairs and work done on the Home may be done by licensed contractors only.

(b) Any Member who mortgages or sells his Home shall notify the Board of Directors providing the name and address of his mortgagee or new owner.

(c) The Board of Directors shall, at the request of the mortgagee of the Home, report any delinquent assessments due from the Owner of such Home.

(d) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.

(e) No improper, offensive or unlawful use shall be made of the property nor any part thereof, and all valid laws, zoning ordinances, the regulations of all governmental bodies having jurisdiction thereof, shall be observed.

(f) Regulations promulgated by the Board of Directors concerning the use of the property shall be observed by the Members.

(g) The maintenance assessments and real estate taxes shall be paid when due.

(h) All dogs, cats, and other pets must be leashed and shall not be permitted to run loose. Home Owners shall be responsible for picking up and disposing of their pet's waste and for any damage caused by their pets to the Common Areas.

(i) No resident of the Community shall post any advertisement or posters of any kind including "for sale" or "for rent" signs in or on the Properties except as authorized by the Board of Directors. This paragraph shall not apply to Developer.

(j) No fence or gate shall be erected on the Properties without the prior written consent of the Board of Directors. This paragraph shall not apply to Developer.

(k) No television or radio antenna or any other type of receiving or transmitting antenna or structure shall be erected on the exterior of Homes or on any lot without the prior written consent of the Board of Directors.

(l) No Home Owner shall move, remove, add or otherwise change the landscaping on Common Areas.

(m) No person shall park a vehicle or otherwise obstruct any resident's use of ingress or egress to any garage or parking space nor may any vehicle be parked on the roadways when such parking would obstruct access by emergency or service vehicles.

(n) No Home Owner shall install or permit to be installed any window mounted, or through the wall mounted air conditioning unit in his Home.

(o) No repair of motor vehicles shall be made in any of the roadways, driveways or parking areas of the Development, nor shall such areas be used for storage parking of any boat, trailer, camper, bus, truck or commercial vehicle without the written permission of the Board of Directors. All vehicles must be maintained in good repair, and no inoperable, unsightly, or abandoned vehicles may be parked on the premises. The determination as to what constitutes inoperable, unsightly or abandoned vehicles lies within the sole discretion of the Board of Directors.

(p) No person shall be permitted to use the recreation area of the Association except in accordance with the rules and regulations established by the Association's Board of Directors or if no such rules or regulations are established, without the prior consent of the Board of Directors.

(q) No Home Owner shall make or permit any disturbing noises in any building or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Home Owners.

(r) Homes may be used for residential purposes only in accordance with Municipal Zoning Regulations.

(s) The Common Area shall not be obstructed, littered, defaced or misused in any manner.

(t) Every member shall be liable for any and all damage to the Common Area and the property of the Association, which shall be caused by said Owner or such other person for whose conduct he is legally responsible.

(u) It is prohibited to hang garments, rugs, etc., or to string clothes lines on any portion of the Home, lot, or Common Area, nor may the patios, balconies or any portion of the Common Area be used for any storage purposes.

(v) Upon receipt, by the President of the Board of Directors or by the Managing Agent, of a signed written complaint alleging violation of any of the By-Laws or Rules as herein established or hereafter established or adopted by the Board of Directors, the President of the Board, or in his absence, the Vice President together with any two members of the Board, without a formal meeting of the Board, shall make a determination as to the validity of the complaint. If in their determination the complaint is valid and justified the Managing Agent shall be directed to send written notice of such violation to the violator. If the violation is not corrected or eliminated within a period of three (3) days from the date of receipt of such notice; another notice will be sent levying a \$50.00 fine upon the violator. Such fine is to be considered as an additional assessment to the account of the violator and shall be treated as such regarding late penalties and a lien upon the Property as elsewhere provided. If after imposition of a fine the violation is not corrected or eliminated, the Board of Directors may assess additional fines of \$50.00 each after serving written notice upon the violator as provided for above. If the violation results in loss of or damage to property classified as Common Area, the Board of Directors shall direct the Managing Agent to have said loss or damage repaired or replaced, and the actual cost of said repair or replacement shall be assessed to said violator as an additional assessment.

Any costs incurred by the Board of Directors to remedy or cure any violation of these By-Laws, the Rules or Regulations as herein or hereafter established, shall be an additional assessment charged to the violator in addition to the fifty dollar (\$50) fine(s) levied upon the violator.

The foregoing provisions labeled (a) through (v) shall not apply to Developer. In the event it becomes necessary for Developer to enforce any provisions of this Declaration, the By-Laws, Rules or Regulations, such Home Owner, tenant, guest, or occupant will be required to reimburse Developer or the Board for any costs incurred in connection herewith, including attorneys fees. The Home Owner shall at all times be and remain responsible for his Tenant's actions or omissions.

**ARTICLE XII. GENERAL PROVISIONS**

**Section 1. Beneficiaries of Easements, Rights and Privileges.** The easements, licenses, rights or privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Association and the Owners of Homes constructed on The Properties; and any Owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject in the case of the Common Properties to the Rules and Regulations of the Board of Directors, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

**Section 2. Duration and Amendment.** The covenants and restrictions of this Declaration shall run with, and bind the land, and shall inure to the benefit of, and be enforceable by the Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until December 31, 2040, unless otherwise expressly limited herein, after which time, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty-six and two-thirds (66 2/3%) of the Home Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties by Section 2 of Article V shall be perpetual, run with the land, and shall survive any destruction, reconstruction and relocation of the physical structure, unless said provision is abrogated by the unanimous written consent of all the Home Owners. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Members holding not less than sixty-six and two-thirds (66 2/3%) of the votes of the membership. Any amendment must be properly recorded to be effective.

**Section 3. Disposition of Assets Upon Dissolution of Association.** Upon dissolution of the Association, its real and personal assets, including the Common Properties, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses,

covenants and easements of this Declaration, or under any subsequently recorded covenants, deeds or other documents applicable to the Properties, except as may be otherwise provided in this Declaration or said covenants, deeds or other documents, as the case may be, nor shall any other party under any such deeds, covenants or other documents be deprived of any rights thereunder on account of such disposition.

**Section 4. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Administration.** The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Exhibit "B". In the event it becomes necessary for Developer or the Board of Directors to enforce any provisions of this Declaration or the By-Laws, such Home Owner, tenant, guest or occupant will be required to reimburse Developer or the Board for any costs incurred in connection herewith, including attorney's fees. The Home Owner shall at all times be responsible for his tenant's actions or omissions.

**Section 6. Severability.** Invalidation of any of the covenants, limitations or provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions hereof and the same shall continue in full force and effect.

FAIRGROUNDS II, INC.

By: \_\_\_\_\_

ATTEST:

Secretary



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ROCKLAND )

On this            day of            , 1991, before me personally came Leif Bergstol, to me known to be the person who being duly sworn by me, did depose and say that he resides at No.            , and that he is the President of Fairgrounds II, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so fixed by order of the board of directors of said corporation and that he signed his name thereto by like order of said corporation.

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Notary Public

## CERTIFICATE OF INCORPORATION

OF

VILLAGE FAIRGROUNDS II HOME OWNERS ASSOCIATION, INC.

(Under Section 402 of the Not-for-Profit Corporation Law)

ALAN M. FRIEDLANDER, being of the age of eighteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is VILLAGE FAIRGROUNDS II HOME OWNERS ASSOCIATION, INC. (the "Corporation").

SECOND: That the Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The purpose or purposes for which the Corporation is formed are as follows:

A. To promote the health, safety and welfare of the residents of a residential community proposed to be developed by Fairgrounds II, Inc., a corporation, on lands situated in the Village of West Haverstraw, Town of Haverstraw, County of Rockland, State of New York; and this purpose:

(1) To own, acquire, build, operate and maintain land and facilities for community use, including roads and site lighting, structures and personal property incidental thereto, hereinafter referred to as the Common Properties"; and

(2) To enforce any and all covenants, restrictions and agreements applicable to the residential parcels within the above described residential community and the Common Properties, hereinafter collectively referred to as "the Properties", (the enforcement of which is not specifically and exclusively reserved to other).

EXHIBIT B

B. To make and perform any contracts and do any acts and things, and exercise any powers suitable, convenient, proper or incidental for the accomplishment of any objectives enumerated herein and in the By-Laws of the Corporation, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law.

C. The Corporation, in furtherance of its corporate purposes above set forth, shall have the powers enumerated in Section 202 of the Not-for-Profit Corporation Law, subject to any limitations provided in the Not-for-Profit Corporation law or any other statute of the State of New York.

**FOURTH:** The Corporation shall be a Type A Corporation pursuant to Section 201 of the Not-for-Profit Corporation Law.

**FIFTH:** This Certificate may be amended pursuant to the provisions of the not-for-Profit Corporation Law.

**SIXTH:** The office of the Corporation will be located in the County of Rockland.

**SEVENTH:** The Secretary of State is hereby designated as the agent of this corporation upon whom process against this corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against this corporation served upon him as agent of this corporation is: 77 Maple Avenue, New City, New York.

**EIGHTH:** The name and address of the initial Board of Directors are as follows: Leif Bergstol, Kenneth Bergstol and Dora Capio, each of which has an address at 77 Maple Avenue. New City, New York 10956.

IN WITNESS WHEREOF, I have made and signed this Certificate this 16<sup>th</sup> day of October, 1990 and to the best of my knowledge I

affirm the statements contained herein as true under penalties of perjury.

Alan M. Friedlander  
ALAN M. FRIEDLANDER  
The Financial Center at Mitchel Field  
90 Merrick Avenue  
East Meadow, New York 11554

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NASSAU    )

On this 16<sup>th</sup> day of October, 1990, before me personally came ALAN M. FRIEDLANDER, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged that he had executed the same.

[Signature]  
Notary Public

DONNA G. WALKER  
Notary Public, State of New York  
No. 4881935  
Qualified in Suffolk County  
Commission Expires Dec. 29, 1991

BY-LAWS  
OF  
VILLAGE FAIRGROUNDS II  
HOME OWNERS ASSOCIATION, INC.

CERTILMAN BALIN ADLER & HYMAN  
Attorneys for the Sponsor  
The Financial Center at Mitchel Field  
90 Merrick Avenue  
East Meadow, New York 11554

EXHIBIT C

BY-LAWS  
OF  
VILLAGE FAIRGROUNDS II  
HOME OWNERS ASSOCIATION, INC.

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**BY-LAWS****OF****VILLAGE FAIRGROUNDS II HOME OWNERS ASSOCIATION, INC.****A New York Not-for-Profit Corporation****ARTICLE I. NAME, LOCATION AND PRINCIPAL OFFICE**

These are the By-Laws of Village Fairgrounds II Home Owners Association, Inc. hereinafter referred to as the "Association". The principal office of the Association shall be located at Route 9W, Village of West Haverstraw, Town of Haverstraw, County of Rockland and State of New York.

**ARTICLE II. DEFINITIONS**

The following words when used in these By-Laws shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to Village Fairgrounds II Home Owners Association, Inc., a New York Not-for-Profit Corporation.

(b) "Developer" shall mean and refer to Fairgrounds II, Inc., a New York corporation and its successors and assigns if such successors and assigns should acquire an undeveloped or developed but unsold portion of The Properties from the Developer for the purpose of development.

(c) "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements, Charges and Liens applicable to The Properties recorded among the land records in the Clerk of the County of Rockland, New York.

(d) "The Properties" shall mean and refer to all those areas of land described in and subject to the Declaration.

(e) "Lot" shall mean and refer to any plot of land intended and subdivided for residential uses shown on the subdivision map of the Properties but shall not include the Common Areas as herein defined.

(f) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article VI.

(g) "Home" shall mean and refer to all units of residential housing situated upon lots located on The Properties.



(h) "Owner" shall mean and refer to the record owner of fee simple title to any Home, including the Developer with respect to any unsold Home. Every Home Owner shall be treated for all purposes as a single owner for each Home held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, majority vote of such owners shall be necessary to cast any vote to which such owners are entitled, but with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such Home.

(i) "Common Properties" or "Common Areas" shall mean and refer to certain areas of land other than individual Lots as shown on the filed subdivision map and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(j) "Development" shall mean Village Fairgrounds II, a residential home development being constructed on the Properties.

#### ARTICLE III. PURPOSE

This Association is formed to own and maintain the Common Properties for the benefit of the members of the Association.

#### ARTICLE IV. APPLICABILITY

All present and future Members, their tenants and guests shall be subject to these By-Laws and to the rules and regulations issued by the Association to govern the conduct of its Members.

#### ARTICLE V. USE OF FACILITIES

The Common Properties shall be limited to the use by the Members and their guests. In the event that a Member shall lease or permit another to occupy his Home, however, the lessee or occupant shall at the option of the Member, be permitted to enjoy the use of the Common Properties in lieu of and subject to the same restrictions and limitations as said Member. However, both the Member and the Lessee may not use the facilities at the same time. Any Member, lessee or occupant entitled to the use of the Association facilities may extend such privileges to members of his family residing in his household by notifying the Secretary in writing of the names of any such persons and of the relationship of such Member, lessee or occupant to such persons.

#### ARTICLE VI. MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** The Association shall have one class of membership interest as follows:

The Owner of each Home (or "lot" in the event no home is constructed on such lot) on the Properties shall be a member of the Association whether such Home is a townhouse or any other type of residential dwelling unit and whether such ownership is joint, in common or tenancy by the entirety. Each member is entitled to one vote regardless of the number of Homes owned by such member. When more than one person or entity holds such interest in any Home, the one vote attributable to such Member shall be exercised as such persons mutually determine but with the exception of cumulative voting employed in the election of Directors, not more than one vote may be cast with respect to any such Home. No member shall split or divide its votes on any motion, resolution or ballot other than in the cumulative voting procedure employed in the election of Directors.

#### **ARTICLE VII. QUORUM, PROXIES AND WAIVERS**

**Section 1. Quorum.** So many Members as shall represent at least 51% of the total authorized votes of all Members present in person or represented by written proxy shall be requisite to and shall constitute a quorum at all meetings of the Association for the transaction of business, except as otherwise provided by Statute, by the Declaration, the Certificate of Incorporation of the Association or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting. At least 5 days' written notice of such adjourned meeting shall be given to all Members. At such adjourned meeting any business may be transacted which might have been transacted at the meeting originally called.

**Section 2. Vote Required to Transact Business.** When a quorum is present at any meeting, the vote of a majority of the Members present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be binding upon all Members, unless the question is one upon which by express provision of the Statute, Declaration, Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

**Section 3. Right to Vote.** Members shall be entitled to vote either in person or by proxy at any meeting of the Association. Any such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

**Section 4. Proxies.** All proxies shall be in writing signed by the owner, and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

**Section 5. Waiver and Consent.** Wherever the vote of the membership at a meeting is required or permitted by Statute or by any provision of the Declaration, Certificate of Incorporation or by these By-Laws to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

**Section 6. Place of Meeting.** Meetings shall be held at any suitable place convenient to the Members as may be designated by the Board of Directors and designated in the notices of such meetings.

**Section 7. Annual Meetings.** The annual meeting of the membership of the Association shall be held on such date as is fixed by the Board of Directors. At such meetings there shall be elected by ballot of the membership a Board of Directors in accordance with the requirements of Article VIII of these By-Laws. The Members may also transact such other business as may properly come before the meeting.

**Section 8. Special Meetings.** It shall be the duty of the President to call a special meeting of the Association, if so directed by the Board of Directors, or upon the presentation to the Secretary of a petition signed by a majority of the Members.

**Section 9. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member at least ten but not more than thirty days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**Section 10. Order of Business.** The order of business at all meetings shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of committees
- (f) Appointment of inspectors of election (in the event there is an election)
- (g) Election of Directors (in the event there is an election)
- (h) Unfinished business
- (i) New business

**ARTICLE VIII. BOARD OF DIRECTORS**

**Section 1. Number and term.** The number of Directors which shall constitute the whole Board shall not be less than three nor more than seven. An initial Board consisting of three Directors shall be designated by the Developer to serve until the first annual meeting of the Association. At the first annual meeting and at all subsequent annual meetings the Members shall vote for and elect five Directors to serve for one year terms and until their successors have been duly elected and qualified. All directors, other than those the Developer shall have the right to designate, must be either Members of the Association or immediate family members residing in the Member's home. As required by law, each Director shall be at least nineteen years of age.

**Section 2. Cumulative Voting and Right of Developer to Designate Certain Board Members.** In an election of Directors, each Member shall be entitled to as many votes as shall equal the number of Directors to be elected and a Member may cast all of such votes for a single Director or may distribute them among two or more Directors as he sees fit.

Notwithstanding the foregoing, the Developer shall have the right to designate three Directors until the fifth anniversary date of the recording of the Declaration or until 90% of the Homes in the Development are closed, whichever is sooner. Thereafter, the Developer shall have the right to designate one Director for so long as it owns at least one Home. When the Developer no longer owns any Home it may not designate any Directors. Developer may not cast its votes to elect any Directors in addition to the designated Directors set forth above. The provisions of Article VIII Sections 1 and 2 may not be amended without the written consent of the Developer.

**Section 3. Vacancy and Replacement.** If the office of any Director becomes vacant by reasons of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a special meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the unexpired term in respect of which such vacancy occurred and until his successor is duly elected and qualified. In the event a Director appointed by Developer resigns, the Developer shall have the right to appoint another Director in his place.

**Section 4. Removal.** Directors, other than Sponsor designated Directors, may be removed for cause by an affirmative vote of a majority of the Members. No Director, other than a designee of the Sponsor, shall continue to serve on the Board if, during his term of office, he shall cease to be a Member.

