

FIFTH AMENDMENT

To the Offering Plan of

**BELLEFAIR AT RYE BROOK  
HOME OWNERS ASSOCIATION, INC.**

King Street  
Rye Brook, New York 10573

Dated: May 15, 2001

The Offering Plan accepted for filing on or about June 23, 1998, amended on March 19, 1999 (First Amendment), July 26, 1999 (Second Amendment), February 22, 2000 (Third Amendment) and September 1, 2000 (Fourth Amendment), is hereby further amended as follows:

**I. SALE OF TWELVE TOWNHOUSES**

Special Risk Factor 1, at page 1 of the Offering Plan, is amended to the extent that the twelve (12) Townhouses will be offered for sale pursuant to the "Affordable Middle Income" requirements of the new Chapter 6 of the Code of the Village of Rye Brook. Among the requirements of Chapter 6 are the following:

**A. MAXIMUM INITIAL SALE AND RE-SALE PRICE.**

1. The initial sale price of an Affordable Middle Income Unit shall be not greater than \$198,900. On initial sales, the Sponsor shall pay at least one-half of the BelleFair Homeowners Association first year common charges for each Middle Income Unit, for the purpose of increasing its affordability to the initial purchaser.
2. Subsequent re-sales of the Affordable Middle Income Units by each owner thereof shall be at a set price not greater than the amount derived by multiplying the then prevailing Westchester County Median Income for a household of four established by the United States Department of Housing and Urban Development (or successor agency), by 2.39. The multiplier of 2.39 is the relationship between the Year 2000 Westchester County Median Income for a four person household of \$83,100 and the initial purchase price of \$198,900.

## B. INCOME ELIGIBILITY

A person or persons eligible to purchase an affordable middle income unit shall have a total household income of not more than 115% of the Westchester County Median Income for a four person household, as established by the United States Department of Housing and Urban Development (or successor agency) at the time of contracting for purchase.

## C. ELIGIBLE PURCHASER PRIORITIES

1. In addition to the income eligibility requirements, the Affordable Middle Income Units shall be sold and re-sold on the basis of the following priority or order:
  - (i) First Priority: Full-time employees of the Village of Rye Brook, Blind Brook - Rye Union Free School District, and the Port Chester - Rye Town Union Free School District, all with a minimum of one year of such employment.
  - (ii) Second Priority: Paid or volunteer firefighters of a fire department or fire company regularly providing fire services in the Village of Rye Brook, paid or volunteer members or employees of the Port Chester - Rye Brook Volunteer Ambulance Corp., and members of the Rye Brook Police Auxiliary, all with a minimum of one year membership or employment in such organization.
  - (iii) Third Priority: Full-time Rye Town employees, all with a minimum of one year of such employment.
  - (iv) Fourth Priority: Others.
2. A person falling into more than one Priority group shall be placed in the more favorable priority group.

## D. LOTTERY

In the event that eligible applicants exceed the affordable middle income units available for initial purchase, the Village of Rye Brook Administrator shall conduct, or cause to be conducted, a lottery for the selection of initial purchasers from among the eligible applicants already screened by Sponsor for income eligibility, preference group status, and creditworthiness. The date and location of the lottery shall be noticed as determined by the Village Administrator, and the lottery shall be conducted in public.

E. USE AND OCCUPANCY

An affordable middle income unit shall be owner-occupied. No affordable middle income unit shall be occupied by, or rented, leased or sub-let to, any person other than the purchaser and the purchaser's family.

The Village Administrator shall have the authority to determine cases of hardship which may warrant the waiver of the provisions of the above provision on a temporary basis. The determination of the Village Administrator in this regard, including but not limited to the establishment of conditions for such waiver, shall be final.

Annexed hereto as Exhibit "A", is a copy of the complete Chapter 6 of the Code of the Village of Rye Brook. A Declaration of Restrictive Covenants which outlines the resale and other requirements set forth above, will be recorded in the Westchester County Clerk's Office and will be an encumbrance on the lots of the twelve (12) affordable middle income units.

Other than as set forth above there are no material changes that require an Amendment to the Plan.

**THE BELLEFAIR HOME & LAND COMPANY**  
Sponsor

A LOCAL LAW amending the Code of the Village of Rye Brook to add a new Chapter 6 establishing the Affordable Middle Income Development Program at BelleFair.

BE IT ENACTED by the Board of Trustees of the Village of Rye Brook as follows:

Section 1. The Code of the Village of Rye Brook is amended to add a new Chapter 6, entitled "Affordable Middle Income Development Program at BelleFair," to read as follows:

## CHAPTER 6

### AFFORDABLE MIDDLE INCOME

#### DEVELOPMENT PROGRAM AT BELLEFAIR

##### §6-1. Purpose and intent.

This Chapter establishes criteria for the twelve affordable middle income units at BelleFair required under Condition 16 of the High Point Village (now BelleFair) PUD approval Resolution adopted by the Board of Trustees of the Village of Rye Brook on January 27, 1998. The purpose of this Chapter is to implement Condition 16 and thereby to encourage the development of additional housing options to assist in accommodating a Village and regional demographic need for affordable home ownership opportunities, to establish priorities intended to assist in attracting and retaining qualified Village, School District, Town, and emergency service organization personnel, and in encouraging residents to remain in the community.

