

**AMENDED, RESTATED AND SUPPLEMENTAL DECLARATION
OF
EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS,
CHARGES AND LIENS
OF
SUMMER WIND HOMEOWNERS'
ASSOCIATION, INC.**

AS AMENDED AT A SPECIAL MEETING OF MEMBERS

JUNE 1, 2019

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**AMENDED, RESTATED AND SUPPLEMENTAL DECLARATION
OF
EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, CHARGES AND LIENS
OF
SUMMER WIND HOMEOWNERS' ASSOCIATION, INC.**

THIS AMENDED, RESTATED AND SUPPLEMENTAL DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, CHARGES AND LIENS OF SUMMER WIND HOMEOWNERS' ASSOCIATION, INC. is made as of the First day of June, 2019, by Summer Wind Homeowners' Association, Inc., a Not-For-Profit Corporation organized and existing pursuant to the Laws of the State of New York, having its office at 5 Cassidy Drive, Saratoga Springs, New York 12866 (hereinafter referred to as the "Association").

WITNESSETH

WHEREAS, the original Declaration of Easements, Conditions, Charges and Liens with respect to Summer Winds Homeowners' Association in the City of Saratoga Springs, County of Saratoga, State of New York dated November 18, 1997, was recorded in the Saratoga County Clerk's Office in Book 1479 of Deeds at Page 212; and re-recorded on November 7, 2001 in the Saratoga County Clerk's Office Book 1596 at Page 207; and

WHEREAS, an Amended and Restated Declaration of Easements, Conditions, Charges and Liens with respect to Summer Winds Homeowners' Association bearing date of May 5, 2001 was thereafter recorded in the Saratoga County Clerk's Office on December 12, 2001 in Book 1599 of Deeds at Page 107; and

WHEREAS, for the purposes of protecting the Homes and Property comprising the Association, which constitutes an integrated, high quality residential community, and providing for common architectural and maintenance standards for enhancing and protecting the value, attractiveness and desirability of the Homes and Property, hereby declares that the Homes within the Association shall be held, sold, and conveyed subject to the following easements, covenants, conditions and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof; and

WHEREAS, the Association desires to provide for the preservation of the values and amenities in said community to this end desires to subject the Property described in Article II to the amended and restated 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, the Association is making this Amended, Restated and Supplemental Declaration to effect a number of revisions to the covenants, conditions, easements, restrictions, charges and liens governing the Property, including deleting all references to the original Declarant/Sponsor entity, as all Lots and Homes have been sold to Owners as of the date hereof, and accordingly this instrument is intended to incorporate, modify and replace the original

Declaration and the Amended and Restated Declaration.

NOW, THEREFORE, the Association, for itself, its successors and assigns declares that the Property described in Article II and in Schedule A hereof is and shall be held, transferred, sold, conveyed and occupied, subject to this amended and restated Declaration.

ARTICLE I DEFINITIONS

The following words, phrases or terms when used in this Declaration or any Supplemental Declaration unless otherwise defined therein, shall have the meanings set forth below:

(a) “Assessments” means, collectively, the Special Assessments and the Maintenance Assessments.

(b) “Association” shall mean and refer to the Summer Wind Homeowners' Association, Inc., a New York Not-For-Profit Corporation, incorporated on the 29th day of October 1997.

(c) “Association Property” or “Common Property” means all land, and any improvements thereon, easements, rights and appurtenances belonging thereto, heretofore or hereafter owned by the Association.

(d) “Board Of Directors” or “Board” means the Board of Directors of the Association.

(e) “By-Laws” means the By-Laws of the Association, as the same may be amended from time to time.

(f) “Declaration” shall mean and refer to this Amended and Restated and Supplemental Declaration of Easements, Covenants, Conditions, Restrictions, Charges and Liens as it may from time to time be supplemented, extended or amended, and also to all prior recorded versions of said Declaration that are intended to be replaced by, and merged and amended and supplemented by, this Declaration.

(g) “First Mortgage” means the first mortgage granted by an Owner on a Home or Lot to a bank, federal savings and loan association, life insurance company, pension fund, trust company or other institutional lender, licensed mortgage banker or broker, or an individual.

(h) “First Mortgagee” means the mortgagee, its representatives, assigns or other holder of a First Mortgage on a Home or Lot.

(i) “Home” means each completed Home situated upon the Property (as evidenced by issuance of a Certificate of Occupancy issued by the appropriate municipality), including the garage appurtenant to such Home, if any. Unless the context clearly indicates otherwise, the

term “Home” shall be deemed to include the term “Lot”.

(j) “Improvements” shall mean and refer to anything or device which, when placed on a Property, may affect the Property's appearance. Such thing or device may include (but not be limited to) any:

- 1.) Building, garage, shed, porch, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, signboard, clothesline, radio or television antenna;
- 2.) Fence, paving, wall, curbing, tree and shrubbery used as a screen planting between Lots;
- 3.) Temporary or permanent living quarters (including any mobile home) or any other temporary or permanent improvement to the Property.

Improvement shall also mean:

- 4.) Any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of surface waters in any natural or artificial stream, wash or drainage channel to, from, upon or across the Property; and
- 5.) Any change in the grade of any portion of the Property more than six inches.

(k) “Lot” means any portion of the Property (with the exception of Association Property) under the scope of this Declaration and identified as a separate parcel on the tax records of the City of Saratoga Springs, New York. Unless the context clearly indicates otherwise, the term “Lot” is included in the term “Home”.

(l) “Maintenance Assessments” means the charges levied by the Board of Directors against the Homes in accordance with Article V hereof to pay the cost of maintaining, repairing, improving and replacing the Association Property, together with such amounts deemed appropriate by the Board of Directors to be maintained as reserves for replacement of Association Property, and for administering the affairs of the Association.

