

Appendix M Draft Homeowners' Association Documents

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

OF

SEVEN PEAKS AT MOUNTAIN ROAD HOMEOWNERS' ASSOCIATION, INC.

SPONSOR:

**MOUNTAIN ROAD PRESERVE, LLC
10 Route 17K
P.O. Box 1040
Bloomingburg, New York 12721**

DATE OF DECLARATION: _____, 2009

**Please Record and Return to:
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260**

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
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SEVEN PEAKS AT MOUNTAIN ROAD HOMEOWNERS’ ASSOCIATION, INC.

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
OF
SEVEN PEAKS AT MOUNTAIN ROAD HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS (the "Declaration") is made and dated effective the ____ day of _____, 2009 by Mountain Road Preserve, LLC, a Delaware limited liability company, authorized to do business in New York, with offices at 10 Route 17K, Bloomingburg, New York 12721, hereinafter being referred to as "Sponsor."

W I T N E S S E T H:

WHEREAS, the Sponsor owns a certain parcel or parcels of real property located in the Town of Mamakating, Sullivan County, New York, said parcel or parcels being more particularly described in Schedule A, attached hereto and by reference made a part hereof; and

WHEREAS, the Sponsor intends to develop said real property into a residential community known as "Seven Peaks at Mountain Road" (the "Community") consisting of approximately ___ acres on which may be constructed up to ___ single family detached homes and related improvements, including, without limitation, roads and utilities; and

WHEREAS, the Sponsor desires that the amenities of the lands described be available for the use and enjoyment of the residents of the Community; and

WHEREAS, the Sponsor also desires to provide for the development and use of lands within the Community and the preservation of the values and amenities in said residential community and, to these ends, to subject the real property described in Schedule A to the Covenants, Conditions, Restrictions, Easements, Charges and Liens (sometimes hereinafter referred to as the "Covenants, Conditions and Restrictions") hereinafter set forth, each and all of which is and are for the benefit of said real property and each Member (as hereinafter defined) of the Association referred to herein, and to provide for the future subjection of such other areas as may not be initially developed to such Covenants, Conditions and Restrictions; and

WHEREAS, the Sponsor has deemed it desirable for the efficient preservation of the values and amenities in said residential community to create an organization to which should be delegated and assigned the powers (among others) of: (i) maintaining, repairing, replacing and operating the Association and the Association Property (as hereinafter defined); (ii) administering and enforcing the Covenants, Conditions and Restrictions; and (iii) collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Sponsor has incorporated the SEVEN PEAKS AT MOUNTAIN ROAD HOMEOWNERS' ASSOCIATION, INC. under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid powers (among others);

NOW, THEREFORE, the Sponsor, for itself, its successors and assigns, declares that the real property described in Article II of this Declaration, is and shall be held, transferred, sold, conveyed, leased, occupied, used and improved subject to the Covenants, Conditions and Restrictions hereinafter set forth, and the other terms and conditions of this Declaration, all of which shall run with the land.

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings:

(a) **APPLICABLE LAW** means statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, restrictions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Association, the Property or any part thereof or the conduct of work on the Property or any part thereof or to the operation, occupancy, use, manner of use or condition of the Property or any part thereof, including but not limited to (1) the Not-For-Profit Corporation Law of New York State; (2) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Property; (3) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing; (4) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority; and (5) Environmental Laws.

(b) **ASSESSMENTS** means charges for the maintenance, repair, replacement and operation of the Association and the Association Property as more fully described in Article V of this Declaration and includes Special Assessments for capital improvements, Maintenance Assessments and any other charges deemed to be assessments pursuant to this Declaration or the By-Laws.

(c) **ASSOCIATION** or **HOMEOWNERS' ASSOCIATION** means the **SEVEN PEAKS AT MOUNTAIN ROAD HOMEOWNERS' ASSOCIATION, INC.**, a New York not-for-profit corporation, its successors and assigns.

(d) **ASSOCIATION PROPERTY** or **PROPERTY** means all land, improvements existing and to be erected thereon, and all easements, rights and appurtenances belonging thereto, and all other property, real personal or mixed, heretofore or hereafter owned by the **ASSOCIATION**, including, without limitation, the Private Roadways, the gatehouse and the hiking and horseback riding trails.

(e) **AUTHORIZED VOTING OWNER** means the person named in a certificate signed by all Owners of the Unit and filed with the secretary of the Association. If no such

certificate is on file, the person or entity first named on the deed by which title to the Unit is obtained shall be the person considered the Authorized Voting Owner.

(f) **BOARD OF DIRECTORS** or **BOARD** means the Board of Directors of the Association elected by the Members and/or appointed by the Sponsor to manage the affairs of the Association.

(g) **BY-LAWS** means the By-Laws of the Association as the same may be amended from time to time.

(h) **DECLARATION** means this Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Seven Peaks at Mountain Road Homeowners' Association, Inc., as the same may be supplemented, extended or amended from time to time.

(i) **DIRECTOR** means a member of the Board of Directors.

(j) **ENVIRONMENTAL LAWS** means all laws, statutes, ordinances, rules, regulations, orders, decrees or requirements of all Governmental Authorities regulating, relating to or imposing liability or standards of conduct concerning the use, storage, treatment, transportation, manufacture, release, refinement, handling, production and/or disposal of Hazardous Materials, or otherwise pertaining to environmental protection, as now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 5101 et seq., the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the New York State Environmental Quality Review Act; the New York State Environmental Conservation Law; and the New York State Navigation Law; together with all amendments thereto and all substitutions therefore, and all rules and regulations promulgated thereunder and all amendments to and substitutions for the rules and regulations.

(k) **FIRST MORTGAGE** means the first mortgage in the terms of priority, at the time in question, on a Unit granted by a bank, federal savings and loan association, life insurance company, pension fund, trust company or other institutional lender or the Sponsor.

(l) **FIRST MORTGAGEE** means the owner of a First Mortgage.

(m) **GOVERNMENTAL AUTHORITY** means the United States, the State of New York and any political subdivision of either of them, and any agency, department, commission, board, bureau, improvement district or instrumentality of any of them.

(n) **GUEST** means any family member, employee, agent, independent contractor, tenant, licensee, customer or invitee of a Member and any family member, employee, agent, independent contractor, tenant, licensee, customer or invitee of a tenant or invitee of a Member.

(o) **HAZARDOUS MATERIALS** means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including, without limitation, petroleum, petroleum by products, under-ground storage tanks, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), and soil vapor intrusion, as such terms are used in any Environmental Laws.

(p) **LAND** means the real property located in the Town of Mamakating, Sullivan County, New York, which is subject to this Declaration, more particularly described in Schedule "A" attached hereto and made a part hereof or in any Supplemental Declaration as provided in Article II hereof.

(q) **LOT** means any portion of the Land (with the exception of Association Property and property owned by a Governmental Authority) which is (1) identified or intended to be identified as a separate parcel on the tax records of the Town of Mamakating, Sullivan County, New York or (2) shown as a separate Lot upon the Subdivision Map in the Sullivan County Clerk's Office.

(r) **MEMBER** means each member in the Association, as described in Article III hereof.

(s) **OWNER** or **UNIT OWNER** or **HOMEOWNER** means the holder of record title, whether one or more Persons, of fee simple title to any Unit (including, without limitation, a Lot), whether or not such holder actually occupies such Unit (or Lot) and shall include the Sponsor with respect to any Unsold Units.

(t) **PERSON** means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated organization or any other legally formed and existing entity.

(u) **PRIVATE ROADWAYS** mean any and all roads or streets in the Community which are shown on the Subdivision Map (including, without limitation, bridges, overpasses and underpasses) and which are not owned by a Governmental Authority. The term "Private Roadways" does not include the driveways located on the Lots.

(v) **PROJECTED UNIT** means any Unit contemplated by the Sponsor for construction on any parcel of land subject to this Declaration or potentially subject to this Declaration as provided in Section 2.02(b) hereof.

(w) **RULES AND REGULATIONS** means the Rules and Regulations of the Association governing the development, use, occupancy and care of the Association Property and the Units as they may be promulgated, from time to time, by the Sponsor or the Board of Directors pursuant to the By-Laws and as the same may be amended from time to time.