## Section 5. Powers.

(a) The property and business of the Association shall be managed by its Board of Directors, which may exercise all such powers of the Association and do all such lawful acts and things as are not by Statute, Declaration, Certificate of Incorporation or by these By-Laws, directed or required to be exercised or done by the Members or Owners personally. These powers shall specifically include, but not be limited to the following items:

1. To determine and levy monthly assessments ("Association assessments") to cover the cost of operating and maintaining the Properties payable in advance. The Board of Directors may increase the monthly assessments or vote a special assessment in excess of that amount, if required, to meet any additional necessary expenses.

2. To collect, use and expend the assessments collected to maintain, care for and preserve the roads, walks, parking areas, and landscaping.

3. To make repairs, restore or alter the Common Properties after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings, or to repair or rebuild any Home destroyed by fire or other casualty in accordance with Section 2B of Article X of the Declaration.

4. To open bank accounts and borrow money on behalf of the Association and to designate the signatories to such bank accounts.

5. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the house rules or rules and regulations herein referred to.

6. To make reasonable rules and regulations and to amend the same from time to time. Such rules and regulations and amendments thereto shall be binding upon the Members when the Board has approved them in writing and delivered a copy of such rules and all amendments to each Member. Such rules and regulations may without limiting the foregoing, include reasonable limitations on the use of the Common Properties by guests of the Members as well as reasonable admission and other fees for such use.

7. To employ workmen, contractors and supervisory personnel, and to purchase supplies and equipment, to enter into contracts to provide maintenance and other services, and generally to have the power of Directors in connection with the matters hereinabove set forth.

8. To bring and defend actions by or against one or more Members pertinent to the operation of the Association and to assess special assessments to pay the cost of such litigation.

9. To hire a Managing Agent to perform and exercise the powers of the Board of Directors in the management of the Development.

10. To impose reasonable fines or penalties for violation of the By-Laws, Rules and Regulations.

11. To determine which vehicles on the premises are unsightly, inoperable, or abandoned.

(b) The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of such committees to consist of at least three (3) Members or immediate family members residing in the home of Member, one of whom shall be a Director, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Association and may have power to sign all papers which may be required, provided the said resolution or resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Committees established by resolution of the Board of Directors shall keep regular minutes of their proceedings and shall report the same to the Board as required.

(c) Notwithstanding anything to the contrary contained in these By-Laws, so long as the Developer or its designee shall continue to own one or more Homes, but in no event later than 5 years from the closing of title to the first Home, the Board of Directors may not, without the Developer's prior written consent (i) make any addition, alteration or improvement to the common area, or (ii) assess any Association charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund or, (iii) enter into any service or maintenance contract for work not covered by contracts in existence on the date the said Plan is declared effective or, (iv) borrow money on behalf of the Association or, (v) increase or decrease the services or maintenance set forth in Schedule A of the Village Fairgrounds II Offering Plan or, (vi) purchase any materials, equipment or other goods costing in excess of \$1,000. Developer shall not use its

veto power or control of the Board of Directors to reduce the level of services described in the Offering Plan or prevent capital repairs or prevent expenditures required to comply with applicable laws or regulations. While Developer is in control of the Board of Directors, no mortgage liens will be placed on the Common Properties without the consent of at least 51% of the home owners other than the Directors or Developers' nominees. This subparagraph (c) may not be amended without the written consent of the Developer.

**Section 6. Compensation.** Directors and officers, as such, shall receive no compensation for their services.

**Section 7. Meetings.**

(a) The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the annual meeting of Association Members and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set.

(b) Regularly scheduled meetings of the Board may be held without special notice.

(c) Special meetings of the Board may be called by the President on two (2) days notice to each Director either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

(d) At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by Statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

(e) Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 8. Annual Statement.** The Board of Directors shall furnish to all Members and shall present annually (at the annual meeting) and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business conditions and affairs of the Association, including a balance sheet and profit and loss statement certified by an independent public accountant and a statement regarding any taxable income attributable to the Members and a notice of the holding of the annual meeting of Association members.

**Section 9. Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association (except Sponsor or Sponsor's representatives) handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be an expense of the Association.

#### ARTICLE IX. OFFICERS

**Section 1. Elective Officers.** The officers of the Association shall be chosen by the Board of Directors and shall consist of a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Assistant Secretaries and Assistant Treasurers and such other officers as in their judgment may be necessary. All officers must be either members of the Board of Directors or Members of the Association. Two or more offices may not be held by the same person.

**Section 2. Election.** The Board of Directors, at its first meeting after each annual meeting of Association Members, shall elect a President, a Vice President, a Secretary and a Treasurer. Only the President must be a member of the Board.

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

**Section 4. Term.** The officers shall hold office for a period of one year or until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed with or without cause, at any time, by the affirmative vote of a majority of the Board of Directors, provided prior notice was given to all Board members that this item was on the agenda for such meeting. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.



**Section 5. The President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Association Members and the Board of Directors, shall be an ex-officio member of all standing committees, shall have general and active management of the business of the Association, shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 6. The Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act and shall have such other powers and duties as are usually vested in the office of Vice President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 7. The Secretary.** The Secretary and/or Assistant Secretary shall attend all sessions of the Board and all meetings of Association Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of Association Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he shall be.

**Section 8. The Treasurer.** The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Association including the vouchers for such disbursements, and shall deposit all monies, and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. These duties may also be exercised by the Managing Agent, if any. However, such Managing Agent shall not replace the Treasurer.

He shall disburse the funds of the Association as he may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Directors, at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer, and of the financial condition of the Association.

He shall keep detailed financial records and books of account of the Association, including a separate account for each Member, which among other things, shall contain the amount of each assessment, the date when due, the amount paid thereon and the balance remaining unpaid.

**Section 9. Agreements, etc.** All agreements and other instruments shall be executed by the President or such other person as may be designated by the Board of Directors.

**ARTICLE X. NOTICES**

**Section 1. Definitions.** Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Directors or to any Director or Association Member, it shall not be construed to mean personal notice; but such notice may be given in writing, by mail, by depositing the same in a post office or letter box in a postpaid sealed wrapper, addressed to the Board of Directors, such Director, or Member, at such address as appears on the books of the Association.

**Section 2. Service of Notice - Waiver.** Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

**ARTICLE XI. ASSESSMENTS AND FINANCES**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The creation of the lien and personal obligation of assessments is governed by Section 1 of Article VI of the Declaration.

**Section 2. Purpose of Assessments.** The purpose of assessments is as specified in Section 2 of Article VI of the Declaration.

**Section 3. Basis of Assessments.** The basis of the assessments is as specified in Section 3 of Article VI of the Declaration.

**Section 4. Date of Commencement of Assessments: Due Dates.** The date of commencement and the due dates of assessments are as specified in Section 4 of Article VI of the Declaration.

**Section 5. Effect of Non-Payment of Assessment: Remedies of the Association.** The effect of non-payment of assessments and the remedies of the Association shall be as specified in Section 5 of Article VI of the Declaration.

**Section 6. Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinated pursuant to the provisions of Section 5 of Article VI of the Declaration.

**Section 7. Checks.** All checks or demands for money and notes of the Association shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board of Directors may from time to time designate.

**Section 8. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all members. Disbursements from said account shall be for the general needs of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the community.

**Section 9. Other Accounts.** The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

## ARTICLE XII. AMENDMENTS

Except as otherwise provided, these By-Laws may be altered, amended or added to at any duly called meeting of Association Members provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment and (2) that the amendment shall be approved by vote of at least sixty-six and two-thirds (66 2/3%) of the members. No amendment, however, shall affect or impair the validity or priority of the Members' interests and the interests of holders of a mortgage encumbering a Member's Home. Nor shall any amendment have the effect of infringing upon the Developer's right to build and make membership in or use of the Association available to purchasers or lessees of no more than 62 attached and semi-attached Homes on the Properties.

In addition, in the case of material changes, approval must be obtained from first mortgage holders representing at least 51% of the votes of Homes that are subject to first mortgages. A change to any of the following would be considered as material: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of Common Areas; responsibility for maintenance and repairs; rights to use the Common Areas; boundaries of any Home; convertability of Homes into Common Areas or vice versa; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; insurance or fidelity bonds; leasing of Homes; imposition of any restrictions on a Home Owner's right to sell or transfer his or her Home; a decision by the Association to establish self management when professional management had been required previously by an eligible mortgage holder; restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the

Association documents; any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors.

An addition or amendment to these By-Laws shall not be considered material if it is for the purpose of correcting technical errors or for clarification purposes only. Any eligible mortgage holder who received a written request to approve amendments and who does not deliver to the Association a negative written response within thirty (30) days of the receipt of the request shall be deemed to have approved such amendment.

#### **ARTICLE XIII. SELLING, LEASING AND GIFTS OF HOMES**

**Section 1. Selling and Leasing Homes.** Any Home may be conveyed or leased by a Member free of any restrictions except that no Member shall convey, mortgage, pledge, hypothecate, sell or lease his Home unless and until all unpaid Association expenses assessed against the Home shall have been paid as directed by the Board of Directors. Such unpaid Association expenses, however, may be paid out of the proceeds from the sale of a Home, or by the Grantee. Any sale or lease of a Home or unit in violation of this section shall be voidable at the election of the Board of Directors. Upon the written request of a Member or his mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this section shall not apply to the acquisition of a home by a mortgagee who shall acquire title to such Home by foreclosure or by deed in lieu of foreclosure. In such event the unpaid assessments against the home which were assessed and became due prior to the acquisition of title to such home by such mortgagee shall be deemed waived by the Association and shall be charged to all other members of the Association as a common expense. Such provisions shall, however, apply to any assessments which are assessed and become due after the acquisition of title to such home by the mortgagee and to any purchaser from such mortgagee.

Whenever the term "Home" is referred to in this Section, it shall include the Home, the Member's interest in the Association and the Member's interest in any Homes acquired by the Association.

**Section 2. Gifts, etc.** Any Member may convey or transfer his Home by gift during his lifetime or devise his Home by will or pass the same by intestacy without restriction.

**ARTICLE XIV. GENERAL PROVISIONS**

**Section 1. Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

**Section 2. Seal.** The Association seal shall have inscribed thereon the name of the Association and the year of its incorporation under the laws of the State of New York. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

**Section 3. Architectural Control.** No building, fence, wall, statuary or other structure, or change in landscaping of the Common Areas and individual lots shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration to the Homes, patios, walkways, driveways, or party fences, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to, and approved in writing as to harmony of external design and location, in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three or more representatives appointed by the Board. The provisions of this paragraph shall not apply to the Developer. A two-thirds majority of a quorum of the Board of Directors or Architectural Committee shall be required for approval of any addition, change, or alteration.

**Section 4. Examination of Books and Records.** Each Member, or their respective representatives and first mortgagees, shall be entitled to a reasonable examination of the books and records of the Association at any time upon reasonable notice to its Board of Directors. The Declaration, Certification of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or first mortgagee at the principal office of the Association.

**Section 5. Construction.** Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires.

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

**Section 6. Severability.** Should any of the covenants, terms or provisions herein imposed be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

## PURCHASE AGREEMENT

Agreement made and dated \_\_\_\_\_, 199 , between Fairgrounds II, Inc., a New York corporation having its offices at 77 Maple Avenue, New City, New York, hereinafter called the "Seller" and \_\_\_\_\_ residing at No. \_\_\_\_\_ hereinafter called the "Purchaser".

WHEREAS, the Seller desires to offer for sale Homes to be situated on the land owned by it located in the Village of West Haverstraw, Town of Haverstraw, New York, together with mandatory memberships in Village Fairgrounds II Home Owners Association, Inc., hereinafter called the "Association", and the Purchaser is desirous of purchasing a Home therein and obtaining membership in the Association.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth, the parties hereto mutually agree as follows:

1. Sale of Home. Seller agrees to sell and convey, and Purchaser agrees to purchase: All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected or to be erected, situate, lying and being in the Village of West Haverstraw, Town of Haverstraw, County of Rockland and State of New York, known as Lot No. \_\_\_\_\_ on a Map entitled, "Fairgrounds II" filed in the Office of the Clerk of Rockland County. The one family dwelling referred to shall conform substantially in appearance as per Plans and/or an exhibit by Seller.

2. Purchase Price. The purchase price is \$ \_\_\_\_\_ payable as follows:

\$ _____	,	previously received as a non-binding reservation deposit (where applicable);
\$ _____	,	on the signing of this agreement, the receipt whereof is hereby acknowledged;
\$ _____	,	on closing of title;
\$ _____	,	Loan in that amount, to be procured by the Purchasers in accordance with paragraph 6 herein, the proceeds of which shall be turned over to the Seller.

EXHIBIT D

Any payment made by check is accepted by Seller subject to collection. If any check tendered is not honored, Purchaser shall provide a certified check or bank cashier's check payable directly to Seller within 72 hours after demand for replacement therefor.

Notwithstanding the foregoing, if for any reason whatsoever the check given by Purchaser as the down payment hereunder is dishonored, Seller shall have the right to cancel this Agreement. Seller's election to cancel shall not be deemed a waiver by Seller of its right to pursue other remedies.

ALL PAYMENTS AT CLOSING ARE TO BE MADE BY GOOD UNENDORSED CERTIFIED CHECK OR BANK CASHIER'S OR OFFICIAL CHECK PAYABLE DIRECTLY TO THE ORDER OF SELLER OR SELLER'S DESIGNEE AND DRAWN ON A BANK WHICH IS A MEMBER OF THE NEW YORK CLEARING HOUSE. UNCERTIFIED CHECKS OF A FUNDING COMPANY OR ATTORNEY'S ESCROW ACCOUNT WILL NOT BE ACCEPTED BY SELLER ON ACCOUNT OF PROCEEDS DUE FROM PURCHASER.

All sums paid on account of this Purchase Agreement are hereby made liens upon said premises, but such liens shall not continue after default by the Purchaser under this Purchase Agreement.

3. Delivery of Deed, Adjustments. The closing of title shall take place at the office to be designated by the Seller at o'clock on or about , 199 , or at another date and time designated by the Seller upon ten (10) days' written notice mailed to the Purchasers at their address hereinabove set forth. The Seller shall be entitled to a reasonable adjournment in the closing of title as set forth in paragraph 23 of this Agreement in the event of delay by reason of weather conditions, strikes, labor or material shortages, or delays in inspections and reports thereon, or other requirements. If the Purchaser is not ready to close title at the date and time fixed pursuant to the contract, any adjournment exceeding seven (7) days granted at the request of the Purchaser shall be upon the condition that (a) interest on the balance of the purchase price computed from the date originally fixed for closing to the actual date of closing, shall be paid to Seller at closing at a rate equal to the rate of interest charged to Seller on the building loan mortgage, if any, or at 12% per annum, whichever is greater; (b) all adjustments shall be made as of the date originally fixed for the closing of title and the Purchaser also agrees to apportion with Seller such taxes, security costs, insurance and Association assessments as may be determined to be due at the time of closing; and (c) \$7.00 per day for each day from the date originally fixed for closing to the actual date of closing for electricity, gas, and heating and \$1.00 per day for each day from the date originally fixed for closing to the actual date of closing for water charges. Nothing herein contained shall be construed to require Seller to grant any adjournment beyond seven (7) days from the date originally fixed for closing.

4. Closing Costs and Adjustments. The Purchaser further agrees to pay to the Seller at the closing of title: the applicable New York State Real Estate Transfer Tax of \$4.00 per \$1,000 of consideration (this tax is normally an expense of Seller. However, by contractual arrangement, it will be paid by purchaser), survey fees of \$150, and the actual fee for recording the deed to the Home. In the event the Purchaser shall obtain a mortgage to finance a portion of the purchase price, he shall also pay all applicable fees connected therewith such as origination fees, commitment fees, fees for credit reports, the actual cost of appraisal and inspection fees, private mortgage insurance where applicable, mortgage tax (any credit received as a result of mortgage tax previously paid in connection with the building loan or purchase money mortgage will inure to Seller), title insurance, bank attorneys fees for preparation of the documents necessary for the mortgage loan, including the building loan if said loan is being extended and/or consolidated with purchasers mortgage, all recording fees and all other charges assessed on the loan. All applicable real estate taxes and other usual and normal closing charges and any Association Assessments assessed during the month that title closes or established as a reserve, shall be adjusted as of the closing date based upon the last bill rendered for such taxes or charges. The purchaser shall pay the fee of his own attorney and the premium for a fee title insurance policy, if he desires such coverage. If the closing of title is held at an office outside of Rockland County, the purchaser will pay Seller's attorney a travel fee of \$250.00. In addition thereto, the Purchaser agrees to pay at the closing to the Association the monthly Association charges in advance and two months' Association assessments to be used as initial working capital. Purchaser shall make the required deposits with the lending institution for future payments of taxes and insurance premiums, and, if collected by the lending institution, for Association Assessments. In addition, Purchaser shall pay a surcharge of \$250 to Seller if Purchaser uses a title abstract company other than McCall Abstract Corp., 399 North Main Street, New City, New York 10956, in connection herewith.