(m) “Owner or Member” means , as set forth in Article II of the Bylaws, the holder of record title, whether one or more Persons, of fee simple title to any Home or Lot, whether or not such holder actually resides at such Home.

(n) “Person” means an individual, a corporation, a partnership, an estate, a trust, an unincorporated organization or any other entity.

(o) “Property” means all real property that now or in the future is subject to this Declaration, as described in Section 2.01 and Schedule A, including all land specified and shown in the Site Plan identified as Schedule B attached to this Declaration and incorporated by

reference, and the improvements thereon covered by this Declaration and such additions as may be made thereto from time to time and any additional property that may be subject to this Declaration pursuant to Section 2.02.

(p) “Rules and Regulations” means the Rules and Regulations, if any, promulgated by the Board of Directors pursuant to the By-Laws or this Declaration, as the same may be amended from time to time.

(q) “Site Plan” means the Planning Board approved and filed Subdivision Map of the Property, a copy of which is annexed hereto as Schedule “B”.

(r) “Special Assessments” means the charges levied by the Board of Directors against the Home or Lots in accordance with Article V hereof to pay for capital improvements or other necessary out of the ordinary expenses.

(s) “Voting Owner” or “Voting Member” means each Voting Member shall be entitled to cast one vote regardless of the number of Homes owned by such Member at all meetings and elections by Members. In the event that any Home is owned by more than one person, each Home shall designate one Member to be the Voting Member at each meeting requiring a vote to be cast.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01 Property Subject to Declaration.

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and is located in the City of Saratoga Springs, County of Saratoga, State of New York, is more particularly described and shown in the metes and bounds legal description annexed hereto as Schedule A and on the Site Plan annexed hereto as Schedule B.

Section 2.02 Additional Property.

The Association’s Board of Directors, by the affirmative vote of not less than three-fourths of the Association's Board of Directors, and with the affirmative vote of not less than 2/3 of all Voting Members cast at a Regular or Special Meeting, shall have the right to bring additional property within the scheme of this Declaration.

The additional property shall be incorporated into the Property and made subject to this Declaration by recording a supplemental declaration which shall extend the scheme of covenants, conditions and restrictions of this Declaration to such additional property and, if applicable, thereby subject such additional property to assessment for its fair share of the costs and expenses of the Association.

Nothing contained in this Declaration, however, or in any recorded or unrecorded plot, map, picture, drawing, brochure or other representation of a scheme of development shall be construed as requiring the Association to subject any other land now or hereafter owned by it to

the provisions of this Declaration regardless of whether such other land is governed by agreement similar or identical to the provisions of this Declaration.

ARTICLE III ASSOCIATION FORMATION AND MEMBERSHIP

Section 3.01 Formation of the Association.

Pursuant to the Not-For-Profit Corporation Law, the Association was formed to own, operate and maintain the Common Property, to enforce the covenants, conditions, and restrictions set forth in this Declaration and, to have such other specific rights, obligations, duties and functions as are set forth in this Declaration, and in the Certificate of Incorporation and By-laws of the Association, as the same may be amended from time to time. The provisions of the Certificate of Incorporation or By-Laws of the Association may not conflict or be inconsistent with the provisions of this Declaration, and may not be amended in any way which would so conflict without also amending this Declaration. Subject to any additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a corporation organized under the Not-For-Profit Corporation Law as the same may be amended from time to time.

Section 3.02 Membership.

As stated in Article II Section 2.01 of the Bylaws, only Owners shall be Members of the Association. Each Owner upon the date that title to the Home is transferred to said Owner shall be deemed automatically to be a Member of the Association, and there shall be no other qualification for Membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in Article I(n) of the Declaration. Membership of an Owner shall terminate when such Owner transfers title to the Home or Lot.

ARTICLE IV ASSOCIATION PROPERTY RIGHTS AND POWERS

Section 4.01 Dedication of Common Property.

The Common Property was conveyed to the Association, prior to the recordation of this Declaration. The Association has accepted such conveyance. The Association may also, from time to time, acquire or lease certain other properties for the use and enjoyment of its Members.

Section 4.02 Right and Easement of Enjoyment in Common Property.

Every Member shall have a right and easement of enjoyment in and to all Common Property, except if restricted pursuant to Section 4.04 hereof. All such rights, easements and privileges shall be subject, however, to the right of the Association, through its Board of Directors, to adopt and promulgate reasonable Rules and Regulations pertaining to the use, operation and maintenance of Common Property including fees associated therewith.

Section 4.03 Acquisition, Conveyance, Improvements and Changes in Use of Common Property.

(a) Subject to the limitations set forth in Subparagraphs (b) through (d) below, the Board of Directors of the Association, with the affirmative vote of not less than 2/3 of all Voting Members cast at a Regular or Special Meeting, and on such terms and conditions as it deems appropriate, may authorize:

1. The acquisition, through purchase, gift, lease or any combination thereof, of land or improvements or any combination thereof, for the use as a Common Property.
2. The transfer, conveyance, donation, lease or other disposition of Common Property or portion thereof.
3. The construction of improvements or the making of additions, modifications or alterations to, or the demolition of, Common Property.
4. The change in the use of any Common Property.

(b) Upon the affirmative vote of the Board of Directors proposing:

1. A transfer, conveyance, donation, lease or other disposition of Common Property (a "transfer") the effect of which will be to deprive or substantially limit the use and enjoyment of such Association facility by some or all Members; and/or
2. A change in use of Common Property (including, without limitation, construction of improvements such as to convert passive recreational or open space to active recreational use), which change in use will be a material alteration or abridgment to the use of such Common Property (hereinafter referred to as "material change in use");

The Board of Directors may hold informational sessions on the proposal. In addition to such informational sessions, not less than 20 days prior to the date of the session, the Board of Directors shall cause a copy of the notice to be mailed, emailed or delivered:

3. To all Members residing within 300 feet of any portion of the affected Common Property; and
4. To all Owners of Lots within 300 feet of any portion of the affected Common Property; and not less than 15 or more than 45 days after the hearing the Board of Directors shall vote on the proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the hearing. An affirmative vote of not less than 3/4 of the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall be in accord with Section 9.09 of this Declaration.