(x) **SITE PLAN** means the Subdivision Map.

(y) SPONSOR means Mountain Road Preserve, LLC, a Delaware limited liability company, its successors and assigns.

(z) SUBDIVISION or COMMUNITY means the community known as “Seven Peaks at Mountain Road” located in the Town of Mamakating, New York, as shown on the Subdivision Map.

(aa) SUBDIVISION MAP means (1) the subdivision map entitled “_____” dated _____, 20__, last revised _____, 20__, prepared by _____ and filed in the Sullivan County Clerk’s Office on _____, 20__ in Drawer ____ as Map No. ____; and (2) any other subdivision map or maps filed, from time to time, in the Sullivan County Clerk’s Office relating to any other portion of the Land.

(bb) SUPPLEMENTAL DECLARATION means any supplemental declaration supplemental hereto or amendatory hereof executed in accordance with the provisions hereof.

(cc) TRANSFER OF CONTROL DATE means the earliest to occur of the following: (1) the date on which the Sponsor has transferred title to all Units and Projected Units in the Community to third-party purchasers; (2) the date which is fifteen (15) years after the date on which the Sponsor has transferred title to the first Unit; or (3) the date which is thirty (30) days after the date on which the Sponsor has notified the Board of Directors of the Association in writing that the Sponsor is relinquishing control of the Board of Directors.

(dd) UNIT or HOME means each completed single family dwelling situated on a Lot as evidenced by a Certificate of Occupancy issued by the Town of Mamakating, New York or other appropriate municipal entity. Unless the context clearly indicates otherwise, the terms "Unit" and “Home” shall be deemed to include the term "Lot."

(ee) UNSOLD UNIT or UNSOLD LOT means any Unit or Lot owned by the Sponsor or its designee other than a Unit purchased by, and for the personal use of, an affiliate or principal of the Sponsor or held by the Sponsor for personal use or investment.

Section 1.02 Interpretation. In this Declaration, unless the context otherwise requires:

(a) The terms hereby, hereof, herein, hereunder and any similar terms as used in this Declaration refer to this Declaration as a whole, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Declaration.

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number, and vice versa.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 2.01. The Property Subject to this Declaration. The real property to be initially held, transferred, sold, conveyed, used and occupied subject to this Declaration is located in the Town of Mamakating, Sullivan County, New York, all of which property is more particularly described in Schedule "A" attached hereto and made a part hereof.

Section 2.02. Additional Property.

(a) Subject to subparagraph (b) of this Section, upon approval in writing of the Association pursuant to a majority vote of its Members as provided in its By-Laws, the owner of any property who desires to add such property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may do so by means of a Supplemental Declaration as set forth in 2.02(c) hereof.

(b) Notwithstanding the above or anything in Section 10.06 hereof to the contrary, the Sponsor may (but is under no obligation to) extend the provisions of this Declaration, from time to time, to all or any portion of land more particularly described in Schedule "B" attached hereto and made a part hereof, without obtaining the approval of the Members of the Association or any other Person, by the recording in the Sullivan County Clerk's Office of one or more Supplemental Declarations, as provided in Section 2.02(c) hereof, with respect to the additional property.

(c) Such Supplemental Declaration or Supplemental Declarations shall extend the provisions of this Declaration to such additional lands and the owners of such lands shall automatically become Owners subject to, and entitled to the benefit of, this Declaration, the By-Laws and the Rules and Regulations including, without limitation, the obligation to pay Assessments for their proportionate share of the expenses of the Association. The Supplemental Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added property as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the provisions of this Declaration with respect to lands which were already subject to this Declaration.

(d) Until the Transfer of Control Date, the provisions of this Section 2.02 may not be amended without the prior written consent of the Sponsor.

Section 2.03. Mergers. Upon a merger or consolidation of the Association with another Association as provided in the Association's Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the Covenants, Conditions and Restrictions established by this Declaration within the Property, together with the Covenants, Conditions and Restrictions

established upon any other properties. No such merger or consolidation, however, shall affect any revocation, change or addition to the provisions of this Declaration within the Property, except as hereinafter provided.

ARTICLE III THE ASSOCIATION: STRUCTURE AND MEMBERSHIP

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of the State of New York, as amended, the Sponsor has formed the Association to own, operate, maintain, repair and replace the Association Property, 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, the Certificate of Incorporation, the By-Laws or the Rules and Regulations. Subject to the additional limitations provided in this Declaration, the By-Laws or the Certificate of Incorporation, the Association shall have all the powers of, and be subject to the limitations on, a not-for-profit corporation as contained in the New York State Not-For-Profit Corporation Law, as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners of Units in the Community and the Sponsor. All Owners shall, upon becoming such, be deemed automatically to have become Members in 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 the interest described in the definition of the word "Owner" as found in Article I of this Declaration. Once a Person ceases to be an Owner, he shall automatically and simultaneously cease to be a Member in the Association. At such time, if ever, as the Sponsor transfers title to all Units and Projected Units, the Sponsor shall cease to be a Member.

Section 3.03. Holder of Security Interest Not a Member. Any Person which holds an interest in a Unit merely as security for the performance of an obligation shall not be a Member and shall have no voting rights.

Section 3.04. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.

(a) Notwithstanding anything to the contrary contained in this Declaration, until the Transfer of Control Date, the Board of Directors may not, without the Sponsor's prior written consent, which consent will not unreasonably be withheld, except for necessary repairs, alterations, additions or improvements required by Applicable Law or by any Governmental Authority or the Board of Fire Underwriters: (1) make any repair, addition, alteration or improvement to the Association Property; (2) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses; (3) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association; (4) enter into any service or maintenance contract for work not provided for in the initial budget, except for the maintenance of an improvement not in

existence or owned by the Association at the time of filing of this Declaration; (5) borrow money on behalf of the Association; or (6) reduce the quantity or quality of services or maintenance of the Property.

(b) This Section shall not be amended without the prior written consent of the Sponsor until the Transfer of Control Date.

**ARTICLE IV
PROPERTY RIGHTS AND EASEMENTS**

Section 4.01. Conveyance of Association Property.

(a) The Sponsor will convey, or cause to be conveyed, to the Association subsequent to the recordation of this Declaration and at or prior to the conveyance of the first Unit in a phase, title to the Association Property in that phase, for the use and enjoyment of the Members and their Guests.

(b) The Association must accept any such conveyance made for a nominal consideration of One (\$1.00) Dollar by the Sponsor. The instrument or instruments conveying such property to the Association shall include a statement that such property has been designated as Association Property (but the failure to include such statement shall not affect the validity of the transfer). No portion of the Property shall be subject to the rights and easements of enjoyment and privileges herein granted unless and until the same shall have been so designated and, in the case of real property, the above described instrument has been recorded in the Sullivan County Clerk's Office in accordance with the procedure provided herein.

Section 4.02. Right and Easement of Enjoyment in Association Property.

(a) Every Member (and such Member's Guests) shall have a right and easement of use and enjoyment in common with others in and to all Association Property. Such rights and easements shall be appurtenant to and shall pass with the interests of a Member. All such rights and easements shall be subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Sponsor as set forth in Sections 4.08 and 4.09 herein.

(b) Every Member (and such Member's Guests) shall have an easement in common with others for ingress and egress by vehicle or otherwise over and to all Association Property and further shall have common utility and conduit easements as described in Section 4.06 of this Declaration. Such rights and easements shall be appurtenant to and shall pass with the interests of a Member. Such rights and easements will be subject to the rights of the Association as set forth in Section 4.03 of this Declaration and to the rights of the Sponsor as set forth in Sections 4.08 and 4.09 of this Declaration.

(c) The Association Property and each Unit shall be subject to an easement for encroachments created by design, construction (including, without limitation, engineering and surveying errors), settling and overhang of the Units or other improvements as designed or

constructed. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

Section 4.03. Rights of Association. With respect to the Association Property, and in accordance with the Certificate of Incorporation and the By-Laws of the Association, the Board of Directors of the Association shall have the right, from time to time:

(a) To lease, dedicate, convey and grant easements, rights of way or licenses across, over, in, on, through, under and onto the Association Property to any utility company, Governmental Authority or cable television company or franchisee with or without monetary or other consideration and upon such other terms as the Board shall determine.