5. Deed and Subject To. The closing deed shall be a Bargain and Sale Deed with Covenants Against Grantor's Acts, shall be duly executed and acknowledged by the Seller, so as to convey to the Purchaser fee simple title to the said premises, free and clear of all liens and encumbrances, except as herein stated, and shall also contain the covenant required by subdivision 5 of Section 13 of the Lien Law. The Purchaser shall accept a marketable title, such as McCall Abstract Corp. as agent for Chicago Title Insurance Company of New York will insure and the Purchaser shall pay the applicable New York State transfer tax. Title to the premises is sold and shall be conveyed subject to: (a) Ordinances and regulations of competent municipal or other governmental authorities; (b) Easements for screening and planting and for sewer, water, gas, fuel line, drainage, scenic purposes, electricity, cable television, telephone and other similar utilities, if any, granted or to be granted; (c) The Declaration of Covenants, Restrictions, Easements, Charges and Liens set forth as Exhibit A which the



Seller will record in the Rockland County Clerk's Office; (d) Unpaid taxes and liens, provided the title company shall insure against collection of same from the premises; (e) The filed Subdivision Map of the Development; (f) fence or other encroachments, if any, of less than 12 inches; and (g) Restrictions in Liber 235 cp 188 and Liber 240 cp 175 that prohibit the manufacture or sale of alcoholic beverages at the Properties.

Portions of the interior roadways that will be owned and maintained by the Association are subject to rights of way in favor of the owners of four (4) parcels of approximately one acre each contiguous to the Development. Such rights of way give the owners of such contiguous properties the right to use portions of the roadways owned by the Association for purposes of ingress and egress to the public highway (Route 9W) with no obligation to contribute to the repair and maintenance of such roadways. Such rights of way are recorded in Liber 520 cp 644, Liber 235 cp 188, Liber 308 cp 80, Liber 721 cp 824, Liber 284 cp 2967 and Liber 547 cp 95. The Common Properties are also subject to easements for sewerage and sewerage disposal in favor of the Village of West Haverstraw recorded in Liber 351 cp 317, Liber 352 cp 468 and Liber 352 cp 469 and as depicted in a map filed in Book 29 of Maps, page 617 as Map #680. Finally, the right of way recorded in Liber 308 cp 80 contains an easement in favor of the Association to install a water pipe to be connected with the main of the water company which leads to the Village of West Haverstraw with the right to erect electric light poles along such right of way.

Purchaser shall deliver to Seller's attorney at least ten (10) days prior to closing, a written notice setting forth each objection to title, if any (other than those specifically set forth herein subject to which the Premises are being sold), and a copy of Purchaser's title report. Seller shall have the right to a reasonable adjournment of Closing not to exceed sixty (60) days for the purpose of curing any title defect; however, no such action taken by Seller shall be deemed an admission by Seller that such defect is one that would entitle Purchaser to cancel this Agreement.

6. Purchaser's Obligations Respecting Mortgage Loan. The Purchaser agrees to apply to a lending institution located in Rockland County for a mortgage loan in connection herewith. The mortgage loan applied for by the Purchaser herein, if any, shall be secured by a first mortgage on the Home herein described payable in monthly installments of principal and interest, together with such installments of taxes, water, sewer, insurance and Association Assessments as the lending institution shall require. The Purchaser does hereby agree to furnish, deliver, and/or execute all other instruments in connection with the Purchaser's application for such loan, to pay to the lending institution its standard appraisal application fee, to furnish all information required by the lending institution and/or Seller, and to render within ten (10) days from the date of this Purchase Agreement a truthful and accurate statement of them, and if the application is approved, to execute at title closing, all papers, statements or instruments

which may be necessary to consummate the mortgage loan transaction. Purchaser represents that he is purchasing the premises for his primary residence and that he currently has sufficient assets to complete the payment of the purchase price for the premises including customary costs incidental to title closing, and that he knows of no reason why his credit standing is impaired and/or should not be considered favorably by the mortgagee. A mortgage commitment shall otherwise be considered firm and unconditional even though it contains a condition requiring the sale of Purchaser's assets including, but not limited to, his present Home prior to closing and the payment of any outstanding debts. The Purchaser waives any such condition as an inducement to Seller to enter into this contract. Failure to comply will be deemed a material breach of this Agreement. If, after compliance with the foregoing by the Purchaser, he is not approved by the lending institution designated by Seller within 30 days from the date hereof, unless said time is extended by Seller at Seller's sole option, then either party may cancel this Agreement by giving the other party written notice to that effect within five (5) days after the expiration of such thirty (30) day period, time being of the essence with respect to such notice. The monies paid hereunder by the Purchaser shall then be refunded to the Purchaser, and the parties hereto shall be released from any liability hereunder. The Seller reserves the right but not the obligation to designate another lending institution, or to grant the mortgage loan itself on the same terms and conditions, within thirty (30) days after receipt of Purchaser's notification to cancel. Should Seller not elect to attempt to secure alternate financing or grant the loan itself, or if Seller or such other lending institution designated by Seller does not approve the Purchaser within an additional thirty (30) days, then this agreement will be deemed cancelled, and all monies paid by Purchaser will be refunded with interest, if any, and the parties shall be released from any liability hereunder. In addition, in the event a mortgage commitment expires prior to closing and the lending institution cancels or refuses to extend such commitment, this Purchase Agreement shall remain in full force and effect and Purchaser shall be obligated to proceed on an "all cash" basis. In the event Seller shall fail to timely receive Purchaser's notice of cancellation as provided above, then this Agreement shall otherwise continue in full force and effect on an "all cash" basis.

6.A. Purchase of Home Without a Mortgage Loan. If the Purchaser fails to make a mortgage application as provided for in paragraph 6, or if the Purchaser so chooses, provided Purchaser gives written notice to Seller thereof within thirty (30) days from the date hereof, the Purchaser shall pay the purchase price "all cash" without obtaining a mortgage. In the event Purchaser exercises this option, the provisions of this Agreement which refer to the mortgage to be obtained by Purchaser (including provisions for mortgage costs) shall be deemed deleted. In the event this option is exercised after 30 days, Purchaser must reimburse Seller for all actual costs incurred in obtaining said mortgage for the Purchaser, plus recoverable closing costs per Paragraph 4 of this Agreement.

7. Home Owners Association. The Seller has exhibited and delivered to the Purchaser and Purchaser has read and agrees to be bound by the proposed Declaration of Covenants, Restrictions, Easements, Charges and Liens, By-Laws and Offering Plan of the Association and any amendments thereto (and the Exhibits attached thereto), as the same may from time to time be amended, all of which are incorporated by reference and made a part of this agreement with the same force and effect as if set forth in full herein. With the purchase of his Home, the Purchaser acknowledges that he will automatically thereby become a member of the Association, subject to its rules and regulations and liable for its assessments. Pursuant to Regulation, this Agreement is being executed more than three (3) days after the receipt by the Purchaser of a copy of the Offering Plan. Purchaser acknowledges that he is purchasing a Home in the Association, and that, except as stated in this Agreement (and as set forth in the Declaration, By-Laws, Exhibits and Offering Plan), he has not relied on any representations or other statements of any kind or nature made by the Seller, any representatives of Seller, or otherwise, including but not limited to any relating to the description, size or dimensions of the Home or rooms therein, and the estimated maintenance charges or other expense in connection herewith.

8. Breach of Purchase Agreement by Purchaser. Should Purchaser violate, repudiate, or fail to perform any of the terms of this Agreement, or fail to make any payment (including payment for any extras ordered from Seller, Seller's contractors or sub-contractors) in a timely fashion, which default remains uncured for ten (10) days after written notice of such default is mailed or delivered to Purchaser from Seller, Seller may, at its option, retain all or any part of the monies paid on account hereunder plus the actual cost of any options ordered, as liquidated damages, in which event the parties shall be discharged of all further liability hereunder. Seller shall not be required to tender a deed to enforce this provision. The provisions shall apply whether or not construction has commenced and regardless of any sale of the property subsequent to Purchaser's default.

9. Subordination of Purchase Agreement to Mortgages. The Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any institutional mortgage heretofore or hereafter made, and any advances heretofore or hereafter made thereon, and any payments or expenses already made or incurred, or which may hereafter be made or incurred, pursuant to the terms thereof, and any purchase money mortgages, to the full extent thereof, without the execution of any further legal documents by the Purchaser. This subordination shall apply whether such advances are voluntary or involuntary, and whether made in accordance with the schedule of payments, or accelerated thereunder by virtue of the lender's right to make advances before they become due in accordance with the schedule of

payments. The Seller shall satisfy all such mortgages or obtain a release of the Home from the lien of any such mortgages, at or prior to the closing date, except for the individual mortgage covering the mortgage loan taken out by the Purchaser, if any, whether same be by extension, assumption, consolidation or otherwise.

10. Risk of Loss. The risk of loss or damage to the Home by fire or any other cause until the earlier of delivery of the deed or possession by the Purchaser is assumed by the Seller. In the event a substantial portion of the Home or Community shall be destroyed or damaged prior to closing, Seller shall be entitled to cancel this Agreement by written notice to Purchaser, together with a check in the full amount paid by Purchaser, with interest, if any. The parties shall thereafter be released from any further liability hereunder.

11. Lack of Labor/Materials; Seller's Right to Cancel. The parties hereto do hereby agree that the Seller may cancel this agreement by forwarding its check in the full amount paid by the Purchaser, with interest, if any, together with a notice in writing, addressed to the Purchaser at their address hereinabove set forth in the event of the occurrence of any of the following: (1) that any governmental bureau, department or sub-division thereto shall impose restrictions on the manufacture, sale, distribution and/or use of materials from its regular suppliers or from using same in the construction and/or completion of the Home; or (2) that the Seller is unable to obtain labor or materials from its usual sources due to strikes, lockouts, war, military operations and requirements or national emergencies, or the installation of public utilities is restricted or curtailed; or (3) the Seller is unable to obtain the necessary building permits and/or Certificate of Occupancy for any reason whatsoever for the Home.

12. Seller's Failure to Convey. The Seller's liability under this agreement for failure to complete and/or deliver title for any reason, shall be limited to the return of the money paid hereunder with interest, if any, and upon the return of said money, this agreement shall be null and void and the parties hereto released from any and all liability hereunder. In any event, the Seller shall not be required to bring any action or proceeding or otherwise incur any unreasonable expense to render the title to the premises marketable or to cure any objection to title.

13. Possession by Purchaser Prior to Closing. It is expressly understood and agreed that the Purchaser shall in no event take possession of the premises prior to the time of the delivery of the deed and full compliance by the Purchaser with the terms of this Agreement, nor shall purchaser enter the home or have his contractors or agents enter the home to perform work prior to

closing without the written authorization of Seller, and should the Purchaser violate this provision, the Purchaser consents that the Seller shall have the right to remove him from the premises as a squatter and intruder by summary proceedings. Upon the Purchaser's unauthorized possession, the Purchaser shall be deemed in default hereunder at the option of the Seller, and upon such election, the amounts paid hereunder (including amounts paid for extras ordered) shall belong to the Seller as liquidated damages and the contract shall be deemed cancelled. It is further understood and agreed that the Seller will not be responsible for damage or loss to any property belonging to Purchaser whether same is delivered to the property on or after the closing of title herein.

14. Acceptance of Deed - Full Compliance by Seller; Waiver of Jury Trial. Anything to the contrary herein contained notwithstanding, it is specifically understood and agreed by the parties hereto that the acceptance of the delivery of the deed at the time of the closing of title hereunder shall constitute full compliance by the Seller with the terms of this agreement and none of the terms hereof, except as otherwise herein expressly provided, shall survive the delivery and acceptance of the deed. All representations contained in the Offering Plan shall survive delivery of the deed. The parties hereto do hereby agree that trial by jury in any action, proceeding or counterclaim arising out of or from this agreement is hereby waived.

15. Municipal Certificates. At the closing of title the Seller will deliver a temporary or permanent certificate of occupancy covering the Home and a New York State Board of Fire Underwriters Certificate covering the electrical installation.

16. Construction of Home by Seller; Incomplete Home at Time of Closing. The Seller agrees, at its own cost and expense to erect and complete the aforementioned Home in accordance with the requirements as to materials and workmanship of the Building Department of the Village of West Haverstraw and further agrees that when completed, same will be in substantial accordance with the plans as filed with the Building Department. The issuance of a temporary or permanent Certificate of Occupancy shall mean that the Home is substantially complete, in which event the Purchaser agrees to accept a letter agreement from the Seller wherein the Seller shall agree to complete all unfinished items within one hundred and twenty (120) days from the date of the closing of title, weather permitting. Any such incomplete items shall not constitute an objection to closing provided Seller executes and delivers to Purchaser, a letter agreement in accordance with the foregoing. Purchaser shall permit Seller, its agents, servants and/or employees to enter upon the Premises and shall provide reasonable access thereto subsequent to closing to complete any incomplete items. In the event Seller is required to make any repair or complete any item of work to be performed by Seller after

closing, the limit of Seller's liability shall be to make said repair and/or to complete such item. This Paragraph shall survive the delivery of the deed.

17. Completion of Construction - Purchaser's Inspection. Purchaser shall accept title (without abatement in or credit against the purchase price or provision for escrow) notwithstanding that construction of (a) minor details of the Home or the Building in which it is located or (b) other Homes or (c) the landscaped areas or (d) other portions of the Common Areas have not been completed. Purchaser will inspect his Home with a representative of the Seller during normal business hours approximately three (3) days prior to the closing date and will sign and deliver to Seller on or before closing date a Pre-Title Inspection Statement supplied by Seller, acknowledging the condition of his Home. Receipt of the executed Pre-Title Inspection Statement shall be a condition precedent to closing.

18. Personal Property Included in Sale. All articles of personal property, fixtures and equipment as set forth in the Offering Plan for the Model Type Home referred to herein are excluded in this sale, except those items set forth in Exhibit A annexed hereto, and same will be delivered free and clear of all liens and encumbrances except the lien of the mortgage applied for by Purchasers herein, if any.

19. Changes in Materials, etc. The Seller reserves the right to: (a) make changes or substitutions of materials or construction for items as set forth in the Offering Plan or Building Plan, provided any such changes are of substantially equal value and quality; (b) determine the exterior color and design, location of buildings, landscaping grading and design of all plots and dwellings to fit into the general pattern of the Community; (c) determine elevation of front, rear and sides of buildings, and location of foundations, building configurations, (including reversal of the building and/or home layout), walks, patios, window fenestrations, driveways, parking spaces, dumpsters, and streets; (d) determine whether trees or shrubs currently on the premises are to be removed; (e) alter the elevation and roof details where elevation of adjacent lot warrants such change; (f) alter the exterior materials or placement thereof where alignment of adjacent homes so warrant; (g) determine the type of home to be constructed on a particular lot; (h) to fix the location of a house (including setbacks) within the lot lines; (i) determine the ultimate number of Homes and house type mix to be constructed in the Development; (j) add or remove retaining walls on the lots or Common Areas where required by grade conditions; (k) determine the location of electric and gas meters, heat pump units, air conditioning units, hose bibs, mailboxes and leaders and gutters, if any, (l) determine the size and location of decks, patios, terraces, or balconies to be constructed on a particular Home.

The Seller agrees to notify Purchaser of any major changes, specifications, deviations, additions or deletions which may be beyond the scope of the limitations thereon, set forth hereinabove. If said major change affects the Common Areas it will be disclosed by a duly filed amendment to the Plan. Such changes shall include, but not be limited to, the substitution of lots in the event topographical conditions on the lot selected are not conducive to construction of a particular model type on that lot. In the event that Seller notified Purchaser in writing of such changes and modifications, Purchaser shall be deemed to have approved of same, unless Seller receives Purchaser's written disapproval of such modifications and amendments within ten (10) days from date of the aforesaid notice by Seller. In such event, Seller may, at its option elect to withdraw its proposed changes and modifications and shall have thirty (30) days from receipt of Purchaser's notice to do so. Thereupon, the home shall be constructed as provided herein. Or, Seller may elect to effectuate the aforementioned changes and modifications irrespective of Purchaser's notice of disapproval. In such event, Purchaser may declare this Agreement to be null and void and shall be entitled to the return, within forty-five (45) days from receipt of Purchaser's notice of disapproval, of all monies deposited hereunder by Purchaser, with interest, if any, at which time the parties hereto shall be relieved of all further obligations hereunder.

20. Selection of Colors, Options, etc., by Purchaser. It is further agreed that wherever the Purchaser has the right to make a selection of construction changes, optional extras, colors, fixtures and/or materials, he shall do so within seven (7) days after written demand therefor. Such written demand shall be by ordinary mail addressed to the Purchasers at the address herein set forth. The selections are to be made at Seller's sales and display offices Monday through Friday, excluding holidays, from the hours of 10:00 a.m. to 4:00 p.m., or at the display showrooms arranged for by the Seller for this purpose. In the event the Purchaser fails to make such selection within such period, the Seller shall have the right to use its own judgment in the selection of colors, fixtures and materials and the Purchaser shall accept the same. Seller shall not be responsible for variations in the color of siding, appliances, plumbing fixtures, carpeting or tiles from the samples due to manufacturer's variations, nor shall such variations constitute an objection to closing or entitle Purchaser to compensation therefor.

21. Extras. Any extras or changes ordered by Purchaser directly from Seller, Seller's contractors or sub-contractors shall be signed by the Purchaser and must be paid for in accordance with the payment schedule established by Seller, Seller's contractors or sub-contractors, as applicable. If for any reason the Seller or Seller's contractors fail to install said extras in accordance with the work order, the limit of the Seller's or Seller's contractors liability is a refund of the amount of the charge and

same shall not be deemed an objection to title. All extras must be ordered prior to commencement of construction and must not delay construction. In the event Purchaser orders upgraded or optional items or finishes other than the standard provided by Seller, Seller or Seller's contractors shall not be responsible or liable for any defects in quality of materials or workmanship in installation. Failure to make any payments due in accordance with said payment schedule of Seller, Seller's contractors or sub-contractors, as applicable, shall constitute a breach in accordance with paragraph 8 herein.