##### §6-2. Affordable middle income units.

An affordable middle income unit under this Chapter shall be constructed, sold, re-sold, conveyed, and occupied only as provided in this Chapter.

§6-3. Construction of affordable middle income units.

The BelleFair Home and Land Company shall be responsible for constructing 12 affordable middle income units consistent with the approved site plan. Such units shall be constructed using materials, mechanical systems and exterior finishes as shown on the plans approved by the Village's Board of Architectural Review, and in accordance with, or at least equivalent to, the construction specification details approved by the Board of Trustees on February 13, 2001.

§6-4. Responsibility for initial sales.

The BelleFair Home and Land Company shall be responsible for the marketing and initial sales of the 12 affordable middle income units in accordance with the provisions of this Chapter. The Village of Rye Brook is not the seller, nor an agent for the seller of the affordable middle income units. However, the Village of Rye Brook may act during marketing to insure adequate outreach to prospective purchasers among those groups noted in §6.1 and 6.7. Prior to conducting marketing or initial sales, the BelleFair Home and Land Company shall execute and record a Declaration of Restrictive Covenant, satisfactory to the Board of Trustees, to establish permanent provisions addressing the sale and re-sale of the affordable middle income units in accordance with this Chapter, and will provide a copy of the recorded instrument to the Village. Said Declaration of Restrictive Covenant shall also be included by amendment in the BelleFair Homeowners Association Offering Plan, a copy of which shall be provided to each prospective purchaser.

§6-5. Maximum initial sale and re-sale price.

A. The initial sale price of an affordable middle income unit shall be not greater than \$198,900. On initial sales, the BelleFair Home and Land Company shall pay at least one-half of the BelleFair Homeowners Association first year common charges for each middle income unit, for the purpose of increasing its affordability to the initial purchaser.

B. Subsequent re-sale of the affordable middle income units by each owner thereof shall be at a set price not greater than the amount derived by multiplying the then prevailing Westchester County Median Income for a household of four established by the United States Department of Housing and Urban Development (or successor agency), by 2.39. The multiplier of 2.39 is the relationship between the Year 2000 Westchester County Median Income for a four person household of \$83,100 and the initial purchase price of \$198,900.

§6-6. Income eligibility.

A person or persons eligible to purchase an affordable middle income unit shall have a total household income of not more than 115% of the Westchester County Median Income for a four person household, as established by the United States Department of Housing and Urban Development (or successor agency) at the time of contracting for purchase. Income eligibility of prospective purchasers will be verified by the BelleFair Home and Land Company for initial sales. "Total household income" shall mean all current income of all household members from any source whatsoever at the time of contracting for purchase, but excluding earnings of working minors (under 21 years of age) attending school full-time.

§6-7. Eligible purchaser priorities.

A. In addition to the income eligibility requirements of §6-6, and notwithstanding any provision of the Code of the Village of Rye Brook to the contrary, affordable middle income units shall be sold and re-sold on the basis of the following priority or order:

1. First Priority: Full-time employees of the Village of Rye Brook, Blind Brook - Rye Union Free School District, and the Port Chester - Rye Town Union Free School District, all with a minimum of one year of such employment.

2. Second Priority: Paid or volunteer firefighters of a fire department or fire company regularly providing fire services in the Village of Rye Brook, paid or volunteer members or employees of the Port Chester - Rye - Rye Brook Volunteer Ambulance Corp., and members of the Rye Brook Police Auxiliary, all with a minimum of one year of membership or employment in such organization.

3. Third Priority: Full-time Rye Town employees, all with a minimum of one year of such employment.

4. Fourth Priority: Village of Rye Brook residents, all with a minimum of one year of Village residency.

5. Fifth Priority: Others.

B. A person falling into more than one Priority group shall be placed in the more favorable priority group, subject to the provisions of §6-9.

§6-8. Marketing and selection of initial purchasers.

A. The BelleFair Home and Land Company shall promote the availability of

applications for the purchase of twelve affordable middle income units, shall furnish and accept such applications and shall screen all accepted applications for income eligibility, preference group status and creditworthiness. For initial sales, the minimum one year employment, membership or residency set forth in §6-7 shall be established as of June 1, 2001. The Village of Rye Brook may assist in promoting the availability of applications to members of the priority groups identified in §6-7, and may sponsor Home buyers Workshops or other public education activities for those groups.

B. In the event that eligible applicants do not exceed the number of affordable middle income units for sale, the BelleFair Home and Land Company shall select initial purchasers from among eligible applicants based upon their priority group status, until all initial purchasers have been selected.

C. In the event that eligible applicants exceed the number of affordable middle income units for sale, the BelleFair Home and Land Company shall advise the Village Administrator who will conduct or cause to have conducted a Lottery in accordance with the procedures outlined in §6-9 below.