(b) To grant easements, rights of way or licenses across, over, in, on, through, under and onto the Association Property to any Person not described in Section 4.03(a) hereof, with or without monetary or other consideration and upon such other terms as the Board shall determine.

(c) To lease or convey all or any part of the land which it owns to any Person not described in Section 4.03(a) for such purposes and subject to such conditions as may be agreed to by the Association and the transferee, subject to the following:

(1) such lease or conveyance shall require the consent of two-thirds (2/3) of all Members other than the Sponsor;

(2) any lease or conveyance by the Association prior to the transfer by the Sponsor of title to all Units and Projected Units, shall also require the prior written approval of the Sponsor unless the Sponsor waives such right in a written agreement recorded in the Sullivan County Clerk's Office; and

(3) no such lease or conveyance shall be made if First Mortgagees of one-third (1/3) or more of the Units advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition shall not be unreasonable. Written notice of any proposed conveyance shall be sent to all First Mortgagees not less than thirty (30) days nor more than ninety (90) days prior to the date set for voting on the proposed conveyance.

(d) To enter into agreements, reciprocal or otherwise, with other associations, condominiums and cooperatives whose purchasers or owners are not Members for the use of, or sharing of, Association Property. Such agreements shall require the consent of two-thirds (2/3) of all Members other than the Sponsor.

(e) To borrow funds from any recognized lending institution and in conjunction therewith, to mortgage and pledge the Association's properties and income (including, without limitation, the Assessments). No such mortgage or pledge, however, shall encumber or otherwise interfere with the easement of ingress and egress of the Members as described in this Article. The amount, terms, rate or rates of all borrowing and provisions of all agreements with lenders

shall be subject to the approval of at least two-thirds (2/3) of the entire Board of Directors of the Association.

(f) To contract with any Person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives and other associations both within and without the Community.

(g) To charge reasonable fees for the use of Association Property by non-Members.

(h) To promulgate rules and regulations relating to the operation, use, occupancy and maintenance of Association Property and the Units (including, without limitation, the Lots).

Until the Transfer of Control Date, the Board of Directors may not exercise any rights set forth in this Section 4.03 without the prior written consent of the Sponsor.

Section 4.04. Maintenance of Association Property. In order to preserve and enhance the values and amenities of the Property, the Association shall at all times maintain the Association Property in good repair and condition as a high-end luxury community and shall operate such Association Property in accordance with high standards

Section 4.05. Rights of Association with Respect to the Property. With respect to all real property described in Schedule "A" to this Declaration and any other real property made subject to this Declaration subsequent hereto, the Association (and its contractors, employees, and agents) and its Members shall have an easement and right of way:

(a) For ingress and egress by vehicle or on foot in, through, over, under, across and onto the Private Roadways, driveways and walkways, now existing and/or which may be constructed in the future, for the Members of the Association and their Guests (except those areas which are restricted in use to a particular Owner or Person);

(b) To connect with and make use of utility lines, wires, pipes, conduits and appurtenances thereto (including but not limited to sanitary sewers, storm water management facilities and improvements, drainage, water, electric, telephone, and cable television) to serve the Association Property and to maintain, repair and replace same, subject to any permits and approvals required by any Governmental Authority and the applicable utility company.

(c) For the installation, construction, inspection, maintenance, repair and replacement of such other utility lines, wires, pipes, conduits and appurtenances thereto (including but not limited to sanitary sewers, storm water management facilities and improvements, drainage, water, electric, telephone, and cable television) which the Association deems necessary to service its Property, provided such lines, wires, pipes, conduits and appurtenances thereto do not substantially and materially interfere with the rights of the Members, subject to any permits and approvals required by any Governmental Authority and the applicable utility company. The cost of any such installation, construction, inspection, repair, maintenance or replacement as provided for in this Section shall be at the sole cost and expense of the Association.

Section 4.06. Common Utility and Conduit Easement. Every Member shall have an easement in common with others to maintain, repair, replace and use all pipes, wires, conduits, drainage areas, utility lines and cable television lines located on another Lot or on Association Property and servicing such Member's Unit subject to any permits and approvals required by any Governmental Authority and the applicable utility company. Such easement shall include the right of reasonable access by vehicle and on foot onto such Lot and Association Property for such maintenance, repair and replacement.

Section 4.07. Environmental Consideration. In carrying out its responsibilities in enforcing the provisions of this Declaration, the Association 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 activities which could have adverse environmental impact or take affirmative action to improve the quality of the environment, and shall comply with all Applicable Laws. So long as the Sponsor has any Unsold Units in the Community, no such standards or guidelines may be established without the Sponsor's prior written consent. Prior to the Transfer of Control Date, this section may not be amended without the prior written consent of the Sponsor.

Section 4.08. Rights of Sponsor With Respect to Association Property and the Lots.

(a) With respect to Association Property, the Sponsor shall have the right, until the construction, marketing and sale of all Units and Projected Units are completed, provided the rights of the Members are not substantially and materially restricted:

(1) to grant and reserve permanent easements and rights-of-way to any Person for the installation, construction, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits, and appurtenances thereto including, but not limited to sanitary sewer, storm water management facilities and improvements, drainage, water, electric, telephone, and cable television to serve any property set forth in Schedule "A" or Schedule "B" hereof even if such property should not be added to the scope of this Declaration;

(2) to connect with and make use of the Private Roadway and utility lines, wires, pipes, conduits, and appurtenances thereto located on the Association Property for the benefit of any area or areas included in the property described in Schedule "A" or Schedule "B" hereof or any additional lands even if such area or additional lands should not be added to the scope of this Declaration;

(3) to use the Association Property for ingress and egress by vehicle and on foot and for the storage of building materials and construction equipment;

(4) to have prospective purchasers and others visit, use and enjoy the Association Property;

(5) to maintain a construction office and sales office on the Association Property and in one or more Units and, subject to compliance with all Applicable Laws, to erect maintain, repair, replace or remove, from time to time, one or more signs on the Association Property and the Units for the purpose of advertising the sale or lease of any of the Units;

(6) to determine the grading, elevation and design (including reversal of the building layout and number of floors) of the plot and buildings to fit into the general pattern of the development, together with the right to alter interior layouts to suit individual purchasers, provided such alterations do not materially affect the Association Property; and to alter location on the site if the grade and/or contour of the land so requires (in the judgment of the Sponsor);

(7) to change or alter the location of any Private Roadways (or any portion thereof) so long as such change or alteration does not result in the taking of any part of an Owner's Unit (including, without limitation, any portion of the Lot) without the consent of the affected Owner;

(8) to dedicate all or any portion of the Private Roadways to a Governmental Authority;

(9) to grant to itself or to others such easements and rights-of-way as may be reasonably needed or desirable (in the judgment of the Sponsor) for the beneficial and orderly development and sale of any property, even if such property should not be added to the scope of this Declaration; without limiting the generality of the foregoing, the Sponsor retains the right to grant easements and rights of way to the owner of the parcel of land labeled on the Subdivision Map as _____ [REFERENCE RESTAURANT PARCEL][and such owner's, successors and assigns for the development, use and enjoyment of such parcel by such owners, its heirs, successors and assigns and their invitees, employees, contractors, visitors and guests (including, without limitation, access easements by vehicle and on foot over the Private Roadways); and

(10) to grant to itself or to others such easements and rights of way as may be reasonably necessary or desirable (in the Sponsor's judgment) to complete the construction and installation of the Units and the Association Property, the sale and marketing of the Lots and the development of the Community, when and as needed.

(b) In the event there are encroachments created by construction (including, without limitation, engineering and surveying errors), settling and overhang of the Units or other improvements as designed or constructed, easements are reserved over the adjoining Lots or Association Property for such purpose as the case may be, a valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

(c) Minor violations of building setback, sidelines and common area may be waived at any time by the Sponsor and such action on the part of the Sponsor shall be binding upon, and be considered the act of, all Owners.