22. Execution of Required Documents, etc. Purchaser agrees to deliver to Seller all documents, and to perform all acts required by the Seller to carry out the provisions of all applicable laws and regulations. This paragraph shall survive delivery of the deed.

23. Delay in Closing, Purchaser's Option to Cancel. In the event the Seller shall be unable to convey title to the Home on or before nine months after the proposed date of delivery of title set forth herein, and except for delays due to strikes, acts of God, wars, lockouts, military operations, national emergencies, installation of public utilities, governmental restrictions preventing Sponsor from obtaining necessary labor or supplies and/or materials, or any court orders prohibiting Seller from commencing and/or completing construction of the Home, in which event the period shall be extended to twelve months, and except for the Purchaser's default, the Purchaser shall have the option to cancel this agreement, and to have the down payment advanced by him returned to the Purchaser with interest, if any. Purchaser shall notify Seller in writing of its intention to exercise such option within ten (10) days after receipt of notification from Seller of its inability to convey title. Failure to so notify Seller shall be deemed a waiver of this provision, and Purchaser shall continue to be bound by the terms of this Agreement. In the event Purchaser elects to cancel this Agreement in accordance herewith, Purchaser shall execute and deliver a General Release form supplied by Seller prior to Seller's return of the down payment, and Purchaser shall have no further rights or causes of action against Seller.

24. Assignability: Notice. The parties agree that the stipulations and agreements herein contained shall be binding upon them, their respective heirs, executors, administrators and/or assigns. The Purchaser agrees that he will not record or assign this Agreement or any of his rights hereunder without the written consent of the Seller. In the event Seller, in its discretion, permits an assignment of this Purchase Agreement, it may elect to impose an assignment fee. In no way should this be construed as a requirement that Seller must consent to any assignment, and Seller reserves the right to refuse to permit an assignment of this Purchase Agreement. Any notice to be given hereunder shall be in



writing and sent by certified mail return receipt requested to the parties at the address above given, or at such address as either party may hereafter designate to the other in writing, or to their respective attorneys.

25. LIMITED WARRANTY. EXCEPT AS PROVIDED IN THE LIMITED WARRANTY ANNEXED TO THIS AGREEMENT, SELLER HEREIN MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR HOME COVERED HEREBY AND ALL SUCH WARRANTIES ARE EXCLUDED. THE TERMS OF THE LIMITED WARRANTY ARE HEREBY INCORPORATED INTO THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE THEREOF. PURCHASER HEREBY ACKNOWLEDGES THAT A WRITTEN COPY OF THE TERMS OF THE ANNEXED LIMITED WARRANTY HAS BEEN PROVIDED BY SELLER TO PURCHASER FOR PURCHASER'S EXAMINATION AND THAT A REASONABLE PERIOD OF TIME FOR ITS EXAMINATION BY PURCHASER HAS BEEN AFFORDED TO PURCHASER PRIOR TO THE TIME OF PURCHASER'S EXECUTION OF THIS AGREEMENT. PURCHASER UNDERSTANDS AND ACCEPTS THE WARRANTY ANNEXED TO THIS AGREEMENT IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH THIS TRANSACTION. THE WARRANTY ANNEXED TO THIS AGREEMENT WILL BE FULLY EFFECTIVE WITHOUT THE EXECUTION OF ANY OTHER DOCUMENT BY EITHER PURCHASER OR SELLER ON THE DATE THAT PURCHASER OR ITS FAMILY SHALL FIRST OCCUPY THE HOME WHICH IS THE SUBJECT OF THIS AGREEMENT AS A RESIDENTIAL HOME OR THE DATE THAT THE DEED TO SUCH HOME SHALL BE DELIVERED TO PURCHASER, WHICHEVER OCCURS FIRST. IN ADDITION TO THE ANNEXED LIMITED WARRANTY, PURCHASER WILL RECEIVE ANY MANUFACTURERS' WARRANTIES APPLICABLE TO THE APPLIANCES INSTALLED IN THE HOME.

26. Trust Funds. The Seller will hold all monies received directly or through its agents or employees in trust until the closing of title, or Seller will post a surety bond issued by a New York insurance company or a letter of credit issued by an institutional lender securing repayment of such funds, in the event the purchaser is entitled to such amount under the terms of the Offering Plan or Purchase Agreement. If no bond or letter of credit is posted, such funds will be held as trust funds pursuant to Section 352-h and Section 352-e(2)(b) of the General Business Law in a non-interest bearing account entitled "Fairgrounds II Special Account" or similar in The Savings Bank of Rockland, 155 Main Street, Nyack, New York. The signature of a member of the firm of Johnson, Johnson & Tanz, 53 Burd Street, Nyack, New York, as attorneys for the Seller, shall be required to withdraw any of such funds. Such funds will be payable to the Seller upon the closing of title to the Home conveyed by the Purchase Agreement. In the event of default by the purchaser under such Purchase Agreement, which default continues for ten (10) days after notice of such default from the Seller to the purchaser in accordance with Paragraph 6 hereunder, the down payment of 10% of the purchase price plus the actual cost of any special work ordered, may be released to the Seller from such account as liquidated damages, and

thereafter neither party shall have any rights or obligations to or against the other.

27. No Broker. The parties agree that no broker brought about this sale and Purchaser agrees to indemnify Seller against any claim brought for brokerage fees based upon Purchaser's act.

28. Prohibition Against Advertising of Home for Sale. The placing of an advertisement for the sale of this Home in any newspaper or other publication prior to closing will constitute a material breach of this Agreement entitling Seller to retain monies paid on account of this Agreement plus the actual cost of extras as liquidated damages.

29. Purchasers Fire and Casualty Insurance. Purchaser acknowledges that Article X of the Declaration applicable to the Development provides that each member shall be required to obtain and maintain adequate fire, flood (if required) and extended coverage insurance of his Home which shall insure the property for its full replacement value, with no deductions for depreciation against loss by fire or other hazards. Article X of the Declaration also requires that the Board of Directors of the Association be named as an additional loss payee of the policy and that each member is required to supply the Board of Directors with evidence of insurance coverage which complies with the foregoing requirements.

30. Purchasers-Agents for Each Other. If two or more persons are named as the Purchaser herein, any one of them is hereby made agent for the other in all matters of any and every kind or nature affecting the premises herein or this agreement.

31. Delivery of Purchase Agreement. This Purchase Agreement shall not be binding on Purchaser or Seller until it is accepted, by endorsement hereon by the Seller, and a fully signed copy thereof shall have been delivered or mailed to Purchaser. If this Agreement shall not be accepted within thirty (30) days of the date hereof by the delivery or mailing to Purchaser of such endorsed and fully signed copy, this Purchase Agreement shall be deemed to be rejected and cancelled and Purchaser's deposit shall be promptly refunded within ten (10) days thereafter.

32. Entire Agreement. This agreement states the entire understanding of the parties and the Seller shall not be bound by any oral representations or agreements of Seller, Seller's representatives, employees, or Selling Agent. Any conflict between

this Purchase Agreement and the Plan shall be resolved in favor of the Plan.

THIS AGREEMENT STATES THE ENTIRE UNDERSTANDING OF THE PARTIES AND THE SELLER SHALL NOT BE BOUND BY ANY ORAL REPRESENTATIONS AND/OR AGREEMENTS MADE BY SELLER, ITS AGENTS, OR REPRESENTATIVES, OR THE SELLING AGENT.

FAIRGROUNDS II, INC.

By: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

"YOU, AS THE PURCHASER OF THIS HOME, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR LETTER OF CREDIT WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE."

RIDER TO PURCHASE AGREEMENT DATE \_\_\_\_\_, 19 \_\_\_\_ BY AND  
BETWEEN FAIRGROUNDS II, INC., AS SELLER, AND \_\_\_\_\_  
\_\_\_\_\_, AS PURCHASER.

LIMITED WARRANTY

NAME OF PURCHASER(S): \_\_\_\_\_  
\_\_\_\_\_

ADDRESS OF PURCHASER(S): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DESIGNATION OF HOME WARRANTED: \_\_\_\_\_

NAME OF SELLER: FAIRGROUNDS II, INC.,

ADDRESS OF SELLER: 77 Maple Avenue  
New City, New York 10956

EFFECTIVE DATE OF THIS LIMITED WARRANTY: The date that Purchaser or its family shall first occupy the Home warranted or the date of delivery of the deed to such Home to Purchaser, whichever occurs first.

SELLER'S LIMIT OF TOTAL LIABILITY: Seventy-Five (75%) percent of the purchase price of the Home set forth in the Purchase Agreement to which this Warranty is annexed as a rider less any insurance proceeds received by Purchaser.

THIS LIMITED WARRANTY EXCLUDES AND PRECLUDES ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, AND INDIRECT DAMAGES.

THIS LIMITED WARRANTY IS IN LIEU OF AND REPLACES ALL OTHER WARRANTIES ON THE CONSTRUCTION AND SALE OF THE HOME AND ITS COMPONENTS, BOTH EXPRESS AND IMPLIED (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. THE PURPOSE OF THIS LIMITED WARRANTY IS TO IDENTIFY THE SELLER'S RESPONSIBILITIES FOR CONSTRUCTION DEFECTS OF A LATENT OR HIDDEN NATURE THAT COULD NOT HAVE BEEN FOUND OR DISCLOSED ON FINAL INSPECTION OF THE HOME.

1. To Whom Given. This Limited Warranty is given to the Purchaser named on page 1 while the Purchaser owns the Home. IT DOES NOT EXTEND TO SUBSEQUENT OWNERS, TENANTS OR MORTGAGEES IN POSSESSION OF THE HOME, ANY ONE WHO MAY SUCCEED TO THE RIGHTS OF PURCHASER (EXCEPT BY INHERITANCE) OR ANY OTHER PERSONS.

2. By Whom Made. This Limited Warranty is made exclusively by the Seller whose name and address appear on page 1.

3. Final Inspection of the Home. Before the Purchaser moves into the Home or accepts the deed, the Seller will schedule an appointment for final inspection of the Home with the Purchaser. The purpose of this final inspection is to discover any defects of a visible, obvious or patent nature, or any other unfinished work.

All defects found on final inspection of the Home will be itemized on a Final Inspection Sheet, which will be signed by the Purchaser and the Seller before occupancy of the Home or delivery of the deed.

4. Warranty Coverages and Periods. The Warranty Period for all of the following coverage begins on the Effective Date of this Warranty shown on page 1 of this warranty.

FIRST YEAR BASIC COVERAGE: for one year from the Effective Date of this warranty, the Home will be free from latent defects that constitute:

(a) defective workmanship by the Seller, or an agent, employee or subcontractor of the Seller;

(b) defective materials furnished by the Seller, or an agent, employee or subcontractor of the Seller;

(c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Seller; or

(d) defective installation of appliances sold as part of the Home by the Seller or an agent, employee or subcontractor of the Seller.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

TWO YEAR MAJOR SYSTEM COVERAGE: for two years from the Effective Date of this warranty, the Plumbing, Electrical, Heating, Cooling and Ventilation Systems of the Home which have been installed by the Seller are warranted to be free from latent defects resulting from defective installation by the Seller.

The Plumbing System refers to the gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system.

The Electrical System refers to all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

The Heating, Cooling and Ventilation System refers to all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

Except by reason of a defect in installation by Seller, this major system coverage does not include defects in appliances, fixtures and items of equipment.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

SIX YEAR MAJOR STRUCTURAL DEFECT COVERAGE: for six years from the Effective Date of this warranty, the Home will be free from latent Major Structural Defects that result from:

(a) defective workmanship by the Seller, or an agent, employee or subcontractor of the Seller;

(b) defective materials furnished by the Seller, or an agent, employee or subcontractor of the Seller; or

(c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Seller.

A Major Structural Defect is a defect resulting in actual physical damage to the following load-bearing portions which affects their load-bearing functions to the extent that the Home becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

Damage to the following non-load bearing portions of the Home are not covered by this six-year coverage: roofing and sheathing; drywall and plaster; exterior siding; brick, stone and stucco veneer; floor covering material; wall tile and other wall coverings; non-load bearing walls and partitions; concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the Home; electrical, plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim; cabinets; hardware; and insulation.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

In all coverages under this Paragraph 4, workmanship, materials, design and installation will be considered to be defective if they fail to meet or exceed the relevant standards and specifications of the applicable building code of the municipality in which the Home is located, in effect on the date that the building permit for the Home was issued, as supplemented by the annexed locally accepted building standards and practices.

ALL TIME PERIODS FOR THESE COVERAGES ARE OF THE ESSENCE AND WILL NOT BE EXTENDED.

5. Exclusions From All Coverages. The following are not covered by this warranty:

(a) patent defects including defects shown on the Final Inspection Sheet and defects which an examination of the Home prior to the Effective Date of this warranty ought to have revealed;

(b) defects in detached garages and carports; swimming pools and other recreational facilities, if any; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); and any other improvements not a part of the Home itself;

(c) raised butt joints; ridging, scuffing on kitchen cabinet or vanity surfaces; variations of wood grain or staining of kitchen cabinets or vanities; shading variations of the

exterior siding staining (on the face surface or grooves), and on facias from staining; doors and windows sticking because of weather; adjustment of bi-fold doors; chips, scratches, marks, breaks, or other blemishes in windows, sliding doors, screens, electric fixtures and globes, woodwork and doors; dented appliances; broken screens; and minor chips (nicks) to cultured marble floors and countertops;

(d) defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors and for incidental or consequential damages resulting from such work or materials;

(e) damage caused by the failure by the Purchaser or anyone other than the Seller, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment;

(f) damage caused by the misuse, abuse, or interference by Purchaser or anyone other than Seller or its employees, agents and subcontractors with the Seller's original construction or installations;

(g) additional damage caused by the failure of the Purchaser to give notice to the Seller of any defects or damage in a timely manner as provided in this warranty;

(h) damage caused by changes in grade made by anyone other than the Seller, its employees, agents or subcontractors and damage caused by changes in grade made by Seller's agents and subcontractors if such work was ordered directly by Purchaser;

(i) damage caused by changes, alterations or additions made to the Home by anyone other than Seller or its employees, agents or subcontractors after the Effective Date of this warranty;

(j) damage caused by changes, alterations or additions made to the Home by Seller's agents and subcontractors if such work was ordered directly by Purchaser after the Effective Date of this warranty;

(k) damage caused by dampness or condensation due to the failure of the Purchaser to maintain adequate ventilation;

(l) loss or damage caused by or resulting from accidents, riot and civil commotion, fire, explosion, smoke, water



escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, soil movement and changes in the underground water table;

(m) loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect;

(n) any damage which Purchaser has not taken timely action to minimize;

(o) normal wear and tear and normal deterioration;

(p) insect, vermin and/or rodent damage and infestation, or damage caused by other animals or pests;

(q) bodily injury, death, or damage to personal property;

(r) costs of shelter, transportation, food, moving, storage or other expenses related to relocation during repair or replacement;

(s) consequential, incidental, special and indirect damages;

(t) any claim not filed in a manner set forth in paragraph 7 of this warranty;

(u) damage which arises while the home is being used for nonresidential purposes; and

(v) damage due to abnormal loading on floors which exceeds design loads as mandated by the applicable building code or building standards.

6. What Seller Will do in the Event of a Defect Covered by This Warranty. If a defect occurs in an item covered by this warranty, the Seller will repair, replace, or pay the Purchaser the reasonable cost of repairing or replacing the defective item(s), within sixty (60) days after the Seller's inspection or testing discloses the problem, subject to weather conditions, acts of God, availability of materials, and other events beyond Seller's control. The choice among repair, replacement or payment is solely that of the Seller. In making any repairs or replacements, Seller shall have the right to select the method and materials to be used in performing such repairs or replacements.

Seller's liability under this warranty is limited in the aggregate to the amount listed on page 1 of the warranty.

Repair of damage to the load-bearing portions of the Home will be limited to that which is necessary to restore their load-bearing function. Repair of other Major Structural Defects will be limited to repair of those defects which made the Home unsafe, unsanitary or otherwise unlivable.

7. Step by Step Claims Procedures. (a) Written notice of any warranty claim must be made on the attached "Notice of Warranty Claim Form" and must be received by the Seller no later than the tenth (10th) day after the expiration of the applicable warranty period. Such notice must be sent by Purchaser to Seller by certified or express mail, return receipt requested. If this form shall not properly be completed and received by the Seller by that deadline, the Seller will have no duty to respond to any complaint or demand contained in such form, and any or all claims may be rejected. COMPLETION AND DELIVERY OF SUCH NOTICE OF WARRANTY CLAIM IN A TIMELY MANNER IS NECESSARY TO PROTECT THE RIGHTS OF THE PURCHASER UNDER THIS LIMITED WARRANTY.

(b) No steps taken by the Seller, Purchaser or any other person to inspect, test or correct defects will extend any time period under this Warranty. No steps taken by the Seller in response to an improperly completed or untimely notice of a warranty claim will give rise to any liability of Seller to Purchaser in connection with such claim.

(c) In response to a Notice of Warranty Claim, or any other complaint or request of the Purchaser, the Seller and the Seller's agents will have the right to inspect and test the portion of the Home to which the claim, complaint or request relates. The Purchaser and occupants of the Home must provide reasonable access to the Seller and the Seller's agents during normal business hours, Monday through Friday, to complete inspection, testing and repair or replacement. Failure by Purchaser to provide such access shall invalidate this warranty with respect to the defect(s) set forth on the Notice of Warranty Claim.