(c) If a proposed acquisition of land or improvements or the construction of improvements or the making of an addition, modification or alteration to, or the demolition of Common Property, will result in a change in the basis of the Assessments or the imposition of a

Special Assessment, the Board of Directors shall hold an informational session prior to finally authorizing such action.

(d) Prior to:

1. The making of an addition, modification or alteration to Common Property, or
2. The demolition of Common Property, or
3. The authorizing of a material change in use of Common Property, the Board of Directors shall consult with the Architectural Standards Committee as provided in Article VI hereof.

Section 4.04 Use and Maintenance of Certain Common Property.

Notwithstanding any of the provisions herein to the contrary, if the Board of Directors determines that any portion of the Common Property will primarily benefit one or more Owner (s) because of proximity to and principal use of such portion of the Common Property, the Board of Directors may either:

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

(b) Without formally restricting or limiting the use of such Common Property to such Owner(s), provide that maintenance and operation of such Common Property be the direct responsibility of such Owner(s), but only if each such Owner(s) consent(s) in writing thereto.

Section 4.05 Right to Borrow and Mortgage.

The Association, with the affirmative vote of 2/3 of all Voting Members cast at a Regular or Special Meeting, may borrow funds and in conjunction therewith may mortgage the Common Property or pledge or assign revenue from Assessments as security for the repayment of any loan. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with lenders shall be determined by the Board of Directors acting in its absolute discretion, subject only to the ability of the Association to repay such borrowed funds from Assessments or Special Assessments.

Section 4.06 Environmental Considerations.

In carrying out its responsibilities to enforce the provisions of this Declaration, and in particular the provisions of Section 7.08 herein, the Board of Directors of the Association, in consultation with the Architectural Standards Committee as provided in Article VI hereof, shall consider the environmental impact of any existing or proposed activities on the Property, or any portion thereof, and may in its discretion establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

**ARTICLE V
ASSOCIATION ASSESSMENTS**

Section 5.01 Obligations to Pay Assessments.

Each Owner of any Home or Lot brought under this Declaration whether or not it shall be expressed in any such deed or other instrument of conveyance, if any, shall be deemed to covenant and agree, to pay to the Association:

(a) Annual Assessments for the maintenance, repair, replacement, improvement and operation of the Association and its Property, and

(b) Special Assessments for capital improvements, as more fully set forth in Section 5.05 hereof (“Special Assessments”).

The Maintenance Assessments and the Special Assessments together being referred to herein as the “Assessments.”

Each Owner has an obligation to inform the Board of Directors of the sale of their Property, provide the purchasers’ identity and contact information whenever possible, and inform their buyers and real estate agents of the HOA and its mandatory membership of homeowners. Sellers’ Assessments should be fully paid at the time of sale.

Section 5.02 Determination of and Basis for Assessments.

The 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 or amendment to the budget to each Member within 30 days of adoption by the Board of Directors. 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 among, assessed to, and paid by the Members as follows: each Member shall for each Home or Lot owned by such Member pay an equal portion of said requirements..

Section 5.03 Establishment of Maintenance Assessment; Assessment Notice.

For each fiscal year, within 30 days of commencement thereof, based on the Association's budget for such year the Board of Directors of the Association shall (1) fix the Maintenance Assessment for each Home or Lot; (2) establish the due date or dates ("due dates") for payment of the Maintenance Assessment or installments thereof; and (3) provide the Owners with a copy of the new budget and amount of the Maintenance Assessment (the "assessment notice").

Section 5.04 Commencement of Obligation to Pay Assessments.

Subject to the provisions of Section 5.10 below, with respect to each Home or Lot, the Owner thereof shall become initially liable for the payment of Assessments commencing on the

date title to said Home or Lot is initially transferred to the Owner.

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

Section 5.05 Special Assessments for Capital Improvements.

(a) In addition to the Maintenance Assessments, the Association may from time to time levy Special Assessments, payable in the year levied and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction replacement, or repair of a capital nature to the Association Property, including the necessary fixtures and personal property related thereto; provided that for any Special Assessment for the construction (rather than reconstruction or replacement) of any capital improvement and for any Special Assessment amounting to more than one hundred percent (100%) of the then current amount of Maintenance Assessments, the consent of at least 2/3 of the Voting Members who are present in person or represented by proxy at a meeting duly called for such purpose must first be obtained.

(b) Written notice of such vote shall be given to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Member liable therefor in writing at least 30 days prior to such due date or dates.

Section 5.06 Effect of Nonpayment of Assessment.

(a) If a Maintenance or Special Assessment or installment payment thereof with respect to a Home or Lot, is not paid by the due date established pursuant to Section 5.03 or Section 5.07 hereof for the payment of such Maintenance or Special Assessment or installment payment, then such payment shall be deemed delinquent and shall (together with interest at a rate of 12% per annum on the amount due from the original due date, plus penalties and cost of collection including reasonable attorney's fees as may be fixed from time to time by the Board of Directors) be a lien on the Home or Lot. In addition to such lien, the then Owner of the Home or Lot may be held personally liable for payment thereof (including interest, penalties and cost of collection). Such personal liability with respect to a delinquent payment shall remain the personal liability of the then Owner until paid and shall be required to be assumed by any successors in interest to the Home or Lot. The Association may bring legal action for payment against the Owner (s) personally liable and/or may foreclose on the lien, as it deems advisable.