(d) The Sponsor hereby reserves for itself, its successors and assigns an easement and right of way in, on, over, across and under the ten foot (10') wide strips of land running along the front, sides and rear boundary lines of each of the Lots for the purpose of the installation, maintenance, repair and replacement of utility (including, without limitation, gas, electric, water, sanitary sewage, telephone, storm water improvements and facilities) mains, lines, poles, pumps, valves, pipes, culverts, meters, wires and appurtenances thereto and an easement and a right of way of access to, from and across the Lots by vehicle and by foot for such purposes.

(e) The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon, and for the benefit of, the Association, the Sponsor and their respective successors and assigns.

(f) With respect to its exercise of the above rights, the Sponsor agrees (1) to repair any damage resulting from construction done by or at the direction of the Sponsor within a reasonable time after the completion of development or when such rights are no longer needed by the Sponsor, whichever first occurs; and (2) until development has been completed, to hold the Association harmless from all liabilities which are directly caused by the Sponsor's negligent exercise of its rights under this Section 4.08.

(g) This Section 4.08 shall not be amended without the prior written consent of the Sponsor until the Transfer of Control Date.

Section 4.09. Easements Reserved to Sponsor for Benefit of Additional Property.

(a) Easements are reserved herein to, and for the benefit of, the Sponsor over, across, on, under, through, onto and in all property covered by this Declaration for the benefit of other lands described in Schedule "B" of this Declaration for the following purposes:

(1) Ingress and egress by vehicle or on foot over the Private Roadways, driveways and walkways now existing or hereafter constructed on the Association Property;

(2) To connect with and make use of utility lines, wires, pipes conduits and appurtenances thereto (including but not limited to sanitary sewers, storm water management facilities and improvements, drainage, water, electric, telephone, and cable television) and to maintain, repair and replace same, subject to any approvals required by any Governmental Authority;

(3) For the installation, construction, maintenance, repair, replacement and inspection of such other utility lines, wires, pipes, conduits and appurtenances thereto (including but not limited to the sanitary sewers, storm water management facilities and improvements, drainage, water, electric, telephone, and cable television) which the Sponsor (in its sole discretion) deems necessary to service such other lands, provided such lines do not substantially and materially interfere (temporary inconvenience shall not be prohibited) with the rights of the Owners of the Units, subject to any approvals

required by any Governmental Authority and the applicable utility company. The cost of any such construction, installation, repair, maintenance, replacement or inspection as provided for in this Section shall be at the sole cost and expense of the owners of the other lands;

(4) To connect utilities to adjoining property whether currently owned by Sponsor or purchased by Sponsor in the future. Sponsor, upon accomplishing the connection of utilities to adjoining property, whether currently owned by Sponsor or purchased by Sponsor in the future, will return the Association Property to its original condition as nearly as practicable.

(b) Upon connection of lines and/or facilities servicing such land area comprising any additional property, should such lands not be added to the scope of this Declaration, the owners of such lands shall, nevertheless, pay to the Association a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.10. Distribution of Condemnation Awards.

(a) In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings (or threat thereof), the award from such proceedings shall be paid to the Association. The Board of Directors shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association property, then the proceeds shall be distributed in the same manner as insurance proceeds in accordance with Article XI of this Declaration.

(b) In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

Section 4.11. Non-Discrimination by Association. Neither the Association nor any officer, Director, agent, committee, member or committee member or employee thereof shall make unavailable or deny the occupancy or use of the Association Property to any Person or Persons, or take any other action which discriminates on the basis of race, religion, color, sex, sexual orientation national origin or anything otherwise prohibited by Applicable Law.

Section 4.12. Subject to Easements, Restrictions and Notes on Subdivision Map. In addition to all other recorded easements, restrictions and covenants, the Association Property and the Units are hereby made subject to any and all easements, covenants, restrictions and notes shown or set forth on the Subdivision Map, which easements, covenants, restrictions and notes are incorporated herein by reference as if set forth in this place in full.

ARTICLE V
ASSESSMENTS: ALLOCATION, LIEN AND LIABILITY

Section 5.01. Creation of the Obligation.

(a) The Sponsor, for each Unit owned by it which is within the scope of this Declaration, hereby covenants, and each Member, for each Unit owned by said Member, shall be deemed, by acceptance of a deed or other instrument of conveyance, to covenant and agree to pay, and shall pay, to the Association whether or not such covenant and agreement shall be expressed in such deed or other instrument:

(1) Annual assessments of charges for the maintenance, repair and operation of the Association, the Association Property, including but not limited to, utility lines servicing the Property, grounds maintenance, snow and ice removal with respect to the Private Roadways and the other items referred to in Section 5.03 hereof ("Maintenance Assessments");

(2) Special assessments for capital improvements within the meaning of Section 5.06 hereof ("Special Assessments");

(3) Property taxes on Association Property, if any, if such taxes are not included in the Assessments.

(b) The Maintenance Assessments, the Special Assessments and any other charge set forth in this Declaration or the By-Laws which is referred to as an "assessment" being collectively referred to herein as "Assessments". The Assessments shall be fixed, assessed, levied, established and collected from time to time as hereinafter provided.

Section 5.02. Basis.

(a) 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, maintenance, repair and replacement of the Association and its Property and shall send a copy of the budget and any supplement to the budget to each Member at least thirty (30) days prior to assessing the Members thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual amount, and any supplemental amounts, shall be allocated among, assessed to, and paid by the Members as follows: Each Member shall pay a portion of said amounts, the numerator of which portion shall be equal to the number of Units (including Lots) owned by the Member and the denominator of which shall be equal to the number of Units (including Lots) subject to this Declaration.

(b) Notwithstanding anything in this Declaration to the contrary, the Sponsor's obligation for Assessments on Unsold Units shall not exceed the difference between the actual operating expenses of the Association, including reserves, if any, and Assessments levied

(whether or not collected) on all other Owners. In no event, however, shall the Sponsor be required to make a deficiency payment in an amount greater than the product of the number of Unsold Units subject to this Declaration multiplied by the average Maintenance Assessment for the fiscal year in question levied against Unit Owners other than the Sponsor.

(c) The sum due the Association from each individual Member shall constitute an Assessment, and unpaid Assessments shall constitute liens on the individual Units, subject to foreclosure as hereinafter provided.

(d) The failure or delay of the Board to prepare or adopt a budget or budgets for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any Owner from the obligation to pay Assessments. If, in a given year, the Board fails to adopt a budget or budgets on time, then the Assessments last determined for any fiscal year or portion thereof with respect to the budget or budgets not timely adopted shall continue thereafter to be the Assessments payable by the Owners until a new budget or budgets, as the case may be, are duly adopted.

(e) Notwithstanding anything in this Declaration to the contrary, any charges or sums, which, pursuant to the terms of this Declaration, are expressly deemed to be Assessments which are to be charged or levied against a specific Unit Owner and shall be charged or levied solely against such Unit Owner and not be allocated to the other Unit Owners.

Section 5.03. Purpose. The purposes of the Maintenance Assessments shall be to fund the operation, maintenance, repair, replacement and improvement of the Association and its Property and the promotion of the safety and welfare of the Owners and the preservation of property values, including, but not limited to the payment of:

- (a) the taxes on the Association Property, if any;
- (b) any utility services to the Association Property, which are commonly metered or billed;
- (c) all casualty, liability and other insurance premiums for the insurance obtained pursuant to Article XI of this Declaration;
- (d) landscaped and green areas and any other facilities that may be added to the Association Property.
- (e) the cost of labor (including, without limitation, employees of the Association), equipment, materials, management and supervision thereof;
- (f) accounting and record keeping of all Association financial transactions;
- (g) legal, architect, engineering and other professional fees and disbursements;
- (h) the obligations of the Association set forth in Section 6.01 hereof; and

(i) such other items as may arise and which the Board of Directors deems appropriate or desirable to meet.

Section 5.04. Date of Commencement and Notice Thereof. The Assessments provided for herein shall commence as to all Units on the first day of the calendar month following the month in which title to the first Unit is conveyed by the Sponsor to the initial purchaser. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors.