(d) The Seller will complete inspection and testing within a reasonable time under the circumstances after receipt of a timely and properly completed Notice of Warranty Claim Form. Upon completion of inspection and testing, the Seller will determine whether to accept or reject the claim. If the Seller rejects the claim, the Seller will give written notice of that decision to the Purchaser at the address shown on the Notice of Claim Form. If the Seller accepts the claim, the

Seller will take corrective action within a reasonable time under the circumstances. The Seller will use good faith efforts to process and handle claims in a timely manner, but all time periods for repair or replacement of defects necessarily are subject to weather conditions, availability of materials, and other events beyond the Seller's control.

8. Legal Actions. (a) No claim under this warranty may be commenced or asserted against Seller in any lawsuit unless a properly completed Notice of Warranty Claim Form has been received by the Seller in the time period set forth in paragraph 7 of this warranty.

(b) No lawsuit against the Seller under this warranty may be commenced more than thirty (30) days after the expiration date of the applicable warranty coverage, or thirty (30) days after Seller has given written notice of its rejection of Purchaser's claim with respect to such claim, or thirty (30) days after Seller has substantially completed corrective action for a defect with respect to such defect.

9. Miscellaneous Provisions. (a) To the extent any coverage under this warranty applies to common elements of a condominium, such coverage shall be deemed given to the Board of Managers of the condominium.

(b) This warranty may not be amended in any way without Seller's prior written consent in each instance.

(c) If any provision of this warranty will not be enforced by an appropriate court, the determination will not affect the enforceability of the remaining provisions.

(d) Use of one gender in this warranty includes the other gender, and use of the plural includes the singular, as may be appropriate.

(e) This warranty shall be governed in accordance with the laws of the State of New York.

## ACCEPTED STANDARDS

The Performance Standards list specific items (defects) within each separate area of coverage. The first section covers Workmanship and Materials; the second section covers Systems. The standards are expressed in terms of performance criteria. For easy comprehension, the format is designed as follows:

1. POSSIBLE DEFICIENCY - a brief statement, in simple terms, of problems that may be encountered.
2. PERFORMANCE STANDARD - a performance standard relating to a specific deficiency.
3. RESPONSIBILITY - a statement of the corrective action required of the Builder to repair the deficiency or a statement of the Home Owner's maintenance responsibilities.

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**PERFORMANCE STANDARDS**

**1. Site Work:** Coverage 1st Year Only,  
Workmanship and Materials

**A. Site Grading**

1. POSSIBLE DEFICIENCY: Setting of ground around foundation, utility trenches or other areas.

PERFORMANCE STANDARD: Setting of ground around foundation walls, utility trenches or other filled areas shall not interfere with water drainage away from the Home.

RESPONSIBILITY: If the Builder has provided final grading: upon request by the Home Owner, Builder shall fill settled areas affecting proper drainage, one time only, during the first year of the Limited Warranty period. Home Owner shall be responsible for removal and replacement of shrubs or other landscaping affected by placement of such fill.

**B. Site Drainage**

1. POSSIBLE DEFICIENCY: Improper drainage of the site.

PERFORMANCE STANDARD: The necessary grades and swales shall have been established by the Builder to insure proper drainage away from the Home. Standing or ponding water shall not remain for extended periods in the immediate area after a rain (generally no more than 24 hours), except that in swales which drain other areas, or in areas where sump pumps discharge, a longer period can be anticipated (generally no more than 48 hours). The possibility of standing water after an unusually heavy rainfall should be anticipated. No grading determination shall be made while there is frost or snow on the ground, or

while the ground is saturated.

**RESPONSIBILITY:** The Builder is responsible only for initially establishing the proper grades and swales. The Home Owner is responsible for maintaining such grades and swales once they have been properly established.

## **2. Concrete:** Coverage 1st Year Only, Workmanship and Materials

### **A. Expansion and Contraction Joints**

1. **POSSIBLE DEFICIENCY:** Separation or movement of concrete slabs within the structure at expansion and contraction joints.

**PERFORMANCE STANDARD:** Concrete slabs within the structure are designed to move at expansion and contraction joints.

**RESPONSIBILITY:** None.

### **B. Cast-in-Place Concrete**

1. **POSSIBLE DEFICIENCY:** Basement or foundation wall cracks.

**PERFORMANCE STANDARD:** Shrinkage cracks are not unusual in concrete foundation walls. Such cracks greater than 1/8 inch in width shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks in excess of 1/8 inch wide.

2. **POSSIBLE DEFICIENCY:** Cracking of basement floor.

**PERFORMANCE STANDARD:** Minor cracks in basement floors are normal. Cracks exceeding 3/16 inch in width or 1/8 inch in vertical displacement shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.

3. **POSSIBLE DEFICIENCY:** Cracking of slab in attached garage.

**PERFORMANCE STANDARD:** Cracks in garage slabs in excess of 1/4 inch in width or 1/4 inch in vertical displacement shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks exceeding maximum tolerances by surface patching or other methods as required.

4. **POSSIBLE DEFICIENCY:** Uneven concrete floors/slabs.

**PERFORMANCE STANDARD:** Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions, or areas of unevenness exceeding 1/4 inch in 32 inches.

**RESPONSIBILITY:** Builder will correct or repair to meet the Performance Standard.

5. **POSSIBLE DEFICIENCY:** Cracks in concrete slab-on-grade floors with finish flooring.

**PERFORMANCE STANDARD:** Cracks which rupture the finish flooring material shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks, as necessary, so as not to be readily apparent when the finish flooring material is in place. (See also Performance Standard 7, "Finishes".)

6. **POSSIBLE DEFICIENCY:** Pitting, scaling or spalling of concrete work covered by this Limited Warranty.

**PERFORMANCE STANDARD:** Concrete surfaces



shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use.

**RESPONSIBILITY:** Builder will take whatever corrective action is necessary to repair or replace defective concrete surfaces. Builder is not responsible for deterioration caused by salt, chemicals, mechanical implements and other factors beyond its control.

**7. POSSIBLE DEFICIENCY:** Settling, heaving or separating of stoops, steps or garage floors.

**PERFORMANCE STANDARD:** Stoops, steps or garage floors shall not settle, heave or separate in excess of 1 inch from the house structures.

**RESPONSIBILITY:** Builder will take whatever corrective action is required to meet the Performance Standard.

**8. POSSIBLE DEFICIENCY:** Standing water on stoops.

**PERFORMANCE STANDARD:** Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated.

**RESPONSIBILITY:** Builder shall take corrective action to assure drainage of steps and stoops.

### **3. Masonry:** Coverage 1st Year Only, Workmanship and Materials

#### **A. Unit Masonry**

**1. POSSIBLE DEFICIENCY:** Basement or foundation wall cracks.

**PERFORMANCE STANDARD:** Small cracks not affecting structural stability are not unusual in mortar joints of masonry foundation walls.

Cracks greater than 1/8 inch in width shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks in excess of 1/8 inch by pointing or patching. These deficiencies shall be reported and repairs made during the first year of the limited Warranty period.

**2. POSSIBLE DEFICIENCY:** Cracks in masonry wall or veneer.

**PERFORMANCE STANDARD:** Small hairline cracks due to shrinkage are common in mortar joints in masonry construction. Cracks greater than 3/8 inch in width are considered excessive.

**RESPONSIBILITY:** Builder will repair cracks in excess of Performance Standard by pointing or patching. These repairs shall be made during the first year of the Limited warranty period. Builder will not be responsible for color variation between old and new mortar.

#### **4. Wood and Plastic:** Coverage 1st Year Only, Workmanship and Materials

##### **A. Rough Carpentry**

**1. POSSIBLE DEFICIENCY:** Floors squeak or subfloor appears loose.

**PERFORMANCE STANDARD:** Floor squeaks and loose subfloor are often temporary conditions common to new construction, and a squeak-proof floor cannot be guaranteed.

**RESPONSIBILITY:** Builder will correct the problem only if caused by an underlying construction defect.

**2. POSSIBLE DEFICIENCY:** Uneven wood floors.

**PERFORMANCE STANDARD:** Floors shall not have

more than 1/4 inch ridge or depression within any 32 inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code.

**RESPONSIBILITY:** Builder will correct or repair to meet Performance Standard.

**3. POSSIBLE DEFICIENCY:** Bowed walls.

**PERFORMANCE STANDARD:** All interior and exterior walls have slight variances on their finished surfaces. Bowing of walls should not detract from or blemish the wall's finished surface. Walls should not bow more than 1/4 inch out of line within any 32 inch horizontal or vertical measurement.

**RESPONSIBILITY:** Builder will repair to meet Performance Standard.

**4. POSSIBLE DEFICIENCY:** Out-of-plumb walls.

**PERFORMANCE STANDARD:** Walls should not be more than 1/4 inch out of plumb for any 32 inch vertical measurement.

**RESPONSIBILITY:** Builder will repair to meet the Performance Standard.

## **B. Finish Carpentry (Interior)**

**1. POSSIBLE DEFICIENCY:** Poor quality of interior trim workmanship.

**PERFORMANCE STANDARD:** Joints in moldings or joint between moldings and adjacent surface shall not result in open joints exceeding 3/8 inch in width.

**RESPONSIBILITY:** Builder will repair defective joints, as defined. Caulking is acceptable.

## C. Finish Carpentry (Exterior)

1. **POSSIBLE DEFICIENCY:** Poor quality of exterior trim workmanship.

**PERFORMANCE STANDARD:** Joints between exterior trim elements, including siding and masonry, shall not result in open joints in excess of 3/8 inch. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements.

**RESPONSIBILITY:** Builder will repair open joints, as defined. Caulking is acceptable.

## 5. Thermal and Moisture: Coverage 1st Year Only, Workmanship and Materials

### A. Waterproofing

1. **POSSIBLE DEFICIENCY:** Leaks in basement.

**PERFORMANCE STANDARD:** Leaks resulting in actual trickling of water shall be repaired. Leaks caused by improper landscaping or failure to maintain proper grades are not covered by this Limited Warranty. Dampness of the walls or floors may occur in new construction and is not considered a deficiency.

**RESPONSIBILITY:** Builder will take such action as necessary to correct basement leaks except where the cause is determined to result from Home Owner action or negligence.

### B. Insulation

1. **POSSIBLE DEFICIENCY:** Insufficient insulation.

**PERFORMANCE STANDARD:** Insulation shall be installed in accordance with applicable energy and building code requirements.

**RESPONSIBILITY:** Builder will install insulation in

sufficient amounts to meet Performance Standard.

### C. Louvers and Vents

1. POSSIBLE DEFICIENCY: Leaks due to snow or rain driven into the attic through louvers or vents.

PERFORMANCE STANDARD: Attic vents and/or louvers must be provided for proper ventilation of the attic space of the structure.

RESPONSIBILITY: None

### D. Roofing and Siding

1. POSSIBLE DEFICIENCY: Ice build-up on roof.

PERFORMANCE STANDARD: During prolonged cold spells, ice build-up is likely to occur at the eaves of a roof. This condition occurs when snow and ice accumulate and gutters and downspouts freeze up.

RESPONSIBILITY: Prevention of ice build-up on the roof is a Home Owner maintenance item.

2. POSSIBLE DEFICIENCY: Roof or flashing leaks.

PERFORMANCE STANDARD: Roofs or flashing shall not leak under normally anticipated conditions, except where cause is determined to result from ice build-up or Home Owner action or negligence.

RESPONSIBILITY: Builder will repair any verified roof or flashing leaks not caused by ice build-up or Home Owner action or negligence.

3. POSSIBLE DEFICIENCY: Standing water on flat roof.

PERFORMANCE STANDARD: Water shall drain from flat roof except for minor ponding immediately following rainfall or when the roof is specifically designed for water retention.

**RESPONSIBILITY:** Builder will take corrective action to assure proper drainage of roof.

4. **POSSIBLE DEFICIENCY:** Delamination of veneer siding or joint separation.

**PERFORMANCE STANDARD:** All siding shall be installed according to the manufacturer's and industry's accepted standards. Separations and delaminations shall be repaired or replaced.

**RESPONSIBILITY:** Builder will repair or replace siding as needed unless caused by Home Owner's neglect to maintain siding properly. Repaired area may not match in color and/or texture. For surfaces requiring paint, Builder will paint only the new materials. The Home Owner can expect that the newly painted surface may not match original surface in color.

## **E. Sheet Metal**

1. **POSSIBLE DEFICIENCY:** Gutters and/or downspouts leak.

**PERFORMANCE STANDARD:** Gutters and downspouts shall not leak but Gutters may overflow during heavy rain.

**RESPONSIBILITY:** Builder will repair leaks. It is a Home Owner responsibility to keep gutters and downspouts free of leaves and debris which could cause overflow.

2. **POSSIBLE DEFICIENCY:** Water standing in gutters.

**PERFORMANCE STANDARD:** When gutter is unobstructed by debris, the water level shall not exceed one (1) inch in depth. Industry practice is to install gutters approximately level. Consequently, it is entirely possible that small amounts of water will stand in certain sections of gutter immediately after a rain.

**RESPONSIBILITY:** Builder will correct to meet Performance Standard.

## **F. Sealants**

1. **POSSIBLE DEFICIENCY:** Leaks in exterior wall due to inadequate caulking.

**PERFORMANCE STANDARD:** Joints and cracks in exterior wall surfaces and around openings shall be properly caulked to exclude the entry of water.

**RESPONSIBILITY:** Builder will repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiencies once, during the first year of the Limited Warranty period. Even properly installed caulking will shrink and must be maintained during the life of the Home.

## **6. Doors and Windows:** Coverage 1st Year Only, Workmanship and Materials

### **A. Wood and Plastic Doors**

1. **POSSIBLE DEFICIENCY:** Warpage of exterior doors.

**PERFORMANCE STANDARD:** Exterior doors will warp to some degree due to temperature differential on inside and outside surfaces. However, they shall not warp to the extent that they become inoperable or cease to be weather resistant or exceed National Woodwork Manufacturers Association Standards (1/4 inch, measured diagonally from corner to corner).

**RESPONSIBILITY:** Builder will correct or replace and refinish defective doors, during the first year of the Limited Warranty period.

2. **POSSIBLE DEFICIENCY:** Warpage of interior passage and closet doors.

**PERFORMANCE STANDARD:** Interior doors (full

openings) shall not warp in excess of National Woodwork Manufacturers Association Standards (1/4 inch measured diagonally from corner to corner).

**RESPONSIBILITY:** Builder will correct or replace and refinish defective doors to match existing doors as nearly as possible, during the first year of the Limited Warranty period.

3. **POSSIBLE DEFICIENCY:** Shrinkage of insert panels show raw wood edges.

**PERFORMANCE STANDARD:** Panels will shrink and expand and may expose unpainted surface.

**RESPONSIBILITY:** None.

4. **POSSIBLE DEFICIENCY:** Split in door panel.

**PERFORMANCE STANDARD:** Split panels shall not allow light to be visible through the door.

**RESPONSIBILITY:** Builder will, if light is visible, fill split and match paint or stain as closely as possible, one time in first year of the Limited Warranty period.

## **B. Glass**

1. **POSSIBLE DEFICIENCY:** Broken glass.

**PERFORMANCE STANDARD:** None.

**RESPONSIBILITY:** Broken glass not reported to Builder prior to closing is the Home Owner's responsibility.

## **C. Garage Doors on Attached Garages**

1. **POSSIBLE DEFICIENCY:** Garage doors fail to operate properly, under normal use.

**PERFORMANCE STANDARD:** Garage doors shall operate properly.



**RESPONSIBILITY:** Builder will correct or adjust garage doors as required, except where the cause is determined to result from Home Owner action or negligence.

**2. POSSIBLE DEFICIENCY:** Garage doors allow entrance of snow or water.

**PERFORMANCE STANDARD:** Garage doors shall be installed as recommended by the manufacturer. Some entrance of the elements can be expected under abnormal conditions.

**RESPONSIBILITY:** Builder will adjust or correct garage doors to meet manufacturer's recommendations.

#### **D. Wood, Plastic and Metal Windows**

**1. POSSIBLE DEFICIENCY:** Malfunction of windows.

**PERFORMANCE STANDARD:** Windows shall operate with reasonable ease, as designed.

**RESPONSIBILITY:** Builder will correct or repair as required.

**2. POSSIBLE DEFICIENCY:** Condensation and/or frost on windows.

**PERFORMANCE STANDARD:** Windows will collect condensation on interior surfaces when extreme temperature differences and high humidity levels are present. Condensation is usually the result of climatic/humidity conditions, created by the Home Owner.

**RESPONSIBILITY:** Unless directly attributed to faulty installation, window condensation is a result of conditions beyond the Builder's control. No corrective action required.

#### **E. Weatherstripping and Seals**

1. **POSSIBLE DEFICIENCY:** Air infiltration around doors and windows.

**PERFORMANCE STANDARD:** Some infiltration is normally noticeable around doors and windows, especially during high winds. Poorly fitted weatherstripping shall be adjusted or replaced. It may be necessary for the Home Owner to have storm doors and windows installed to provide satisfactory solutions in high wind areas.

**RESPONSIBILITY:** Builder will adjust or correct poorly fitted doors, windows and poorly fitted weather-stripping.

## **7. Finishes:** Coverage 1st Year Only, Workmanship and Materials

### **A. Lath and Plaster**

1. **POSSIBLE DEFICIENCY:** Cracks in interior wall and ceiling surfaces.

**PERFORMANCE STANDARD:** Hairline cracks are not unusual in interior wall and ceiling surfaces. Cracks greater than 1/8 inch in width shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks exceeding 1/8 inch in width as required one time only, during the first year of the Limited Warranty period. (See also Performance Standard 7.F, "Painting.")