#### §6-9. Lottery.

A. In the event that eligible applicants exceed the affordable middle income units available for initial purchase, the Village Administrator shall conduct, or cause to be conducted, a lottery for the selection of initial purchasers from among the eligible applicants already screened by BelleFair Home and Land Company for income eligibility, preference

group status, and creditworthiness. The date and location of the lottery shall be noticed as determined by the Village Administrator, and the lottery shall be conducted in public. Initial purchasers for up to two-thirds of the affordable middle income units shall be selected by lottery from a pool comprised of eligible applicants in the First Priority group as described in §6-7. The initial purchaser or purchasers for any affordable middle income unit or units remaining after the first lottery shall be selected by lottery from a pool comprised of eligible First Priority group applicants not selected in the first lottery and eligible applicants from the Second Priority group. The initial purchaser or purchasers for any affordable middle income unit or units remaining after the second lottery, shall be selected from a pool comprised of eligible applicants not selected in the second lottery and eligible applicants from the Third Priority group. If necessary, further lotteries shall be conducted to select initial purchasers for remaining affordable middle income unit(s), based on the same principle used in prior lotteries. Eligible applicants not selected shall comprise a waiting list ranked in order of Priority group status. As soon as practicable after such lottery, the Village Administrator shall provide the BelleFair Home and Land Company with a listing of the initial purchasers in the order of their selection, together with the waiting list of eligible applicants.

C. All determinations made by the Village Administrator relating to the lotteries under this Chapter, including but not limited to the conduct of a lottery, the appeal of any determination made by the BelleFair Home and Land Company regarding ranking, eligibility of persons to be entered into the lottery, the length of time the list of initial

purchasers selected by lottery and waiting list of eligible applicants shall be effective, and a decision to conduct a new or supplemental lottery, shall be final.

§6-10. Initial and subsequent sales.

A. The BelleFair Home and Land Company shall offer the affordable middle income units for sale to initial purchasers selected in accordance with §6-8 or §6-9 above until all units have been sold to their initial purchasers. In the event that the initial purchaser does not sign and return the contract of sale within 7 days after the lottery, or does not close title within 60 days after the lottery, the BelleFair Home and Land Company shall offer such unit to the next eligible purchaser on the waiting list of eligible applicants to complete the sales of the affordable middle income units. The waiting list shall be exhausted prior to accepting new applications.

B. After the initial sale, the owner of the affordable middle income unit shall be responsible for such units re-sale in conformance with the provisions of this Chapter. The owner shall provide the Village Administrator with a Notice of Intent to Sell prior to entering into any contract for sale of the units. The Village Administrator will inform the owner in writing of the applicable income eligibility, maximum re-sale price, and priority groups established under this Chapter and the availability of a waiting list, if any. Selection of a purchaser from the initial waiting list shall be required within two (2) years from the date of the last closing of the initial twelve (12) units, unless that list becomes exhausted. An owner must demonstrate a diligent effort to sell a unit to a person in a higher Priority

Group before seeking to sell a unit to the next lower Priority Group to the satisfaction of the Village Administrator. Prior to closing, the owner shall demonstrate compliance under this Chapter to the satisfaction of the Village Administrator.

§6-11. Village administrator.

The Board of Trustees may by Resolution designate from time to time an official, board or entity, other than the Village Administrator, to fulfill the powers and duties of the Village Administrator under this Chapter. The Village Administrator may designate a consultant or agency to assist the Village Administrator in the administration of this Chapter with the approval of the Board of Trustees. The Village Administrator shall from time to time report to the Board of Trustees concerning the administration of this Chapter.

§6-12. Use and occupancy.

A. An affordable middle income unit under this Chapter shall be owner-occupied. No affordable middle income unit shall be occupied by, or rented, leased or sub-let to, any person other than the purchaser and the purchaser's family.

B. The Village Administrator shall have the authority to determine cases of hardship which may warrant the waiver of the provisions of §6-12 (A) above on a temporary basis. The determination of the Village Administrator in this regard, including but not limited to the establishment of conditions for such waiver, shall be final.

§6-13. Penalty.

A. Any person found guilty of a violation of this Chapter shall be liable to the penalties prescribed in Section 1-17 of the Code of the Village of Rye Brook.

B. In addition, the Village of Rye Brook may commence an action or proceeding in a court of competent jurisdiction to obtain injunctive relief to enforce the provisions of this chapter and/or to recover a civil penalty against a former owner of an affordable middle income unit of up to three times the amount received, upon an initial sale or re-sale of an affordable middle income unit, in excess of the maximum price under the provisions of this Chapter.

§6-14. Severability.

In the event any of the provisions of this Chapter are determined by a court of competent jurisdiction to be invalid or unlawful by a judgment or order, the remaining provisions of this Chapter shall not be affected and shall continue in full force and effect.

§2. This local law shall take effect immediately upon filing in the Office of the Secretary of State.