All sums assessed by the Board of Directors but unpaid, together with any accelerated installments, late fees and interest, including any fines or penalties, Assessments for violations of the Rules and Regulations together with any late charges and interest thereon at such rate as may be fixed by the Board of Directors from time to time (such rate not to exceed the maximum rate of interest then permitted by law), shall be the personal obligation of a Member and shall constitute a lien upon the Member's Home prior to all other liens except:

- (1) tax or assessment liens on the Home by any governmental authority, including but not limited to state, county, city, town and school district taxing agencies; and
- (2) all sums unpaid on any First Mortgage encumbering any Home.

Interest on Assessments and other amounts due hereunder shall begin to accrue on the 30th day after the date on which such Assessments or other amounts were due.

(b) Assessments shall be levied on an annual basis and shall be due and payable according to a schedule established by the Board of Directors annually. If no schedule is established, payment is due on the first day of each quarter: January, April, July and October. If an installment of Assessments is not paid within thirty (30) days from date due, the Board of Directors may accelerate the remaining monthly or other periodic installments for the balance of the fiscal year, if any, upon notice thereof to the delinquent Member, and thereafter commence appropriate legal proceedings, including but not limited to a foreclosure action. All costs and expenses incurred in collection of past due Assessments, including reasonable attorneys' fees, shall also be the personal obligation of the Member and a lien against the Home.

(c) Any amounts collected with respect to past due Assessments shall be applied in the following order: reasonable attorney's fees, other costs of collection, interest, late charges and the balance, if any, to the Assessments in inverse order of their due dates.

Section 5.07 Foreclosure of Lien for Past Due Assessments.

The lien for past due Assessments may be foreclosed by the Association in accordance with the laws of the State of New York, in like manner as a mortgage on real property. The Association shall also have the right to recover all costs incurred by it in pursuing such right including penalties and reasonable attorneys' fees, and the same shall constitute a lien against the Home. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments, the unpaid balance shall continue to be the personal obligation of the Owner. However, where a First Mortgagee of record, or other purchaser at a foreclosure sale of a First Mortgage, obtains title to the Home as a result of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for, and the Home shall not be subject to, a lien for the payment of Assessments chargeable to such Home which were assessed and became due prior to the date of the foreclosure public auction. In such event, the unpaid balance of Assessments may be charged equally to all other Owners as determined by the Board of Directors. A suit to obtain a money judgment for past due Assessments may be maintained without foreclosing or waiving the lien securing the same.

Section 5.08 Notice of Default.

The Board of Directors, when giving notice to a Member of a default in paying Assessments or any other default, may, at its option, or shall, at the written request of a First Mortgagee, send a copy of such notice to the First Mortgagee of such Home whose name and

address appear on the Book of First Mortgagees of the Association. The First Mortgagee shall have the right to cure the Member's default with respect to the payment of said Assessments or other default which could result in the creation of a lien against the Home.

Section 5.09 No Exemption or Waiver of Assessments.

Every Member shall pay the Assessments assessed against his Home when due and no Member may exempt himself from liability for the payment of Assessments by waiver of the use or enjoyment of any of the Association Property or by the abandonment of his Home. However, no Member shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him of such Home made in accordance with the Real Property Law or in accordance with the provisions of this Declaration and the By-Laws.

Section 5.10 Grantee to be Liable with Grantor for Unpaid Assessments.

In any conveyance of a Home either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Home shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and levied to the time of the grant or conveyance without prejudice to the Grantee's right to indemnification from the Grantor therefor. "Grantee" as used herein shall not include either a First Mortgagee or a purchaser of a Home at a foreclosure sale of a First Mortgage or a Person who obtains title to a Home by means of a deed in lieu of foreclosure.

Section 5.11 Assessment Certificates.

Upon written request of a Member or lessee with respect to a Home (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Home), the Association shall, within a reasonable period of time, issue and furnish a certificate signed by an officer or designee of the Association setting forth with respect to such Home as of the date of such certificate (a) whether the Assessments, if any, have been paid, (b) the amount of such Assessments, including interest and costs, if any, due and payable as of such date, and (c) whether any other amounts or charges are owing to the Association (e.g. for the cost of extinguishing a violation of this Declaration, the By-Laws or the Rules and Regulations). A reasonable charge, as determined by the Board of Directors, may be imposed for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee, mortgagee, or title insurer of the Home with respect to which such certificate has been issued. If such certificate is issued via email, the Assessment Certificate shall be deemed signed by the sender.

Section 5.12 Use of Funds.

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

Section 5.13 Association Funds and Assets-No Right to Assign, Encumber, Hypothecate or Pledge.

Although all funds and other assets of the Association, and any profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, encumber, hypothecate, pledge or in any manner transfer his membership or interest in or to said funds or assets, except as an appurtenance to his Home. When an Owner of a Home shall cease to be a Member of the Association by reason of divestment of ownership of said Home, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association.

**ARTICLE VI
CONTROL**

Section 6.01 Control by Association.

Enforcement of this Declaration with respect to control over any change in use or any additions, modifications, or alterations to any Home or improvement on any Lot or portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee, as directed by the Board of Directors and the Bylaws of the Association, and as stated in Sections 6.02-6.14 below.

Section 6.02 Submission and Review of Applications and Plans Submitted to the Architectural Standards Committee.

No addition, modification, or alteration shall be made to a Home nor shall any improvement be made on or to any Lot or portion of the Property without prior approval from the Architectural Standards Committee. The Committee shall determine the form and number of copies of the application and plans to be provided.

The applicant will also furnish the Owner of each contiguous Lot within the development with a copy of the application and plans at the same time. The Owner of a contiguous Lot shall have 7 days from the date of the Owner's receipt of the application to either notify the Committee, in writing, that the Lot Owner wishes to appear before the Committee on the matter or to provide written comment on the application.