### **B. Gypsum Wallboard**

1. **POSSIBLE DEFICIENCY:** Defects which appear during first year of the Limited Warranty such as nail pops, blisters in tape, or other blemishes.

**PERFORMANCE STANDARD:** Slight "imperfections" such as nail pops, seam lines and cracks

not exceeding 1/8 inch in width are common in gypsum wallboard installations and are considered acceptable.

**RESPONSIBILITY:** Builder will repair only cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period. (See also Performance Standard 7.F, "Painting.")

## **C. Ceramic Tile**

1. **POSSIBLE DEFICIENCY:** Ceramic tile cracks or becomes loose.

**PERFORMANCE STANDARD:** Ceramic tile shall not crack or become loose.

**RESPONSIBILITY:** Builder will replace cracked tiles and re-secure loose tiles unless the defects were caused by the Home Owner action or negligence. Builder will not be responsible for discontinued patterns or color variations in ceramic tiles.

2. **POSSIBLE DEFICIENCY:** Cracks appear in grouting of ceramic tile joints or at junctions with other materials such as a bathtub.

**PERFORMANCE STANDARD:** Cracks in grouting of ceramic tile joints are commonly due to normal shrinkage conditions.

**RESPONSIBILITY:** Builder will repair grouting if necessary one time only, during the first year of the Limited Warranty period. Builder will not be responsible for color variations or discontinued colored grout. Regrouting of these cracks is a maintenance responsibility of the Home Owner within the life of the Home.

## **D. Finished Wood Flooring**

1. **POSSIBLE DEFICIENCY:** Cracks developing between floor boards.

**PERFORMANCE STANDARD:** Cracks in excess of 1/8 inch in width shall be corrected.

**RESPONSIBILITY:** Builder will repair cracks in excess of 1/8 inch within the first of the Limited Warranty period, by filling or replacing, at Builder's option.

## **E. Resilient Flooring**

1. **POSSIBLE DEFICIENCY:** Nail pops appear on the surface of resilient flooring.

**PERFORMANCE STANDARD:** Readily apparent nail pops shall be repaired.

**RESPONSIBILITY:** Builder will correct nail pops which have broken the surface. Builder will repair or replace, at Builder's sole option, resilient floor covering in the affected area with similar material. Builder will not be responsible for discontinued patterns or color variations in the floor covering.

2. **POSSIBLE DEFICIENCY:** Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

**PERFORMANCE STANDARD:** Readily apparent depressions or ridges exceeding 1/8 inch shall be repaired. The ridge or depression measurement is taken as the gap created at one end of a six-inch straightedge placed over the depression or ridge with three inches of the straightedge on one side of the defect, held tightly to the floor.

**RESPONSIBILITY:** Builder will take corrective action as necessary, to bring the defect within acceptable tolerance so that the affected area is not readily visible. Builder will not be responsible for discontinued patterns or variations in floor covering.

3. **POSSIBLE DEFICIENCY:** Resilient flooring loses

adhesion.

**PERFORMANCE STANDARD:** Resilient flooring shall not lift, bubble or become unglued.

**RESPONSIBILITY:** Builder will repair or replace, at Builder's sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Home Owner neglect or abuse.

4. **POSSIBLE DEFICIENCY:** Seams or shrinkage gaps show at resilient flooring joints.

**PERFORMANCE STANDARD:** Gaps shall not exceed 1/16 inch in width in resilient floor covering joints. Where dissimilar materials abut, a gap not to exceed 1/8 inch is permissible.

**RESPONSIBILITY:** Builder will repair or replace, at Builders sole option, the affected resilient flooring as required. Builder will not be responsible for discontinued patterns or color variation of floor covering, or for problems caused by Home Owner neglect or abuse.

## **F. Painting**

1. **POSSIBLE DEFICIENCY:** Exterior paint or stain peels, deteriorates or fades.

**PERFORMANCE STANDARD:** Exterior paints or stains should not fail during the first year of the Limited Warranty period. However, fading is normal and the degree is dependent on climatic conditions.

**RESPONSIBILITY:** If paint or stain is defective, Builder will properly prepare and refinish affected areas, matching color as close as possible. Where finish deterioration affects the majority of the wall area, the whole area will be refinished.

2. **POSSIBLE DEFICIENCY:** Painting required as corollary repair because of other work.

**PERFORMANCE STANDARD:** Repairs required under this Limited Warranty shall be finished to match surrounding areas as closely as practicable.

**RESPONSIBILITY:** Builder will finish repair areas as indicated.

3. **POSSIBLE DEFICIENCY:** Deterioration of varnish or lacquer.

**PERFORMANCE STANDARD:** Natural finishes on interior woodwork shall not deteriorate during the first year of the Limited Warranty period. However, varnish type finishes used on the exterior will deteriorate rapidly and are not covered by the Limited Warranty.

**RESPONSIBILITY:** Builder will retouch affected areas of natural finish interior woodwork, matching the color as closely as possible.

4. **POSSIBLE DEFICIENCY:** Mildew or fungus on painted surfaces.

**PERFORMANCE STANDARD:** Mildew or fungus will form on a painted surface if the structure is subject to abnormal exposures (i.e., rainfall, ocean, lake or river front.)

**RESPONSIBILITY:** Mildew or fungus formation is a condition the Builder cannot control and is a Home Owner maintenance item unless it is a result of noncompliance with other sections of the Performance Standard.

## **G. Wall Covering**

1. **POSSIBLE DEFICIENCY:** Peeling of wall covering.

**PERFORMANCE STANDARD:** Peeling of wall covering shall not occur.

**RESPONSIBILITY:** Builder will repair or replace defective wall covering applications.

2. **POSSIBLE DEFICIENCY:** Edge mismatching in pattern of wall covering.

**PERFORMANCE STANDARD:** None.

**RESPONSIBILITY:** None.

## **H. Carpeting**

1. **POSSIBLE DEFICIENCY:** Open carpet seams.

**PERFORMANCE STANDARD:** Carpet seams will show. However, no visible gap is acceptable.

**RESPONSIBILITY:** Builder will correct.

2. **POSSIBLE DEFICIENCY:** Carpeting becomes loose, seams separate or stretching occurs.

**PERFORMANCE STANDARD:** Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose, or separate from its point of attachment.

**RESPONSIBILITY:** Builder will restretch or re-secure carpeting as needed, if original installation was performed by Builder.

3. **POSSIBLE DEFICIENCY:** Spots on carpet, minor fading.

**PERFORMANCE STANDARD:** Exposure to light may cause spots on carpet and/or minor fading.

**RESPONSIBILITY:** None.

## **I. Special Coatings**

**1. POSSIBLE DEFICIENCY:** Cracks in exterior stucco wall surfaces.

**PERFORMANCE STANDARD:** Cracks are not unusual in exterior stucco wall surfaces. Cracks greater than 1/8 inch in width shall be repaired.

**RESPONSIBILITY:** Builder will repair cracks exceeding 1/8 inch in width, one time only, during the first year of the Limited Warranty period.

## **8. Specialties:** Coverage 1st Year Only, Workmanship and Materials

### **A. Louvers and Vents**

**1. POSSIBLE DEFICIENCY:** Inadequate ventilation of attics and crawl spaces.

**PERFORMANCE STANDARD:** Attic and crawl spaces shall be ventilated as required by the approved building code.

**RESPONSIBILITY:** The Builder shall provide for adequate ventilation. Builder will not be responsible for alterations to the original system.

### **B. Fireplaces**

**1. POSSIBLE DEFICIENCY:** Fireplace or chimney does not draw properly.

**PERFORMANCE STANDARD:** A properly designed and constructed fireplace and chimney shall function properly. It is normal to expect that high winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. Some homes may need to have a window opened slightly to create an effective draft, if they have been insulated and weatherproofed to meet high energy conservation criteria.



**RESPONSIBILITY:** Builder will determine the cause of malfunction and correct, if the problem is one of design or construction of the fireplace.

2. **POSSIBLE DEFICIENCY:** Chimney separation from structure to which it is attached.

**PERFORMANCE STANDARD:** Newly built fireplaces will often incur slight amounts of separation. Separation shall not exceed 1/2 inch from the main structure in any 10 foot vertical measurement.

**RESPONSIBILITY:** Builder will determine the cause of separation and correct if standard is not met. Caulking is acceptable.

3. **POSSIBLE DEFICIENCY:** Firebox paint changed by fire.

**PERFORMANCE STANDARD:** None.

**RESPONSIBILITY:** None. Heat from fires will alter finish.

4. **POSSIBLE DEFICIENCY:** Cracked firebrick and mortar joints.

**PERFORMANCE STANDARD:** None.

**RESPONSIBILITY:** None. Heat and flames from "roaring" fires will cause cracking.

## **9. Equipment:** Coverage 1st Year Only, Workmanship and Materials

### **A. Residential Equipment**

1. **POSSIBLE DEFICIENCY:** Surface Cracks, point delaminations and chips in high pressure laminates on vanity and kitchen cabinet counter-tops.

**PERFORMANCE STANDARD:** Countertops fabricated with high pressure laminate coverings shall not delaminate.

**RESPONSIBILITY:** Builder will replace delaminated coverings to meet specified criteria. Builder will not be responsible for chips and cracks noted following first occupancy.

2. **POSSIBLE DEFICIENCY:** Kitchen cabinet malfunctions.

**PERFORMANCE STANDARD:** Warpage not to exceed 1/4 inch as measured from face frame to point of furthest warpage with door or drawer front in closed position.

**RESPONSIBILITY:** Builder will correct or replace doors or drawer fronts.

3. **POSSIBLE DEFICIENCY:** Gaps between cabinets, ceiling or walls.

**PERFORMANCE STANDARD:** Acceptable tolerance 1/4 inch in width.

**RESPONSIBILITY:** Builder will correct to meet Performance Standard.

## **10. Plumbing:** Coverage 1st Year Only, Workmanship and Materials

### **A. Water Supply System**

1. **POSSIBLE DEFICIENCY:** Plumbing pipes freeze and burst.

**PERFORMANCE STANDARD:** Drain, waste and vent, and water pipes shall be adequately protected, as required by applicable code, during normally anticipated cold weather, and as defined in accordance with ASHRAE design temperatures, to prevent freezing.

**RESPONSIBILITY:** Builder will correct situations not meeting the code. It is the Home Owner's responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures.

## **B. Plumbing System**

1. **POSSIBLE DEFICIENCY:** Faucet or valve leak.

**PERFORMANCE STANDARD:** No valve or faucet shall leak due to defects in workmanship and materials.

**RESPONSIBILITY:** Builder will repair or replace the leaking faucet or valve.

2. **POSSIBLE DEFICIENCY:** Defective plumbing fixtures, appliances or trim fittings.

**PERFORMANCE STANDARD:** Fixtures, appliances or fittings shall comply with their manufacturer's standards.

**RESPONSIBILITY:** Builder will replace any defective fixture or fitting which does not meet acceptable standards, as defined by manufacturer.

3. **POSSIBLE DEFICIENCY:** Noisy water pipes.

**PERFORMANCE STANDARD:** There will be some noise emitting from the water pipe system, due to the flow of water. However, water hammer shall be eliminated.

**RESPONSIBILITY:** Builder cannot remove all noises due to water flow and pipe expansion. Builder will correct to eliminate "water hammer".

4. **POSSIBLE DEFICIENCY:** Cracking or chipping of porcelain or fiberglass surfaces.

**PERFORMANCE STANDARD:** Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when surface is hit with sharp or heavy objects.

**RESPONSIBILITY:** Builder will not be responsible for repairs unless damage has been reported to Builder prior to first occupancy.

## **11. Heating and Cooling:** Coverage 1st Year Only, Workmanship and Materials

### **A. Heating**

#### **1. POSSIBLE DEFICIENCY:** Inadequate heating.

**PERFORMANCE STANDARD:** Heating system shall be capable of producing an inside temperature of 70° F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in ASHRAE handbook. Federal, state or local energy codes shall supersede this standard where such codes have been locally adopted.

**RESPONSIBILITY:** Builder will correct heating system to provide the required temperatures. However, the Home Owner shall be responsible for balancing dampers, registers and other minor adjustments.

### **B. Refrigeration**

#### **1. POSSIBLE DEFICIENCY:** Inadequate cooling.

**PERFORMANCE STANDARD:** Where air-conditioning is provided, the cooling system shall be capable of maintaining a temperature of 78° F, as measured in the center of each room at a height of 5 feet above the floor, under local outdoor summer design conditions as specified in ASHRAE handbook. In the case of outside temperatures exceeding 95° F, a differential of 15° F from the outside temperature will be maintained. Federal, state, or local energy codes shall supersede this standard where such codes have been locally adopted.

**RESPONSIBILITY:** Builder will correct cooling system to meet temperature conditions, in accordance with specifications..

### **C. Condensation Lines**

1. **POSSIBLE DEFICIENCY:** Condensation lines clog up.

**PERFORMANCE STANDARD:** None.

**RESPONSIBILITY:** Condensation lines will clog eventually under normal use. This is a Home Owner maintenance item. Builder shall provide unobstructed condensation lines at time of first occupancy.

### **D. Evaporative Cooling**

1. **POSSIBLE DEFICIENCY:** Improper mechanical operation.

**PERFORMANCE STANDARD:** Equipment shall function properly at temperature standard set.

**RESPONSIBILITY:** Builder will correct and adjust so that blower and water system operate as designed.

## **12. Ventilation:** Coverage 1st Year Only, Workmanship and Materials

### **A. Air Distribution**

1. **POSSIBLE DEFICIENCY:** Noisy ductwork.

**PERFORMANCE STANDARD:** When metal is heated it expands and when cooled it contracts. The result is "ticking" or "cracking" which is generally to be expected.

**RESPONSIBILITY:** None.

2. **POSSIBLE DEFICIENCY:** Oilcanning.

**PERFORMANCE STANDARD:** The stiffening of the ductwork and the gauge of the metal used shall be such that ducts do not "oilcan". The booming noise caused by "oilcanning" is not acceptable.

**RESPONSIBILITY:** Builder will correct to eliminate this sound.

### **13. Electrical:** Coverage 1st Year Only, Workmanship and Materials

#### **A. Electrical Conductors, Fuses, and Circuit Breakers**

1. **POSSIBLE DEFICIENCY:** Fuses blow or circuit breakers (excluding ground fault interrupters) "kick out".

**PERFORMANCE STANDARD:** Fuses and circuit breakers shall not activate under normal usage.

**RESPONSIBILITY:** Builder will check wiring circuits for conformity with local, state, or approved national electrical code requirements. Builder will correct circuitry not conforming to code specifications.

#### **B. Outlets, Switches and Fixtures**

1. **POSSIBLE DEFICIENCY:** Drafts from electrical outlets.

**PERFORMANCE STANDARD:** Electrical junction boxes on exterior wall may produce air flow whereby the cold air can be drawn through the outlet into a room. The problem is normal in new home construction.

**RESPONSIBILITY:** None.

2. **POSSIBLE DEFICIENCY:** Malfunction of electrical outlets, switches or fixtures.

**PERFORMANCE STANDARD:** All switches, fixtures and outlets shall operate as intended.

**RESPONSIBILITY:** Builder will repair or replace defective switches, fixtures and outlets.

### **C. Service and Distribution**

1. **POSSIBLE DEFICIENCY:** Ground fault interrupter trips frequently.

**PERFORMANCE STANDARD:** Ground fault interrupters are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These sensitive devices can be tripped very easily.

**RESPONSIBILITY:** Builder shall install ground fault interrupter in accordance with approved electrical code. Tripping is to be expected and is not covered, unless due to a construction defect.

# SYSTEMS: FIRST AND SECOND YEARS

## 14. Plumbing System: Coverage 1st and 2nd Year, Systems

### A. Water Supply

1. **POSSIBLE DEFICIENCY:** Water supply system fails to deliver water.

**PERFORMANCE STANDARD:** All on-site service connections to municipal water main and private water supply shall be the Builder's responsibility. Private systems shall be designed and installed in accordance with all approved building, plumbing and health codes.

**RESPONSIBILITY:** Builder will repair if failure is the result of defective workmanship or materials. If conditions beyond Builder's control disrupt or eliminate the sources of the supply, the Builder has no responsibility.

### B. Septic Tank System

1. **POSSIBLE DEFICIENCY:** Septic system fails to operate properly.

**PERFORMANCE STANDARD:** Septic system shall function adequately during all seasons, under climatic conditions normal or reasonable anticipated (based on local records) for the location of the home. Septic system shall be designed and installed to comply with applicable, approved Code requirements.

**RESPONSIBILITY:** Builder will repair, or otherwise correct, a malfunctioning or non operating system, if failure is caused by inadequate design, faulty installation, or other cause relating to actions of the builder or contractors or subcontractors under the builder's control. Builder will not



be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance, or other causes attributable to actions of the owner or owner's contractors, not under the control of the builder, including, but not necessarily limited to: the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing system served by the septic system; and damage, or changes, to the septic system installation or surrounding soil conditions critical to the system's functioning.

### C. Piping

1. POSSIBLE DEFICIENCY: Leakage from any pipe.

PERFORMANCE STANDARD: No leaks of any kind shall exist in any soil, waste, vent, or water pipe. Condensation on piping does not constitute leakage, and is not covered.

RESPONSIBILITY: Builder will make repairs to eliminate leakage.

2. POSSIBLE DEFICIENCY: Stopped up sewers, fixtures and drains.

PERFORMANCE STANDARD: Sewers, fixtures and drains shall operate properly.