Section 5.05. Change in the Basis.

(a) The Association may change the basis of determining the Maintenance Assessment by obtaining the vote of not less than two-thirds (2/3) of all Members, excluding the Sponsor, voting in person or by proxy except that: (1) until the Transfer of Control Date, any change in the basis of Assessments which adversely (in the Sponsor's sole judgment) affects the interests or rights of the Sponsor with respect to Unsold Units shall require the prior written consent of the Sponsor; and (2) no such change shall be made if First Mortgagees of one-third (1/3) or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition shall not be unreasonable. Written notice of such change shall be sent to all Owners and First Mortgagees of Units whose names appear on the records of the Association at least thirty (30) days in advance of the date or initial date set for voting thereon. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Sullivan, State of New York.

(b) Any change in the basis of Assessments shall be equitable and non-discriminatory.

Section 5.06. Special Assessments for Capital Improvements.

(a) In addition to the annual Maintenance Assessment, the Board may levy a Special Assessment, for the purpose of paying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction, replacement or repair of a capital nature of the Association Property, including the necessary fixtures and personal property related thereto; provided that for any Special Assessment for the construction (rather than reconstruction, replacement or capital repair) of any capital improvement and for any Special Assessment amounting to more than twenty-five (25%) of the then current amount of annual Maintenance Assessments, (1) the consent of two-thirds (2/3) of the Members who are present in person or represented by proxy or absentee ballot at a meeting duly called for this purpose is obtained; and (2) prior to the Transfer of Control Date, the prior written consent of the Sponsor is obtained.

(b) Notice of any meeting at which the Board shall vote on or intend to vote on levying a Special Assessment, which levy does not require a vote of the Members, shall be sent to all Members at least thirty (30) days in advance of said meeting and shall set forth the purpose

(or purposes) 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 (including the Sponsor, so long as the Sponsor is a Member) thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.07. Assessments: Personal Obligation of the Member and Lien on Unit.

(a) The Assessments (or monthly installments thereof) shall be paid when due. All sums assessed by the Board of Directors but unpaid, together with any accelerated installments, late charges (not exceeding ten percent (10%) of the amount of the overdue Assessment or portion thereof) and charges for violations of this Declaration or the Rules and Regulations and interest thereon at such rate as may be fixed by the Board of Directors, from time to time (such rate not to exceed eighteen percent (18%) per year or the maximum rate of interest then permitted by law, whichever is less), shall be the personal obligation of a Member and shall constitute a lien upon the Member's Unit prior to all other liens except: (1) tax or assessment liens on the Unit by the taxing subdivision of any Governmental Authority, including but not limited to state, county, town, village and school district taxing entities; and (2) all sums unpaid on any First Mortgage of record encumbering the Unit.

(b) Assessments shall be levied on the Members on an annual basis and shall be due and payable in twelve (12) substantially equal payments on the first day of each month, unless the Board of Directors establishes other periods for payment, except that, if an installment of Assessments is not paid within thirty (30) days from date due, the Board of Directors may accelerate the remaining installments, if any, upon notice thereof to the delinquent Owner. The Board of Directors may offer a discount on an Assessment if paid in full in advance. All costs and expenses incurred by the Association in the collection of past due Assessments, including reasonable attorneys' fees, shall also be the personal obligation of the Member and shall be added to and constitute an Assessment payable by such Member.

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

Section 5.08. Foreclosure of Lien for Unpaid Assessments.

(a) 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, and the Association shall also have the right to recover all costs incurred by it in pursuing such action, including reasonable attorneys' fees and the same shall be part of the lien. In any such foreclosures, the Member shall be required to pay reasonable rental for the Unit for the period after the foreclosure and prior to sale, and the Association in such action shall have the absolute right, without notice and without regard to the adequacy of any security for the lien, to have a receiver appointed with all the rights and powers permitted under Applicable Law.

(b) 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 delinquent Owner. However, where the holder of a First Mortgage of record, or other purchaser of a Unit at a foreclosure sale of a First Mortgage, obtains title to the Unit as a result of foreclosure, or the mortgage holder obtains title by conveyance in lieu of foreclosure, such holder or purchaser, its heirs, successors or assigns, shall not be liable for, and the Unit shall not be subject to, a lien for the payment of Assessments chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such holder or purchaser.

(c) In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments and the delinquent Owner fails or refuses to pay the unpaid balance, then the unpaid balance shall be charged equally to all Owners. However, where the holder of a First Mortgage of record, or other purchaser of a Unit at a foreclosure sale of a First Mortgage, obtains title to the Unit as a result of foreclosure, or the first mortgage holder obtains title by conveyance in lieu of foreclosure, such holder or purchaser, its successors or assigns, shall not be liable for, and the Unit shall not be subject to a lien for the payment of Assessments chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such holder or purchaser.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to an Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments.

Section 5.10. No Exemption or Waiver of Assessments. Each Owner shall pay the Assessments assessed against him when due, and no Owner may exempt himself from liability for the payment of Assessments so assessed against him by waiver of the use or enjoyment of any of the Association Property or by the abandonment of his Unit. Without limiting the generality of the foregoing, dissatisfaction with the quality of the Property or the maintenance thereof or the conduct of the Board shall not be a ground for withholding or failing to pay to the Association the Assessments. However, no Owner shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him of his Unit made in accordance with the provisions of this Declaration and the By-Laws.

Section 5.11. Grantee to be Liable with Grantor for Unpaid Assessments. In any conveyance of a Unit either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Unit shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to receive from the Grantor the amounts paid by the Grantee therefore. "Grantee" as used in this Section 5.11 shall not include either the holder of a First Mortgage of record or a purchaser of a Unit at a foreclosure sale of a First Mortgage.

Section 5.12. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected by it in such year by way of Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors, in its absolute discretion, may determine to be desirable for the greater financial security and the more efficient effectuation of the purposes of the Association.

Section 5.13. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Unit which he owns or leases (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Unit), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Unit as of the date of such certificate: (1) whether the Assessments, if any, have been paid; (2) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (3) 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 made 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 or lessee of, or lender on, or title insurer of, the Unit with respect to which such certificate has been issued.

Section 5.14. Exempt Property. Property subject to this Declaration shall be exempt from Assessment charges and liens created herein to the extent of any fee title easements or other interest therein dedicated to and accepted by, any Governmental Authority and devoted to public use.

Section 5.15. Remedies Not Exclusive. The remedies set forth in this Declaration and the By-Laws for the collection of Assessments and other amounts due from Members are not intended to be, and are not, exclusive. All remedies are cumulative. In seeking to collect such Assessments and other amounts, the Board may take any and all actions to the fullest extent permitted by Applicable Law.

ARTICLE VI
MAINTENANCE, REPLACEMENT AND REPAIR

Section 6.01. Repairs and Maintenance by the Association.

(a) Except as otherwise specifically provided in this Declaration, all maintenance, repair, and replacements of the Association Property, including without limitation the Private Roadways, landscaped areas, community announcement signs, walking and biking trails and utility lines (if any) on the Association Property which serve the Association Property and which are not the responsibility of a municipality, public authority, improvement district, utility company or cable television company, shall be the responsibility of, and shall be undertaken at the cost and expense of, the Association.

(b) Without limiting the generality of Section 6.01(a) hereof, the Association (1) shall be responsible for the maintenance of (A) storm water management facilities and improvements located on Association Property or the Lots (including, without limitation, grass-lined swales, infiltration measures and detention facilities); and (B) all shrubbery and other plantings installed by, or at the direction of, the Sponsor or the Board of Directors on Association Property and (2) shall take reasonable steps to minimize the potential of wildfires on the Association Property and the Lots, including, without limitation, retaining a naturalist to assist the Board in fulfilling its duty to suppress and mitigate the wildfire potential in the Community, as set forth in Section 9.01(gg) hereof.