The applicant and Owners of contiguous Lots wishing to be heard on the matter will be notified by the Committee of the date, time and place of its meeting on the application and will be given the opportunity to be heard at that meeting.

If the Committee, by majority vote, determines that it needs the assistance of an expert (e.g. engineer, architect or surveyor) to properly evaluate an application, it will notify the applicant of the need and inform the applicant of the cost, which must be borne by the applicant. The applicant must give written consent for hiring the expert. If no consent is given, the Committee shall be under no duty to proceed with its evaluation and may deny the application.

No Association funds shall be expended without the approval of the Board of Directors.

Section 6.03 Basis for Disapproval of Plans by Architectural Standards Committee.

The Architectural Standards Committee may disapprove any plans submitted pursuant to Section 6.02 above for any of the following reasons:

(a) Failure of such plan to comply with any protective covenants, conditions and restrictions contained in this Declaration and which benefit or encumber the applicant's Lot or any contiguous Lot or other portion of the Property;

(b) Failure to include information in such plans as requested;

(c) Objection to the site plan, exterior design, appearance or materials of any proposed improvements, including, without limitation, color or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness of any proposed improvements;

(d) Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

(e) Failure of the proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules or regulations.

(f) Any other matter which in the judgment and sole discretion of the Architectural Standards Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof, or with Homes or other improvements or uses in the vicinity.

Section 6.04 Approval of the Architectural Standards Committee.

A majority vote of the entire Architectural Standards Committee shall be required for the approval or qualified approval of any plans submitted pursuant to Section 6.02 above. Upon approval or qualified approval by the Architectural Standards Committee of any plans submitted pursuant to Section 6.02 above, the Architectural Standards Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualification or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualification and conditions, if any) and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided:

(i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in this Declaration which benefit or encumber the Lot or portion of the Property, and

(ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Standards Committee to disapprove

similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 6.05 Written Notification of Disapproval.

In any case where the Architectural Standards Committee disapproves any plans submitted hereunder, the Architectural Standards Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 6.02. In any such case, the Architectural Standards Committee shall, if requested and if possible, make reasonable efforts *to* assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 6.06 Appeal of Architectural Standards Committee Decisions.

Any Owner whose application to the Architectural Standards Committee is disapproved by the Committee or has received a notice of violation may petition the Board of Directors, in writing, for a review of that decision or notice. Such written appeal petition must be made no later than 30 days after the Committee has notified the Owner of its decision. The Owner's petition shall inform the Board of the Owner's objections to the Committee's decision. The Board shall schedule a review meeting no later than 30 days after the receipt of the Owner's written petition at which the Owner, a representative of the Committee, and any other Member of the Association will present to the Board their respective positions regarding the Committee's decision. The Board shall render a decision on the appeal no later than 10 days after the meeting. The Board's decision shall be made by a vote of the majority of its members and shall be binding on both the Owner and the Committee.

An Owner of a Lot contiguous to an applicant's Lot may appeal an approval by the Committee to the Board provided such appeal is made, in writing, within 5 days of the Committee's decision. The Board shall follow the same process outlined above in reviewing the decision. The applicant may not move forward with the proposed action until the Board has rendered its decision.

Section 6.07 Failure of Committee to Act.

If any applicant has not received written notice of the Architectural Standards Committee approving or disapproving any plans within 30 days after submission thereof, said applicant may notify the Committee in writing of that fact. The plans shall be deemed approved by the Committee unless written notice to the contrary or of necessary delay is given by the Committee to the applicant by the later of:

- (a) 15 days after the date of such applicant's written notice of failure to act, if such notice is given;
- (b) 60 days after the date the plans were originally submitted.

Section 6.08 Architectural Standards Committee's Right to Promulgate Rules and Regulations.

The Architectural Standards Committee may from time to time, in consultation with the Board of Directors, promulgate rules and regulations governing the form and content of plans to be submitted for approval and the standards and criteria to be applied by the Committee for determining approval or disapproval of certain types of alterations, additions or modifications to improvements or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Standards Committee or the Board of Directors to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of this Declaration, the Bylaws of the Association or any applicable governmental law, code, ordinance, rule or regulation.

Section 6.09 Delegation of Functions.

The Architectural Standards Committee may authorize its staff or any member of the Architectural Standards Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or member, and the functions and scope of authority have been established by a resolution of the entire Architectural Standards Committee. The approval or disapproval of plans by the staff or member will be subject, however, to the reasonable review of the Architectural Standards Committee, in accordance with procedures to be established by the Committee.

Section 6.10 Records of Meetings and Regulations.

The Architectural Standards Committee shall keep minutes of all electronic, teleconference and face-to-face meetings, and maintain records of all votes taken at such meetings. The Architectural Standards Committee shall make such records and current copies of rules and regulations available at reasonable places and times for inspection by any Member. It shall notify any Owner applying for permission and the contiguous Lot Owners of its decision no later than two days after it has voted on the application. The Committee chairman will provide the Board with a summary of all decisions made no later than three days after the Committee has met.

Section 6.11 Liability of Architectural Standards Committee.

No action taken by the Architectural Standards Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulation, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including, without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Standards Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Standards Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission, and

that such applicant shall save, hold harmless and indemnify the Association, the Board of Directors, its officers and the Architectural Standards Committee and the employees, agents or representatives of all of the foregoing from and against any and all liability arising from or related to said application.

Section 6.12 Architectural Standards Committee Certificate.

Upon request of any Owner, (or any prospective Owner; mortgagee or title insurer) of a Home or Lot or other portion of the Property, The Architectural Standards Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing signed by a member of the Architectural Standards Committee stating, as of the date of such certificate, whether or not the Home or Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of this Declaration respecting the exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, for issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated between the Association and any bona fide purchaser of, mortgagee, or title insurer of, the Home or Lot or other portion of the Property in question. The Architectural Standards Committee will notify the Board of Directors of any such certificates issued within three days of issuance.