RESPONSIBILITY: Builder will not be responsible for sewers, fixtures and drains which are clogged through the Home Owner negligence. If a problem occurs, the Home Owner should consult Builder for a proper course of action. Where defective construction is shown to be the cause, Builder will assume the cost of the repair; where Home Owner negligence is shown to be the cause, the Home Owner shall assume all repair costs.

3. POSSIBLE DEFICIENCY: Refrigerant lines leak.

**PERFORMANCE STANDARD:** Refrigerant lines shall not develop leaks during normal operation.

**RESPONSIBILITY:** Builder will repair leaking refrigerant lines and re-charge unit, unless damage was caused by the Home Owner.

## **15. Ventilation System:** Coverage 1st and 2nd Year, Systems

### **A. Air Distribution**

1. **POSSIBLE DEFICIENCY:** Ductwork separates or becomes unattached.

**PERFORMANCE STANDARD:** Ductwork shall remain intact and securely fastened.

**RESPONSIBILITY:** Builder will re-attach and re-secure all separated or unattached ductwork.

## **16. Electrical System:** Coverage 1st and 2nd Year, Systems

### **A. Wiring**

1. **POSSIBLE DEFICIENCY:** Failure of wiring to carry its designed load.

**PERFORMANCE STANDARD:** Wiring should be capable of carrying the designed load for normal residential use.

**RESPONSIBILITY:** Builder will check wiring for conformity with local, state, or approved national electrical code requirements. Builder will repair wiring not conforming to code specifications.

## PERFORMANCE STANDARDS

### 17. Major Structure: Coverage through 6th year, Material Defects

#### A. Load-bearing Portions of the Home

1. **POSSIBLE DEFICIENCY:** The failure of any of the following load bearing portions of the home: foundation systems and footings, beams, girders, lintels, columns, structural walls and partitions, floor systems, and roof framing systems. (Note: load-bearing portions do not include, for example: roofing and sheathing, drywall and plaster, exterior siding, brick or stone or stucco veneer, floor covering material, wall tile or other wall coverings, non-load bearing walls and partitions, concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the home, electrical systems, plumbing systems, heating or cooling systems, ventilation systems, appliances, fixtures and items of equipment, paint, doors and windows, trim, cabinets, hardware or insulation.)

**PERFORMANCE STANDARD:** The failure of these load-bearing portions of the home shall not affect their load bearing functions, making the home unsafe, unsanitary or unliveable.

**RESPONSIBILITY:** The Builder will repair or replace the defective item(s), or will pay the Home Owner the reasonable cost of such repair or replacement. The Builder's total liability is limited to the amount specified in the Limited Warranty. The choice as to repair, replacement or payment is solely that of the Builder.

Repair of defective item(s) is limited to (1) the repair of damage to the load-bearing portions of the Home which are necessary to restore their load-bearing function; and (2) the repair of those

items of the Home damaged by the Material defect which make the Home unsafe, unsanitary or otherwise unliveable,

## DEED

THIS INDENTURE made the            day of            , 199 ,  
between Fairgrounds II, Inc., a New York corporation, having a  
place of business at 77 Maple Avenue, New City, New York, Party of  
the First Part and

residing at Party of the Second Part,

## W I T N E S S E T H:

That the Party of the First Part, in consideration of Ten Dollars (\$10.00), lawful money of the United States, and other good and valuable considerations, paid by the Party of the Second Part, does hereby grant and release unto the Party of the Second Part, the heirs or successors and assigns of the Party of the Second Part forever,

ALL that certain piece or parcel of real property, with the building and improvements therein contained, situate, lying and being in the Village of West Haverstraw, Town of Haverstraw, County of Rockland and State of New York, known and designated as and by lot number            as shown on a certain map entitled "Map of Fairgrounds II" situated at Village of West Haverstraw, Town of Haverstraw, Rockland County, New York, and filed in the Rockland County Clerk's Office on November 27, 1990 as file number 6518.

Subject to covenants, restrictions, reservations and easements of record, now in force and effect.

AND TOGETHER with the benefits and subject to the burdens, covenants, restrictions, by-laws, rules, regulations and easements all as set forth in the Declaration of Covenants, Restrictions, Easements, Charges and Liens made by the Party of the First Part dated            , 199   and recorded in the Office of the Clerk of Rockland County on the            day of            , 199   , in Liber            of Conveyances at page            .

TO HAVE AND TO HOLD the premises herein granted unto the Party of the Second Part, the heirs or successors and assigns of the Party of the Second Part forever.

AND the Party of the First Part covenants that the Party of the First Part has not done or suffered anything whereby the said premises have been encumbered in any way whatsoever, except as aforesaid.

EXHIBIT E

AND the Party of the First Part, in compliance with Section 13 of the Lien Law, covenants that the Party of the First Part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

This conveyance has been made in the regular course of business actually conducted by the Party of the First Part.

The word "Party" shall be construed as if it read "Parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the Party of the First Part has duly executed this deed the day and year first above written.

FAIRGROUNDS II, INC.

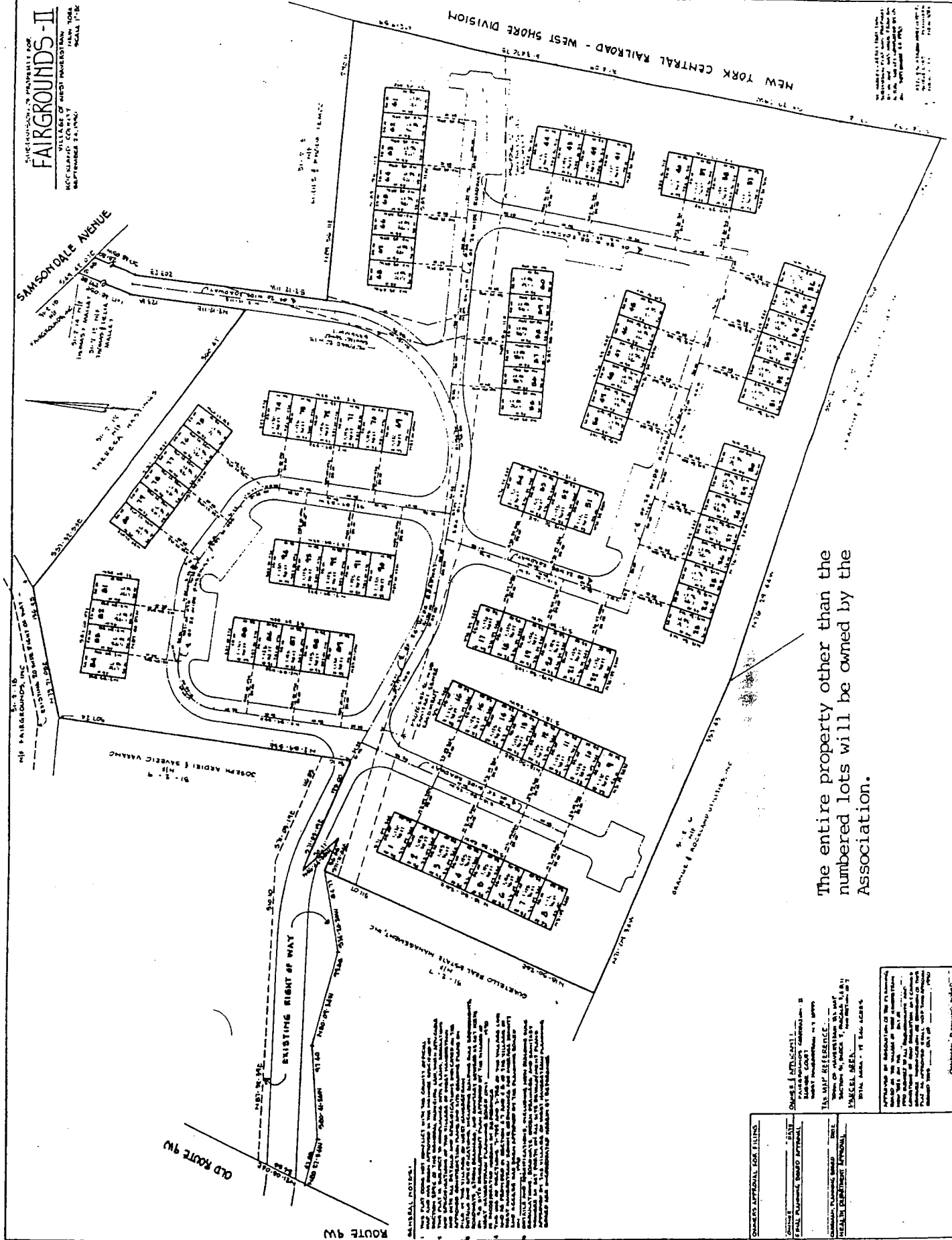
By: \_\_\_\_\_

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ROCKLAND )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1991, before me personally came Leif Bergstol, to me known to be the person who being duly sworn by me, did depose and say that he resides at No. \_\_\_\_\_, and that he is the President of Fairgrounds II, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so fixed by order of the board of directors of said corporation and that he signed his name thereto by like order of said corporation.

\_\_\_\_\_  
Notary Public

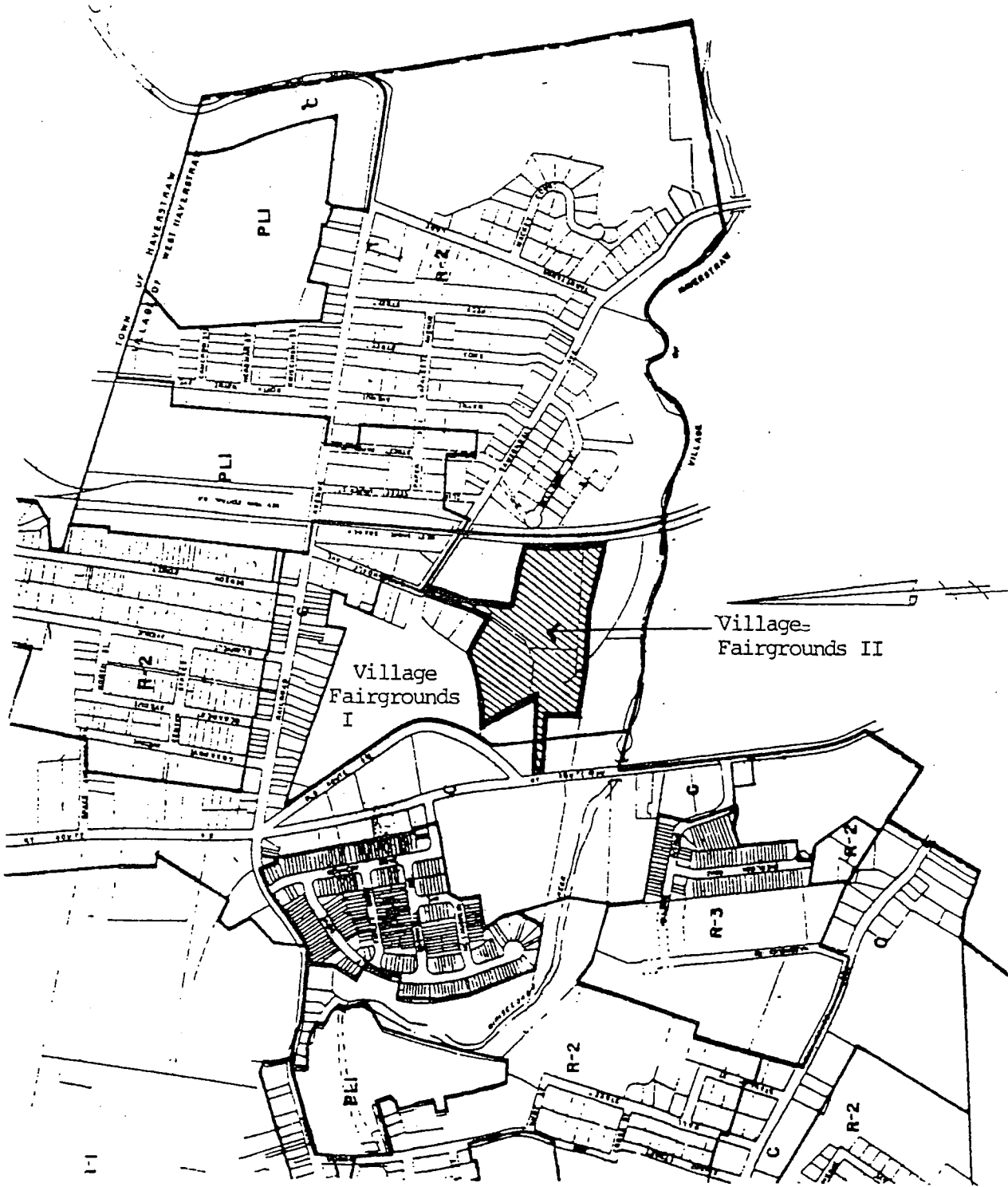
SUBDIVISION PLAN FOR  
**FAIRGROUNDS - II**  
 VILLAGE OF WEST HAVEN  
 WEST HAVEN TOWNSHIP  
 WASHINGTON COUNTY  
 SEPTEMBER 22, 1991  
 SCALE 1" = 40'



The entire property other than the numbered lots will be owned by the Association.

**GENERAL NOTES:**  
 1. THIS PLAN SHOWS THE LOTS AND STREETS AS THEY EXIST AT THE TIME THIS PLAN WAS PREPARED. THE OWNER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE ENGINEER AND FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE TOWNSHIP. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE TOWNSHIP. THE TOWNSHIP SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE STATE. THE STATE SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE FEDERAL GOVERNMENT.

CHECKED APPROVAL FOR FILING DATE: _____ BY: _____	
ENGINEER (PRINT NAME, TITLE AND ADDRESS)	DATE: _____ BY: _____
TOWNSHIP ENGINEER (PRINT NAME, TITLE AND ADDRESS)	DATE: _____ BY: _____
COUNTY ENGINEER (PRINT NAME, TITLE AND ADDRESS)	DATE: _____ BY: _____
STATE ENGINEER (PRINT NAME, TITLE AND ADDRESS)	DATE: _____ BY: _____



VICINITY MAP

SCALE 1" = 1000'



ROADWAY, UTILITY & SITE IMPROVEMENTS

HOME OWNER'S ASSOCIATION PROPERTY

THE FAIRGROUNDS - II

ROUTE 9W, OLD ROUTE 9W AND SAMSONDALE AVENUE  
VILLAGE OF WEST HAVERSTRAW, N.Y.

Prepared By

ATZL & SCATASSA ASSOCIATES, P.C.  
SURVEYORS - PLANNERS  
248-C North Main Street  
New City, NY 10956

October 4, 1990

EXHIBIT K

## THE FAIRGROUNDS

## HOME OWNER'S ASSOCIATION (H.O.A.) PROPERTY

A. LOCATION

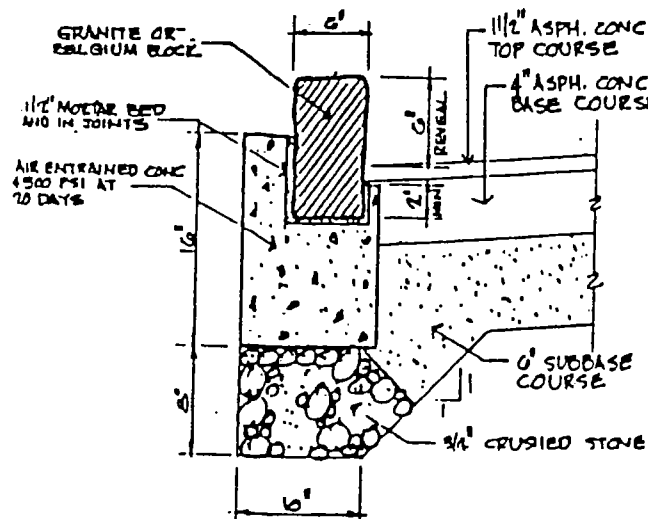
The site is located on the west side of Samsondale Avenue, and on the east side of Route 9W and Old Route 9W in the Village of West Haverstraw.

B. SITE

1. The total area of the site is 12.246 acres of which 9.785 acres belongs to the H.O.A. The area belonging to the H.O.A. will have walkways and parking areas.
2. There will be 94 attached townhouses located in 16 building groups which will be individually owned.

3. ROADWAY

All roads will be owned and maintained by the Association; all work, materials, construction methods and workmanship are to conform with standard specifications of the Village of west Haverstraw, Rockland County, New York as described below:



PAVEMENT & STONE CURB DETAIL

N.T.S.

Access road to Samsondale Avenue will be paved 18 feet wide, access road to Old Route 9W will be paved 30 feet wide and all other interior roads will be paved 24 feet wide. All roads will be able to handle emergency vehicles.

C. LANDSCAPING

Grass cover, plantings, fencing etc. are to be as per Landscaping plan prepared by Atzl & Scatassa Associates, P.C. and approved by the Village of West Haverstraw, Rockland County, New York.

D. UTILITIES

Electricity for street lighting will be provided by Orange & Rockland Utilities, Inc. and will be paid by the H.O.A.

E. SEWERS

1. Sanitary Sewer System

- a) All proposed Sanitary Sewer piping in streets will be of 8" PVC (polyvinyl chloride) as approved by the local building code.
- b) Eighteen (18) sewer man-holes will be constructed in pre-cast concrete with cast-iron covers.
- c) All Sanitary Sewers will discharge into the main sewer system provided by the Joint Regional Sewer Board, Town of Haverstraw, Rockland County, New York partly by gravity and partly by lift station with a 4" Ductile Iron force main. Each building group will have a separate connection to the private sewer.