(c) The Association shall use reasonable efforts to remove snow and ice from the Private Roadways when snowfall exceeds two inches in a 24 hour period. So long as the Association contracts with a reputable (in the Board’s judgment) Person for the removal of snow and ice as aforesaid and such Person has reasonable (in the Board’s judgment) liability insurance in effect at the time the contract is entered into, then none of the Association, the Board or any Director shall have any liability for, and by accepting a deed or occupying or using a Unit, each Owner and his Guests release the Association, the Board and all Directors from, any loss, liability, damage, suit, proceeding, cause of action, judgment, order, cost or expense (including, without limitation, legal fees) for personal injury (including, without limitation, death) or property damage incurred or suffered by any Person, including, without limitation, Unit Owners and their Guests, arising out of, connected with or relating to the failure to remove, or the negligent removal of, ice and snow as aforesaid.

(d) Subject to the provisions of Section 6.03(b) hereof, the cost of all maintenance, repair and replacements performed by the Association shall be funded from Maintenance Assessments or Special Assessments.

(e) The Board of Directors may, upon the affirmative vote of not less than two-thirds (2/3) of the Members of the Association, provide for additional maintenance with respect to the Property.

Section 6.02. Repairs and Maintenance Which are not the Responsibility of the Association. Except as otherwise provided in Section 6.01 above, the Association shall not be responsible for (1) the maintenance, repair or replacement of any buildings, structures or landscaped areas not owned by the Association (including, without limitation, the exteriors of any Units); or (2) the maintenance, repair or replacements of any sanitary sewer lines, water lines or other utility lines or storm water management facilities and improvements not located on Association Property or which are required to be maintained, repaired and replaced by a municipality, public authority, special district, utility company or cable television company.

Section 6.03. Repairs and Maintenance Which are the Responsibility of the Owners.

(a) Each Owner shall maintain, at his cost and expense, the interior and exterior of his Home, utility lines, valves, pipes and appurtenances thereto which only serve the Owner’s Unit (or Lot), any patios, fences, driveways, pools, walkways and other structures and improvement on his Lot, and all landscaping, including the trees, shrubs and grass on his Lot in good condition

and repair, in compliance with all Applicable Laws and in a neat and attractive condition. Without limiting the generality of the foregoing, each Owner shall maintain all glass surfaces in doors, skylights and windows and replace the glass as necessary when cracked, broken or fogged. All personal property kept on a Lot shall be either kept and maintained inside of a Home or a proper storage facility or shall be stored at the rear of the Home; provided, however, this provision shall not be construed to permit junk cars, old appliances or the like being kept anywhere on the Lot, including in the front, on the side or to the rear of the Lot. Any personal property, if it is to be stored on the Lot, shall be stored in a completely enclosed structure approved by the Sponsor or the Board, as provided in Article VIII hereof. If an Owner shall fail to comply with the requirements of this Section, then upon vote of a majority of the Board of Directors and after not less than ten (10) days' notice to the Owner, the Association shall have the right (but not the obligation) to enter upon such Lot and provide such maintenance or make such repairs or replacements or remove such items as it deems necessary or appropriate, and the cost thereof shall be payable to the Association by such Owner within ten (10) days after the delivery to the Owner of a demand for payment. Amounts due under this Section 6.03 shall be a lien against the Owner's Unit, shall be a binding personal obligation of the Owner and may be enforced and collected, together with interest thereon at the rate of eighteen percent (18%) per annum or the highest interest rate permitted by law, whichever is less, in the manner Assessments are enforced and collected under Article V hereof. The rights granted to the Association in this Section 6.03 are in addition to any other rights the Association has under the other sections of this Declaration or Applicable Law.

(b) Any maintenance, repair or replacement necessary or desirable to preserve the appearance and value of the Property made pursuant to Section 6.01 hereof, but which is occasioned by a negligent or willful act or omission of an Owner or his Guests, shall be made at the cost and expense of such Owner. If such maintenance, repair or replacement is performed by the Association, it shall be regarded as a special expense allocable to the Owner's Unit and such cost shall be added to the Owner's Assessment and, as part of such Assessment, shall constitute a lien on the Unit, to secure payment thereof.

(c) Each Owner shall maintain construction sites on his Lot in a clean condition, remove accumulation of scrap and rubbish regularly and store construction materials and equipment in a neat, orderly manner. Onsite burning or disposal of trash is prohibited. Each Owner shall, prior to and during construction, provide adequate dumpsters and port-a-potties on site and be responsible for having these receptacles emptied and reset on a regular basis.

Section 6.04. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.05. Access for Repairs. The Association (and its Directors, employees, contractors and agents) shall, upon reasonable notice to the Owner and/or Guest, have the right

to enter upon any portion of the Property and any Lot, at any reasonable hour, to carry out its functions as provided for in this Declaration, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and any Lot to make necessary repairs or to prevent damage to any other Unit or any portion of the Property.

**ARTICLE VII
(RESERVED)**

**ARTICLE VIII
ARCHITECTURAL CONTROL**

Section 8.01. Initial Control by Sponsor.

(a) Except as otherwise provided in Section 8.02 hereof, no construction (including, without limitation, excavation, site clearing and grading) of any Unit, fence, wall, outbuilding or other improvement (above or below ground) shall commence on any Lot unless and until final and completed plans and specifications (including, without limitation, site plans, utility plans, grading plans, landscaping plans, lighting plans and building elevations) for such construction in such number, form and detail as the Sponsor shall require, have been first approved in writing by the Sponsor, in its sole discretion. Such approval may be conditioned upon such terms as the Sponsor deems appropriate in its sole discretion. The Sponsor may charge and collect a reasonable fee for the examination of plans and specifications submitted for review, including, without limitation, any fees and reasonable expenses which may be charged by architects, engineers, attorneys and others retained by the Sponsor in connection with the review of such plans and specifications.

(b) Once plans and specifications have been approved in writing by the Sponsor for construction of a Unit or improvement or landscaping, such approval may not be revoked unless the Sponsor determines that: (1) the work currently being performed is not in substantial conformity with the approved plans and specifications (including any conditions); (2) adequate insurance is not being maintained by the applicant; (3) appropriate governmental approval and permits have not been obtained, maintained and/or complied with; or (4) a period of six (6) months has passed from date of approval of the plans and specifications and the construction or landscaping, as the case may be, has not commenced and been diligently pursued.

Section 8.02. Control by Association. After a Unit or other improvement has been built on a Lot in accordance with the provisions of Section 8.01 hereof and after the transfer of title by the Sponsor to any completed portion of the Association Property has occurred, then enforcement of those provisions of this Declaration pertaining to any change in use of or any additions, modifications or alterations to any exterior improvements or landscaping on said Unit or Lot or Association Property, as the case may be, shall be the responsibility of the Architectural Committee and the Board of Directors.

Section 8.03. Composition and Function of Architectural Committee.

(a) The Architectural Committee shall be a permanent committee of the Association. It shall serve in an advisory capacity to the Board of Directors, with final approvals and/or enforcement resting solely with the Board of Directors.

(b) The Architectural Committee shall be composed of three (3) or more persons (as determined by the Board of Directors), who shall be appointed for terms of two (2) years, subject to removal, with or without cause, by the affirmative vote of three-fourths (3/4) of the entire Board of Directors.

(c) The Architectural Committee shall advise the Board of Directors on the following:

(1) All proposed additions, modifications or alterations to Association Property;

(2) All proposed additions, modifications or alterations of the exterior of any Unit or improvement on (or under) a Lot (including, without limitation, exterior doors, windows and garage doors) and the landscaping of any Lot; and

(3) Such other matters as may be assigned to it by the Board of Directors from time to time.

Section 8.04. Submission of Plans to Architectural Committee. After a Unit or other improvement has been built on a Lot in accordance with the provisions of Section 8.02 hereof and after the transfer of title by the Sponsor to any completion portion of the Association Property has occurred, then no addition, modification or alteration to the exterior of any such Unit shall be made on or to such Unit or to the improvements or the landscaping located on the Lot or to any Association Property, as the case may be, unless and until plans and specifications therefore, in such number, form and detail as the Architectural Committee requires, shall have been submitted to and reviewed by the Architectural Committee and approved by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans and specifications submitted for review, including, without limitation, any fees and reasonable expenses which may be charged by architects, engineers, attorneys and others retained by the Board of Directors in connection with the review of such plans and specifications.