Section 6.13 Establishment of Fines and Penalties.

The Board will establish and from time to time adjust, in consultation with the Architectural Standards Committee, a schedule of fines and penalties for violation of the architectural standards or review process. The schedule will define the actions for which penalties are appropriate and the fine that must be paid and/or remedial action that must be taken by the Owner, provided, however, in the event a particular violation has not been specifically identified by the Board, the Board may nevertheless impose a fine in such amount as the Board in its sole discretion deems warranted under the particular circumstances.

Section 6.14 Notice and Appeals Procedure.

The Architectural Standards Committee may issue a written notice of violation of the architectural standards or review process to any Owner. The notice will be sent by certified mail, return receipt requested, with a copy by first class mail to the President of the Board and inform the Owner of the specific details of the alleged violation(s) including, but not limited to, dates, policy violated and potential fine and/or mandated remediation. The notice will also inform the Owner of the appeals process, outlined in Section 6.06, which the Owner may wish to use to appeal a decision finding a violation or imposing a fine.

ARTICLE VII GENERAL COVENANTS AND RESTRICTIONS

Section 7.01 Maintenance.

The Association will provide care and maintenance upon the Member's Lot, limited to the following: trimming grass, fertilizing lawns, and removing snow from fire hydrants, driveways, front walks and sidewalks adjacent to the road whenever the snowfall from a single storm exceeds 3 inches in depth. Payment for such care or maintenance shall be assessed against the Lot or Home upon which the services are performed and shall be added to and become part of the annual Maintenance Assessment or charge to which such Lot or Home is subject, and, as part of such annual Assessment, it shall be a lien and obligation of the Owner in all respects. (See Article V. of this Declaration).

Any agent of the Association may at any reasonable time enter upon, across, over and through the Lot or any other portion of the Property for the purpose of providing such care and maintenance.

The Owner of a Lot or other portion of Property shall keep the Lot and all improvements thereon in good order and repair, including, but not limited to, seeding, watering, pruning and cutting all trees and shrubbery, and painting or other appropriate external care of the Home and other improvements thereon, all in a manner and with such frequency as is consistent with good Property management.

Section 7.02 Signage.

No sign, which for the purpose of this section shall be deemed to include, but not limited to a flag, banner, display advertising communication in any form or media, or any other statement device of any nature, shall be placed for display to the public view on such Home or other portion of Property.

Usage of the following is allowed subject to Architectural Standards Rules and Regulations, including but not limited to placement, size and duration of display, which may change from time to time.

- Temporary signs advertising Property for sale or rent
- Small decorative garden banners and flags
- Political signs
- Contractor signs
- Holiday decorations
- American and State flags hung respectfully

Any signs in existence on the date of the recording of these restrictions must be removed within 90 days of such date to avoid being in violation of these restrictions,

Section 7.03 Animals, Birds and Insects.

No animals, birds or insects shall be kept or maintained on such Lot or other portion of the Property other than for domestic purposes except with the consent of the Architectural Standards Committee which may, from time to time, impose reasonable rules and regulations setting forth the type and number of animals, birds and insects that may be kept on any Lot or other portion of the Property and may prohibit certain types of animals, birds or insects entirely.

Section 7.04 Protective Screening and Fences.

Any screen planting, fence enclosures or walls initially constructed on a Lot or other portion of the Property shall be maintained by the Owner of said Lot or other portion of the Property and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Standards Committee. Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon any Lot or other portion of the Property unless approved by the Architectural Standards Committee. Notwithstanding the foregoing, no fence, wall, or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 7.05 Garbage and Refuse Disposal.

Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "trash") shall be kept, stored, or allowed to accumulate outdoors on any Lot or other portion of the Property, except in sanitary containers and screened from adjacent and surrounding Lots or other portions of the Property. Such containers may be placed in the open within 24 hours of a scheduled pick-up. The Board of Directors, with respect to Lots or other portions of the Property, may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any Lot or other portion of the Property. All facilities for the storage or disposal of trash shall be kept in a clean and sanitary condition.

Section 7.06 Utility Easements.

There is hereby created a blanket easement upon, across, over, through and under the Property subject to this Declaration for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to, sewers, water, gas, telephones, electricity, television, cable or communications lines and systems. By virtue of this easement, it shall be expressly permissible for the Owner or providing utility or service company to maintain facilities and equipment on said Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under roofs, floors, slabs and exterior walls of the residences provided the Owner or utility or service company restores disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewers, water or electrical lines may be installed or relocated on the said Property except as originally constructed or approved by the City of Saratoga Springs prior to the conveyance of the first Home or Lot to an Owner or by the Architectural Standards Committee thereafter. This easement shall in no way affect any other recorded easements on said Property. This easement shall be limited to improvements as

originally constructed.

Section 7.07 Drainage Easements.

Each Owner shall maintain and repair any drainage facilities on such Owner's Lot. Each and every other Owner shall have the right to enter upon the drainage easement areas of any other Lot for the purpose of installing, maintaining and repairing the drainage facilities of such Owner's Lot. Unless required by law, the City of Saratoga Springs shall not be responsible for the maintenance and repair of the drainage facilities and such maintenance and repair shall be the responsibility of the Owners.

Section 7.08 Noxious or Offensive Activities.

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

Section 7.09 Encroachments.

If a structure located primarily on one Lot inadvertently encroaches not more than three feet upon another Lot, or, as a result of settling or shifting of such structure or portion thereof, there shall be implied an easement for such encroachments and for the maintenance of same so long as such encroaching improvement or portion thereof shall stand.