- 2. The sewer plan was approved by the Joint Regional Sewer Board, Town of Haverstraw, for the new sanitary sewer to be constructed.

3. Storm Drainage System

The drainage of the common open space owned by the H.O.A. will be run off into the existing drainage system in Village of West Haverstraw.

- a) Nineteen (19) catch basins and seven (7) field inlets for drainage of streets and grass areas are to be constructed in concrete blocks and cast-iron grates.
- b) Drainage pipes: 15", 18" and 21" reinforced concrete
- c) Two (2) head walls will be built in reinforced concrete.

d) There will be no storm water pumping required.

F. REFUSE DISPOSAL

Refuse removal will be provided by private carting and collections will be made as per the applicable collection schedule. The expense of the refuse removal for each house will be paid by H.O.A.

G. PARKING AREAS AND SIDEWALKS

There will be 235 parking spaces owned by H.O.A. Parking areas will be constructed with 4" stone base course and 2 1/2" asphalt concrete top course. Six (6) feet wide concrete sidewalks will be constructed as per approved Site Plan and Landscape Plan.

H. RECREATION FACILITIES

A children play area will be provided and maintained by H.O.A.; as shown on approved Site Plan and Landscape Plan.

I. STREET LIGHTING

Street lighting for Association property will be owned and maintained by Orange & Roskland Utiities, Inc. and are to be installed as per direction of the Orange & Rockland Utilities, Inc. and shown on the approved Landscape Plan.

Sworn to before me  
this 17<sup>th</sup> day of January 1991

*Vittorio Scatassa*  
Vittorio Scatassa, P.L.S.

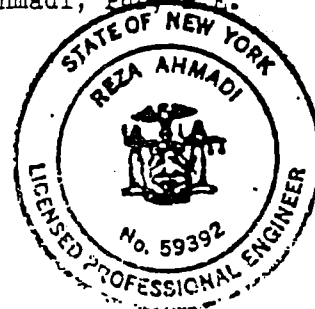
*Astri Braaten*  
Notary Public  
ASTRI BRAATEN  
Notary Public, State of New York  
No. 4738790  
Qualified in Rockland County  
Commission Expires January 31, 1992

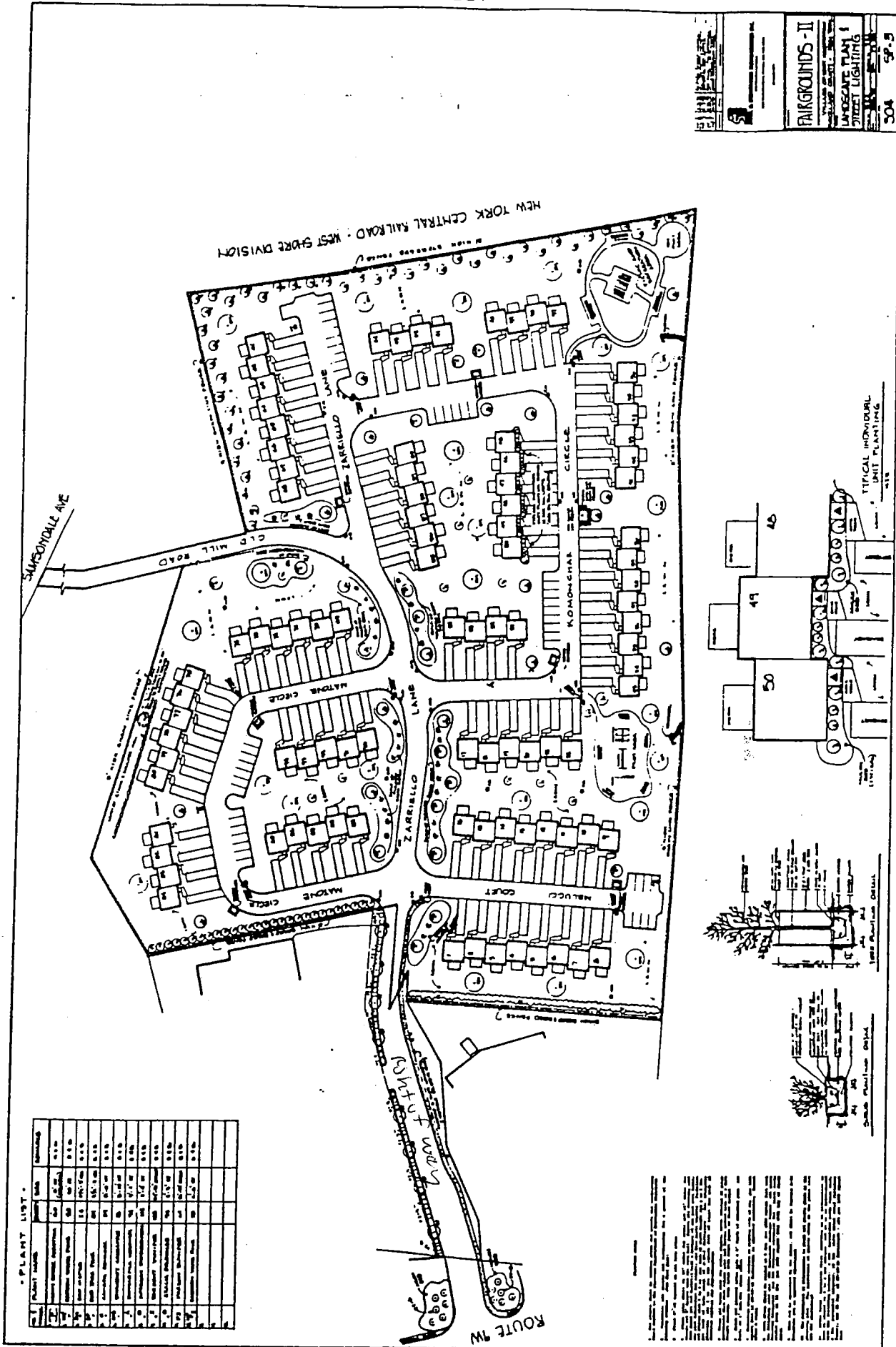


Sworn to before me  
this 17<sup>th</sup> day of January 1991

*Raymond Ahmadi*  
Raymond Ahmadi, Ph.D., P.E.

*Astri Braaten*  
Notary Public  
ASTRI BRAATEN  
Notary Public, State of New York  
No. 4738790  
Qualified in Rockland County  
Commission Expires January 31, 1992





CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS  
PURSUANT TO 13 NYCRR 22.4 (b)

Dated: October 15, 1990

State of New York  
Department of Law  
120 Broadway - 23rd Floor  
New York, NY 10271

RE: VILLAGE FAIRGROUNDS II HOME OWNERS ASSOCIATION

Gentlemen:

We are the sponsor and the principals of sponsor of the homeowners association offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 22 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan for the homeowners association does, and that documents submitted hereafter by us which amend or supplement the offering plan for the homeowners association will:

- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reason able effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Very truly yours,

FAIRGROUNDS II, INC.  
Sponsor

By: \_\_\_\_\_

Leif Bergstol, President  
Title or Position

SPONSOR'S PRINCIPALS:

\_\_\_\_\_  
Leif Bergstol

Sworn to before me this  
15th day of October, 1990.

Kathleen Herman  
Notary Public

KATHLEEN HERMAN  
Notary Public, State of New York  
Qualified in Rockland County  
No. 4930106  
Commission Expires August 8, 1992

**ATZL & SCATASSA ASSOCIATES P.C.**  
SURVEYORS-PLANNERS

October 4, 1990

Department of Law  
State of New York  
2 World Trade Center  
New York, NY 10047

Re: The Fairgrounds-II  
Village of West  
Haverstraw  
New York

Gentlemen:

The Sponsor of the captioned Offering Plan for a Home Owners Association have retained us to prepare a report describing the property dated October 4, 1990, a copy of which is intended to be incorporated into the Offering Plan so that the prospective purchasers may rely on it.

Our firm prepared the Subdivision Map of the above referenced property dated September 24, 1990.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to this Report.

We have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. We certify the Report does:

- (i) set forth in narrative form the significant elements of the entire property as it will exist upon completion of construction, provided that construction is in accordance with plans and specifications that we examined.
- (ii) in our opinion afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we examined;

THEODORE F. ATZL, P.L.S.

EXHIBIT J

VITTORIO SCATASSA, P.L.S.

248C North Main Street, New City, New York 10956 (914) 634-4694



- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, or suppression;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representations of statement which is false, where we (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representations or statements made.

We further certify that we are not owned or controlled by and have no beneficial interest in the Sponsor and that our compensation for preparing this Report is not contingent on the profitability or price of the Offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

Very truly yours,

ATZL & SCATASSA ASSOCIATES,

P. C.

*Vittorio Scatassa*

Vittorio Scatassa, P.L.S.

VS/vg

SWORN TO BEFORE ME THIS

10 Day of OCT. 1990

*Wayne J. Klingman*  
 NOTARY PUBLIC

WAYNE J. KLINGMAN  
 Notary Public, State of New York  
 No. 44-7305000  
 Residing in Rockland County  
 Commission Expires Jan. 31, 19 91



The  
**DALZELL**  
**MANAGEMENT**  
Company, Inc.

132

*SPECIALISTS IN COMMERCIAL LEASING, SALES AND MANAGEMENT*

(914) 354-2177  
623-0941

September 19, 1990

CERTIFICATION OF ADEQUACY OF SCHEDULE "A"

Department of Law  
120 Broadway  
New York, N.Y. 10271

Gentlemen:

The Sponsor of the Home Owners Association Offering Plan for the captioned property retained me/our firm to review the Schedule containing projections of income and expenses for the first year of operation as a Homeowners Association. My/our experience in this field includes, attached hereto and made a part hereof is a list of my qualifications to make this certification.

I/We understand that I/we am/are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to the Schedule.

I/We have reviewed the Schedule and investigated the facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. I/We also have relied on my/our experience in managing residential property.

I/We certify that the projections in the Schedule appear reasonable and adequate under existing circumstances, and the projected income will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a Homeowners Association.

I/We Certify that the Schedule:

- (i) sets forth in detail the terms of the transaction as it relates to the Schedule and is complete current and accurate.
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgement concerning the first year of operation as a Homeowners Association:
- (iii) does not omit any material fact;

EXHIBIT K

PACESETTER PARK PLAZA, ROUTE 202, POMONA, NEW YORK 10970

The  
**DALZELL**  
**MANAGEMENT**  
 Company, Inc.

SPECIALISTS IN COMMERCIAL LEASING, SALES AND MANAGEMENT

(914) 854-2177  
 623-0941

- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where I/We: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

I/We further certify that I am/we are not owned or controlled by the Sponsor. I/We understand that a copy of this certification is intended to be incorporated into the Offering Plan.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I/We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Very truly yours,

Sworn to before me this  
 19th day of September, 1990.

*Kathleen Herman*

**KATHLEEN HERMAN**  
 Notary Public, State of New York  
 Qualified in Rockland County  
 No. 4930108  
 Commission Expires August 8, 1992

*George Dalzell*

George Dalzell

# The DALZELL MANAGEMENT Company, Inc.

SPECIALISTS IN COMMERCIAL LEASING, SALES AND MANAGEMENT

(914) 554-2177  
623-0941

GEORGE C. DALZELL

## QUALIFICATIONS

### EDUCATION:

GRADUATE OF COLGATE UNIVERSITY - 1967 - B A SOCIOLOGY

LICENSED REAL ESTATE BROKER

MEMBER, ASSOCIATION OF REAL ESTATE APPRAISERS

MEMBER, ROCKLAND COUNTY APARTMENT OWNERS ASSOCIATION INC.

### EXPERIENCE:

SINCE 1971 has been involved in selling, renting, appraising and managing Shopping Centers, Professional Buildings, Multi-Family Dwellings. Responsibilities include negotiations of all leases, and contracts for the maintenance of the Common areas, and contracts for the maintenance of the Common areas, and managing the budgets for said centers and the collection of all rents and other monies from tenants.

### PRESENTLY MANAGING: COMMERCIAL PROPERTIES:

- 1) Pacesetter Park Shopping Center,  
Pomona, New York
- 2) Lake Road Plaza  
Congers, New York
- 3) The Bardonia Mall  
Bardonia, New York

### RESIDENTIAL PROPERTIES

- |  |  |
|--|--|
| 1) Stratford Arms<br>Congers, New York       | 4) #7 Medway Avenue<br>Congers, New York   |
| 2) Briarwood Apartments<br>Congers, New York | 5) 27 North Route 303<br>Congers, New York |
| 3) #9 Friend Street<br>Congers, New York     |  |

  
George C. Dalzell

PACESETTER PARK PLAZA, ROUTE 202, POMONA, NEW YORK 10970

THE NEW WARRANTY STATUTE  
AND LEGISLATIVE HISTORY

AN ACT to amend the general business law in relation to warranties on sales of new homes

The people of the state of New York represented in senate and assembly do enact as follows:

Section 1. A new article thirty-six-B is added to the general business law to read as follows:

ARTICLE 36-B

WARRANTIES ON SALES OF NEW HOMES

Section 777. Definitions.

777-a. Housing Merchant Implied Warranty.

778-b. Exclusion or Modification of Warranties.

Section 777. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Builder" means any person, corporation, partnership or other entity contracting with an owner for the construction or sale of a new home.

2. "Building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law, local building code standards approved by the uniform fire prevention and building code council under section three hundred seventy-nine of the executive law, and the building code of the city of New York, as defined in title twenty-seven of the administrative code of the city of New York.

3. "Constructed in a skillful manner" means that workmanship and meet or exceed the specific standards of the applicable building code. When the applicable building code does not provide a relevant specific standard, such term means that workmanship and use of materials meet or exceed the standards of locally accepted building practices.

4. "Material defect" means actual physical damage to the following load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

5. "New home" or "home" means any single family house or for-sale unit in a multi-unit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative regime. Such terms do not include dwellings constructed solely for lease, mobile homes as defined in section seven hundred twenty-one of this chapter, or any house or unit which the builder has resided in or leased continuously for three years or more following the date of completion of construction, as evidenced by a certificate of occupancy.

6. "Owner" means the first person to whom the home is sold and, during the unexpired portion of the warranty period, each successor in title to the home and any mortgagee in possession. Owner does not include the builder of the home or any firm under common control of the builder.

7. "Plumbing, electrical, heating, cooling and ventilation systems" shall mean:

a. in the case of plumbing systems: gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system;

b. in the case of electrical systems: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection; and

c. in the case of heating, cooling and ventilation systems: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

8. "Warranty date" means the date of the passing of title to the first owner for occupancy by such owner or such owner's family as a residence, or the date of first occupancy of the home as a residence, whichever first occurs.

Section 777-a. Housing Merchant Implied Warranty.

1. Notwithstanding the provisions of section two hundred fifty-one of the real property law, a housing merchant implied warranty is implied in the contract or agreement for the sale of a new home and shall survive the passing of title. A housing merchant implied warranty shall mean that:

a. one year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

b. two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

c. six years from and after the warranty date the home will be free from material defects.

2. Unless the contract or agreement by its terms clearly evidences a different intention of the seller, a housing merchant implied warranty does not extend to:

a. any defect that does not constitute (i) defective workmanship by the builder or by an agent, employee, or subcontractor of the builder, (ii) defective materials supplied by the builder or by an agent, employee or subcontractor of the builder, or (iii) defective design provided by a design professional retained exclusively by the builder; or

b. any patent defect which an examination ought in the circumstances to have revealed, when the buyer before taking title or accepting construction as complete has examined the home as fully as the buyer desired, or has refused to examine the home.

3. In the case of goods sold incidentally with or included in the sale of the new home, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers and dryers, a housing merchant implied warranty shall mean that such goods shall be free from defects due to failure by the builder, or any agent, employee or subcontractor of the builder to have installed such systems in a skillful manner. Merchantability, fitness, and all other implied

warranties with respect to goods shall be governed by the part three of article two of the uniform commercial code and other applicable statutes.

4. a. Written notice of a warranty claim for breach of a housing merchant implied warranty must be received by the builder prior to the commencement of any action under paragraph b of this subdivision and no later than thirty days after the expiration of the applicable warranty period, as described in subdivision one of this section. The owner and occupant of the home shall afford the builder reasonable opportunity to inspect, test, and repair the portion of the home to which the warranty claim relates.

b. An action for damages or other relief caused by the breach of a housing merchant implied warranty may be commenced prior to the expiration of one year after the applicable warranty period, as described in subdivision one of this section, or within four years after the warranty date, whichever is later. In addition to the foregoing, if the builder makes repairs in response to a warranty claim under paragraph a of this subdivision, an action with respect to such claim may be commenced within one year after the last date on which such repairs are performed. The measure of damages shall be the reasonable cost of repair or replacement and property damage to the home proximately caused by the breach of warranty, not to exceed the replacement cost of the home exclusive of the value of the land, unless the court finds that, under the circumstances, the diminution in value of the home caused by the defect is a more equitable measure of damages.

c. In addition to any other period for the commencement of an action permitted by law, an action for contribution or indemnification may be commenced at any time prior to the expiration of one year after the entry of judgment in an action for damages under paragraph b of this subdivision.

5. Except as otherwise provided in section seven hundred seventy-seven-b of this article, any provision of a contract or agreement for the sale of a new home which excludes or modifies a housing merchant implied warranty shall be void as contrary to public policy.

6. Except as otherwise provided in section seven hundred seventy-seven-b of this article, other implied warranties may arise from the terms of the contract or agreement or from course of dealing or usage of trade.

777-b. Exclusion or Modification of Warranties. 1. Except in the case of a housing merchant implied warranty, the builder