Section 8.05. Basis for Recommendation of Disapproval of Plans by Architectural Committee. The Architectural Committee may recommend disapproval of any plans and specifications submitted for any of the following reasons:

(a) Failure of such plans and specifications to comply with the provisions of this Declaration, including, without limitation, Section 9.01 hereof;

- (b) Failure to include information in such plans and specifications as reasonably requested by the Architectural Committee;
- (c) Objection to the plan, exterior design, appearance of materials of any proposed additions, modifications or alterations, including without limitation, colors or color scheme, finish, proportion and style of architecture;
- (d) Incompatibility of proposed additions, modifications or alterations, or use of proposed improvements with existing improvements or uses within the Community;
- (e) Failure of the applicant to furnish to the Architectural Committee proof that insurance in the form and amount satisfactory to the Architectural Committee has been obtained and will be maintained for the appropriate period of time by the applicant;
- (f) Failure of proposed additions, modifications or alterations to comply with Applicable Laws; or
- (g) Any other matter which, in the reasonable judgment of the Architectural Committee, would render the proposed additions, modifications or alterations inconsistent or incompatible with the general plan of the Community, including, without limitation, any possible adverse impact on the use and enjoyment of the Property by any other Owner or occupant.

Section 8.06. Action by the Board.

- (a) After recommendation to the Board of Directors for approval or conditional approval or disapproval by the Architectural Committee of any plans and specifications submitted pursuant to this Article, the Board of Directors shall vote upon such plans and specifications and notify the applicant, in writing, of its decision.
- (b) Upon a vote by the Board for approval, or conditional approval, the notification shall set forth any conditions of such approval, and the Board shall file a copy of such plans as approved in the Association's permanent records (together with such conditions, if any) and, shall provide the applicant with a copy of such plans bearing a notation of such approval or conditional approval.
- (c) Approval of any such plans shall not be deemed a waiver by the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for approval by other Owners.
- (d) The Board may allow reasonable variances from the provisions of this Declaration concerning types of additions, alterations and modifications to the Units, other improvements or landscaping, as set forth in this Declaration, if literal application of such provisions of this Declaration would result in unreasonable and unnecessary hardship, so long as such variance request is in conformity with the general intent of this Declaration and so long as the granting of such variance request will not be materially detrimental or injurious to other Owners; provided, however, that notwithstanding any other term or condition of this Declaration

to the contrary, the Board shall not permit, under any circumstance, any travel trailer, mobile home, recreational vehicle or tent to be placed, parked, erected or stored on any Lot, nor shall the Board under any circumstances permit any overnight camping on any Lot.

(e) Once plans and specifications have been approved by the Board for an addition, alteration or modification of a Unit or other improvement or landscaping, such approval may not be revoked unless the Board of Directors determines that: (1) the work currently being performed is not in substantial conformity with the approved plans and specifications (including any conditions); (2) adequate insurance is not being maintained by the applicant; (3) appropriate governmental approval and permits have not been obtained, maintained and/or complied with; or (4) a period of six (6) months has passed from date of approval of the plans and the additions, alterations or modifications have not been commenced and diligently pursued.

Section 8.07. Written Notification of Disapproval. In any case where the Board of Directors votes to disapprove plans, the Board of Directors shall notify the applicant in writing, accompanied by a statement of the grounds (in reasonable detail) upon which such action was based. In any such case, the Architectural Committee shall, if requested and if practicable, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 8.08. Failure of Board of Directors to Act. If an applicant has not received notice from the Board of Directors approving (including conditional approval) or disapproving any plans and specifications within sixty (60) days after submission thereof, said applicant may notify the Board of Directors of that fact in writing. Such notice shall be sent by certified mail, return receipt requested. The plans and specifications shall be deemed approved by the Board of Directors thirty (30) days after the date of receipt by the Board of such notice if no decision is rendered by the Board of Directors within said thirty (30) day period.

Section 8.09. Liability. No action taken (or omitted to be taken) by the Architectural Committee, the Board of Directors or the Sponsor or any member of a subcommittee, employee or agent of any of them with respect to any plans and specifications submitted to them shall entitle any Person to rely thereon with respect to conformity with Applicable Laws, or with respect to the physical or other condition of any Unit, Lot or Association Property. Neither the Sponsor, the Association, the Board of Directors, the Architectural Committee, nor any member, subcommittee, employee or agent of any of them shall be liable to any Person submitting plans and specifications to them for approval, or to any Owner or any other Person, in connection with a submission of plans and specifications, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every Person or other entity submitting plans and specifications to the Sponsor or the Architectural Committee agrees, by submission of such plans and specifications, to defend, indemnify and hold harmless the Sponsor, the Association, the Board of Directors and the Architectural Committee (and any officer, member of a subcommittee, employee or agent thereof) from and against any action, proceeding, liability, loss, cost, expense (including, without limitation, reasonable attorney's fees), suit, claim, judgment or order arising out of, resulting from, or in connection with such submission.

Section 8.10. Architectural Standards Compliance Certificate. Upon written request of any Owner, mortgagee, lessee, licensee or title insurer (or any prospective Owner, mortgagee, lessee, licensee or title insurer) of a Unit or Lot, title to which has been previously transferred from the Sponsor, the Board of Directors shall, within fifteen (15) days, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Standards Compliance Certificate"), signed by a member of the Board of Directors (or its designee) stating, as of the date of such Certificate, whether or not the Unit, Lot or any improvements or landscaping thereon violates any of the provisions of this Declaration pertaining to construction, exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, determined, from time to time, by the Board of Directors, may be imposed for issuance of such Architectural Standards Compliance Certificate. Any such Architectural Standards Compliance Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 8.11. Completion of Work by the Board of Directors. In the event the Board of Directors deems it necessary to complete work previously commenced by an Owner, or to otherwise protect the appearance, value or structural integrity of the Property or the other Units, such amounts expended in connection with such work shall become a binding personal obligation of the Owner and an additional assessment payable by such Owner, shall become a lien against his Unit shall be a binding personal obligation of the Owner and shall be enforceable and collectible in accordance with the provisions of Article V herein relating to delinquent Assessments.

Section 8.12. Approval by Sponsor or the Board Does Not Constitute Approval by Appropriate Governmental Authority. In the event approval or conditional approval is granted by the Sponsor or the Board (as the case may be), said approval or conditional approval does not supersede or replace permits or approvals required by any Governmental Authority including, but not limited to, the Town of Mamakating Building Department, New York State Health Department, New York State Department of Environmental Conservation, New York State Department of Transportation, or any other Governmental Authority having jurisdiction over such actions contemplated by an applicant. Applicant shall apply for all such permits and approvals at his own cost and expense and shall provide copies to the Sponsor and the Architectural Committee of all governmental permits, approvals and/or disapprovals prior to commencing any construction (including, without limitation, excavation, site clearing and grading), addition, alteration or modification.

Section 8.13. Board Approval Not Required for Replacement in Kind. Notwithstanding anything in this Declaration to the contrary, in the event that a Unit, improvement or landscaping which was previously approved by the Sponsor or the Board, as the case may be, is damaged or destroyed, the Unit, structure or landscaping may be repaired, reconstructed or replanted to duplicate, as nearly as reasonably possible, the Unit, structure or landscaping (including, without limitation, size, materials, color, architectural style and use) as it existed when it was previously approved without any further approval by the Board. Nevertheless, the Architectural Committee may require that plans and specifications for such repair, reconstruction or replanting, in such number, form and detail as the Architectural Committee may require, be submitted to the

Architectural Committee for its review prior to the commencement of such repair, reconstruction or replanting. Such review shall be limited to determining if the proposed plans and specifications comply with the provisions of this Section or if the plans and specifications require Board approval. The Architectural Committee may charge and collect a reasonable fee for the review of such plans and specifications, including any fees and reasonable expenses which may be charged by architects, engineers, attorneys and others retained by the Architectural Committee in connection with such review.

**ARTICLE IX
CONVENANTS AND RESTRICTIONS**

Section 9.01. Units.