Section 7.10 Oil and Mining Operations.

No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth (except soil borings in connection with the improvement of said portion of the Property.) and no derrick or other structure designed for use in boring for oil or natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Architectural Standards Committee.

Section 7.11 Dwelling in Other Than Homes.

No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage or building in the course or construction or other temporary structure shall be used, temporarily or permanently, as a dwelling or for habitation on any Lot or other portion of the Property except with the consent of the Architectural Standards Committee.

Section 7.12 Television and Radio Antennas.

The Architectural Standards Committee may promulgate rules and regulations regarding location, color, landscaping and safety of exterior antennas and dishes provided that such rules and regulations do not interfere with the function of the antenna nor result in an unreasonable delay or cost to the Owner.

Section 7.13 Trees and Other Natural Features.

Except as provided below, and except in the event of an emergency defined as immediate danger to person(s) or property(ies), or presenting an immediate danger to foot and/or street traffic, no trees having a diameter of four (4) inches or more, as measured from a point two feet above ground level, shall be removed from any Lot or other portion of the Property without the permission of the Architectural Standards Committee. The Architectural Standards Committee, with the approval of the Board of Directors, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

Section 7.14 Use and Maintenance of Slope Control Areas.

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

Section 7.15 Snowmobiles.

No snowmobile, all-terrain vehicle or similar type motor vehicle shall be operated on any portion of the Property except with the written consent of the Association.

Section 7.16 Non-Discrimination in Sale or Rental.

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

Section 7.17 Depositing Ashes, Snow, Ice, Stones, Sticks, Et Cetera Upon the Roads.

No Owner or resident shall deposit or throw loose stones in the gutter or grass adjoining a road, or shall deposit or throw upon a road, ashes, papers, snow, ice, stones, sticks or other rubbish.

**ARTICLE VIII
ADDITIONAL COVENANTS AND RESTRICTIONS**

Section 8.01 Residential Use Only.

Homes, Lots or other portions of the Property shall be used only for residential purposes and home occupation offices and purposes incidental and accessory thereto, as permitted by applicable zoning requirements.

Section 8.02 No Division of Lots or Change in Form of Ownership.

No Lot or portion of the Property designated for residential use shall be split, divided, or subdivided for sale, resale, gift, lease, transfer or otherwise (including, but not necessarily limited to, conversion to a condominium, cooperative, or townhouse-for-sale form of ownership).

Section 8.03 Outside Storage.

There shall be no outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers except as may be permitted by the Architectural Standards Committee (unless prohibited altogether by the applicable zoning requirements.)

Section 8.04 Outdoor Repair Work.

No extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Architectural Standards Committee.

**ARTICLE IX
ENFORCEMENT, AMENDMENT AND DURATION OF
DECLARATION**

Section 9.01 Declaration Runs With the Land.

Each Person acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for him, her or itself for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration, and also covenants and agrees to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property, but the failure to do so shall not in any manner effect the validity or enforceability of this Declaration.

Section 9.02 Enforceability.

The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Association (the

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

Section 9.03 No Waiver by Failure to Enforce.

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

Section 9.04 Obligation and Lien for Cost of Enforcement by Association.

If the Association successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, the By-Laws, or any of the Rule or Regulations promulgated hereunder, the costs of such action, including all reasonable legal fees, shall become a binding, personal obligation of the violator. If such violator is an Owner, such cost shall also be a lien upon the Home or Lot owned by such violator.

In addition, or as an alternative, to an action at law or suit in equity, the Board of Directors may, with respect to any violation of this Declaration or of the By-Laws or any Rules and Regulations of the Association or any Committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary fines, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person.

Monetary fines and penalties imposed against an Owner, lessee or occupant shall be deemed an Assessment against the Lot owned or occupied by the violator, and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Owner and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 9.05 Inspection and Entry Rights.

Any agent of the Association (or the Architectural Standards Committee) may at any reasonable time or times enter upon any Lot to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of a Home or other structures or other improvements thereon comply with this Declaration, or with the Rules and Regulations issued hereunder, for the purpose of inspecting certain trees in accordance with Section 7.13 herein.

Neither the Association (nor the Architectural Standards Committee thereof) nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Standards Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or Property or obscures the view of street traffic or is otherwise in violation of Sections 7.01 and 7.04 hereof, the Association shall notify the Owner of the Lot who shall be obligated to remedy the violation. If the Owner fails to remedy the violation within 7 days after such notice is given, then the Association may take such remedial action to rectify the condition. The cost of the work shall be assessed against the Lot upon which the services are performed and shall be added to and become part of the annual Maintenance Assessment to which such Lot or Home is subject, and, as part of such annual Assessment, it shall be a lien against such Lot or Home and the obligation of the Owner in all respects, except the payment for any work performed pursuant to this section shall be due upon presentation to the Owner, either in person or by regular mail, of the Association's invoice therefor. Default in prompt and full payment within 30 days from the date the original due date shall entitle the Association to twelve (12%) percent per annum interest on the amount due from the date of the invoice, plus penalties and cost of collection including reasonable attorney's fees as may be fixed by the Board of Directors, and which shall also constitute a lien upon the Lot or the Home and be the personal obligation of the Owner thereof.

Section 9.06 Amendments.

Except as otherwise specifically provided for herein, the Board of Directors on its own initiative, or pursuant to a written petition signed by not less than 25 percent of all of the Voting Members of the Association, may propose an amendment to this Declaration.

The Board of Directors may hold an informational session for the purpose of considering such proposed amendment. The proposed amendment and any such informational session date, time and location shall be mailed, emailed or delivered to all Members not less than 10 nor more than 30 days prior to the date set for such session.

Not less than 30 nor more than 60 days after the informational session, the Members shall vote on the proposed amendment. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors may have made as a result of the written and oral comments received from Members, and a ballot shall be mailed, emailed or delivered by the Board of Directors to all Members not less than 15 days prior to the date or dates set for the canvass thereof.

The affirmative vote of not less than 2/3 of the total number of Voting Members shall be required for approval of a proposed amendment.

Any approved amendment to this Declaration shall become effective only when an instrument containing such amendment has been duly recorded in the Office of the Clerk of the County of Saratoga and upon such recording shall be binding upon all of the Property unless otherwise specifically provided in such amendment. Such instrument need not contain written consent of the required number of Voting Members but shall contain a certification by the Board of Directors that the consents required for such amendment have been received and filed by the Board.

Section 9.07 Duration.

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, 2050, unless otherwise expressly limited herein, after which time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by two-thirds (2/3) of all the Voting Members has been recorded, (and notice of such recording given to all Owners at least 30 days prior to the then-current expiration date of this Declaration), stating that such extension shall not take effect. However, certain easements and provisions as described herein as being perpetual, run with the land and shall survive such termination, unless said provisions are terminated by the unanimous written consent of all the Members.

Section 9.08 Construction and Interpretation.

The Board of Directors shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction or interpretation shall be binding as to all Members, persons or Property benefited or bound by the provisions hereof.

The Board of Directors may adopt and promulgate reasonable Rules and Regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such Rules and Regulations, and making any findings, determinations, ruling, or orders or in the issuance of permits, authorizations or approvals, the Association's Board of Directors and the Architectural Standards Committee shall take into consideration the best interests of the Owners and Members and of the Property to the end that the value and amenities of the Property shall be preserved and maintained.

Section 9.09 Conflict with Municipal Laws.

This Declaration shall not be construed as permitting anything prohibited by the applicable zoning laws, or any other applicable laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease and no action may be taken hereunder which would so violate such applicable zoning laws, other laws, ordinance, rules, regulations or restrictions. In the event of any conflict, the more restrictive provision shall be deemed to govern and control or, in the event of a direct contradiction or incompatibility, the applicable law, ordinance, rule, or regulation of the governmental entity shall control.

Section 9.10 Invalidity of Declaration.

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

**ARTICLE X
GENERAL**

Section 10.01 Heading and Caption.

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

Section 10.02 Notice.

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 emailed or mailed, postage prepaid, or otherwise delivered to the last known address of the Member or Owner on the records of the Association.

Section 10.03 Right of Association to Transfer.

Notwithstanding any other provision herein to the contrary, the Association, by the affirmative vote of not less than two-thirds (2/3) of all the Voting Members, shall at all times have the absolute right to transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation, trust, or governmental entity and upon such assignment the successor corporation, trust, or governmental entity shall have all the rights and be subject to all the duties of the Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof to the same extent as if the successor corporation, trust or governmental entity had been an original party to this Declaration, and all reference herein to Board of Directors shall refer to the board of directors, trustees or governing board of such successor corporation, trust or governmental agency. Any such assignment shall be accepted by the successor corporation, trust or governmental entity under a written agreement pursuant to which the successor corporation, trust or governmental entity shall expressly assume all the duties and obligations of the Association, however, a failure to accept in writing shall in no way alter the obligation of the successor to be bound by all the provisions of this Declaration. If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, trust or governmental entity, the covenants, easements, charges and liens imposed hereunder, and under any supplemental declaration, trust agreement, or other agreement, shall nevertheless continue and any Owner or Member may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation, trust or governmental entity to take over the duties and responsibilities of the Association subject to the conditions provided for in this Declaration.

IN WITNESS WHEREOF, pursuant to the authority of the Certificate of the Board of Directors attached hereto, this Amended, Restated and Supplemented Declaration has been duly executed as of the date first above written.

SUMMER WIND HOMEOWNERS' ASSOCIATION, INC.

By: _____

Rita M. Lashway, President

State of New York }
 } ss.:
County of _____ }

On the _____ day of _____, in the year 2019 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**Certificate of Board of Directors of Summer Wind
Homeowners' Association, Inc.**

The undersigned, being all of the Directors of the Summer Wind Homeowners' Association, Inc. hereby certify pursuant to Section 9.06 of this Amended, Restated, and Supplemental Declaration of Easements, Covenants, Conditions, Restrictions, Charges and Liens with respect to Summer Wind Homeowners' Association, Inc. (which Declaration, dated November 18, 1997, was recorded in the Saratoga County Clerk's Office on January 2, 1998 in Book 1479 of Deeds at Page 212, and re-recorded on November 7, 2001 in Book of Deeds 1596 at Page 207; and was Amended and Restated by Declaration of Easements, Conditions, Charges and Liens with respect to Summer Winds Homeowners' Association bearing date of May 5, 2001 and recorded in the Saratoga County Clerk's Office on December 12, 2001 in Book 1599 of Deeds at Page 107; that at a Special Meeting of Summer Wind Homeowners' Association, Inc. duly held on June 1, 2019, the requisite affirmative vote of at least 2/3 of all Members were cast at such Special Meeting in favor of the foregoing Amendments to the Amended and Restated Declaration to which this Certificate is attached, and that no holder of a first mortgage on any Unit has requested the Association in writing to provide it notice of such Special Meeting and the proposed Amendments to the Amended and Restated Declaration to be recorded herewith. Accordingly, the consents required by Section 9.06 have been received and filed with the Board of Directors.

Dated: July 8, 2019

RITA M. LASHWAY

MARSHALL KLEIN

MONICA KO

MICHAEL RILEY

RICHARD SWANTEK

MARIE HOENINGS

State of New York }

instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York }
 }ss.:
County of _____}

On the _____ day of _____, in the year 2019 before me, the undersigned, personally appeared MARIE HOENINGS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public