(a) Dwelling Purposes Only. Except as otherwise provided in this Declaration and the By-Laws, the Association Property and all Units shall be used for residential purposes only and purposes incidental and accessory thereto. No commercial activity shall be permitted on the Property, on any Lot or within any Home. Notwithstanding the foregoing, prior to transfer of title by the Sponsor to all Units, the Sponsor and/or the sales agent may use on or more Lots or Units or other portions of Property for model Units, a sales office and/or a construction office. The foregoing restriction shall also not preclude an Owner or occupant from maintaining (subject to such Owner obtaining, at his sole cost and expense, any and all necessary governmental permits and approvals) an office within his Unit so long as such office use is permitted by Applicable Law, no extraordinary traffic or parking results from such office use and no signs indicating the existence of such office are placed in any window of such Unit or anywhere on the exterior of the Unit or on the Lot.

(b) Minimum Design Standards. The exterior of all Homes and other structures on the Lots will be built using natural materials (such as stone, natural wood and raw timber) and colors designed to blend in with the existing landscape. All Homes and other structures on the Lots will be designed and built to be energy efficient and fire-resistant.

(c) Square Footage of Living Space. No Home shall be constructed with less than 4,000 square feet of living space, excluding basements, garages, porches, patios or other outside living space. All garages shall contain not less than 240 square feet of enclosed space.

(d) Accessory Outbuildings. No detached garage or shed shall be built on any Lot before the Home is constructed on that Lot. No garage, shed, tent, temporary building, or partially completed building shall be used for home habitation. Except during construction of the Home, no outside toilet building, outhouse, privy or chemical toilet shall be erected or installed or permitted to remain on a Lot. No trailer, tent, barn, outbuilding, shack or other temporary building shall be erected or permitted to remain on a Lot and no basement or garage shall at any time be used as a residence, either temporarily or permanently, and no Home shall be occupied prior to completion except with the prior written consent of the Sponsor.

(e) Completion of Construction.

(1) Exterior construction of any Home or other improvement, backfilling and grading must be completed within twelve (12) consecutive months from the commencement of construction. Improvements on which construction has been interrupted for ninety (90) consecutive days and improvements partially or totally destroyed and not rebuilt or refurnished within twelve (12) months of said partial or total destruction shall be deemed and declared to be a nuisance hereunder. The Sponsor or the Board (as provided in Article VIII hereof) may, for good cause, extend the periods set forth in this Section 9.01(d) for as long as the Sponsor or the Board, as the case may be, deems reasonable under the circumstances. Such extension may be granted at anytime.

(2) The Board may (but shall not be obligated to) remove any such nuisance or repair or complete the same at the cost and expense of the Lot Owner. The costs and expenses incurred in removing or repairing said nuisance shall be a charge upon and assessed against the Owner. If any such charge is not paid within fifteen (15) days of notice to the Lot Owner, then such charge shall be delinquent and shall, together with interest (at the lesser of twelve percent (12%) per annum or the higher rate permitted by law) and costs of collection, be a lien upon the Lot, be a binding personal obligation of the Owner and be enforced and collected in the same manner as Assessments. Neither the Sponsor, the Association, nor any of their respective agents, servants or employees or contractors shall be liable in any manner whatsoever for any damage which may result from any such removal, demolition or construction performed hereunder.

(f) No Further Subdivision. No Lot shall be further subdivided, except that Owners of contiguous Lots may realign the boundary between the Lots. Any such realignment shall not reduce or otherwise modify the Assessments pertaining to such Lots.

(g) Nuisances. No Lot or any Home or other improvement erected thereon shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing which will cause or may cause such Lot to appear in any unclean or untidy condition or that will be obnoxious to the eye or ear, nor shall any substance, thing, or material be kept upon any Lot or in any Home or other improvement erected thereon that will emit or discharge any foul or obnoxious odors, or that will cause any unreasonable noise that will or may disturb the peace, quiet, comfort, or serenity of the occupants of adjacent Units.

(h) Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or in any Home or other improvement, except horses, dogs, cats, or other household pets may be kept, provided that such animals are not kept, bred or maintained for any commercial purpose and provided further that all such pets shall be restrained and kept reasonably confined while outside any structure so as not to become a nuisance. The Board of Directors may prohibit certain types of pets entirely. Additionally, the Board shall have the right to require an Owner to remove his or his Guest's pet from the Unit if the Board determines that the pet is creating a nuisance (for example and without limitation, the pet is noisy or the Owner or his Guest does not promptly clean up after the pet).

(i) Vehicles, Trailers and Water Craft. No camper, trailer, recreational vehicle, water craft or unlicensed or inoperable motor vehicle may be kept or parked on any Lot except in an enclosed garage. “Motor vehicles” as used herein shall include, but shall not be limited to, automobiles, trucks, snowmobiles, motorcycles, trail bikes and off-road motorized equipment. No camper, trailer, recreational vehicle, water craft or motor vehicles shall be parked on the improved road surface or the shoulder of the Private Roadway, whether or not said vehicle is operable. Mini-bikes, trail bikes, all-terrain vehicles, snowmobiles, and other similar type of vehicles are not permitted to be operated anywhere in the Community (including, without limitation, on the Lots). The Association shall have an unrestricted right (but not an obligation) to remove any vehicles and other such equipment parked or kept in violation of this Section. The applicable Owner shall reimburse the Association for any and all expenses incurred by the Association in the removal of his or his Guest’s vehicles parked in violation of this section. Every Owner is hereby deemed to release, remise, discharge and hold harmless the Association, its successors and assigns, the Directors and any agent, servant or employee of the Association from any and all liability for or arising from or out of any such removal of vehicles.

(j) Traffic Safety and Security. Each Owner and his Guest shall be liable to pay a fine to the Association for the violation of traffic, safety and security rules and regulations as the same may be issued (and revised) from time to time by the Board. Such rules and regulations may include, but shall not be limited to the following: Failure to observe stop signs and other traffic direction signs, reckless driving, failure to observe rules and regulations at marked pedestrian, automobile, bicycle, riding horse, etc. crossings, and all other rules and regulations pertaining to the safety, security, convenience, health and welfare of the entire Community.

(k) Concealment of Fuel Storage Tanks, Trash Receptacles, and Other Property. All fuel storage tanks of any type used for the storage of oils, fluids or gases shall be placed in such a manner as not to be visible from adjoining Units. Every receptacle for rubbish shall be so placed as not to be visible from any public highway, the Private Roadway, other Units, or improved activity area.

(l) No Camping; Restrictions on Temporary Structures. No overnight camping shall be permitted on any Lot nor shall any travel trailer, mobile home, or recreational vehicle of any kind whatsoever or any tent or other temporary structure be placed or erected on any Lot; provided, however, that recreational overnight camping in tents for a period of up to three (3) days may be allowed with prior written approval of the Board, and, provided further, however, nothing herein contained shall be deemed or construed to preclude, limit or prohibit the use of temporary structures by the Sponsor and its contractors and subcontractors. Furthermore, at no time shall any equipment, appliances, merchandise, construction materials and other materials and goods of any nature whatsoever, other than those normally incident to private residential use, be stored outside of an enclosed building or screening so as to present an unsightly appearance and detract from the beauty of the Community in any respect whatsoever as determined by the Board.

(m) Changes in Elevation and Grading. No changes in the elevation of the land shall be made on any Lot without the prior written consent of the Board. No such change shall be

permitted outside of the building envelope or which will be in contravention of any governmental approval given in connection with the approved Subdivision Map.

(n) Setbacks. Every Home shall be located within the building envelope (if any) designated on the Subdivision Map.

(o) Wetlands. No area designated as a wetland (federal or state), watercourse or other body of water or any designated “buffer area” appurtenant to any of the foregoing shall in any manner be altered, developed, filled, drained, improved or changed except in accordance with all Applicable Laws and with the prior written consent of the Sponsor or the Board, as provided in Article VIII hereof.

(p) Ditches and Swales. Each Owner shall keep drainage ditches and swales located on his Lot (if any) free and clear of obstruction and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required by the Board for proper drainage.

(q) Drilling and Mining. No drilling, refining, quarrying or mining operation of any kind or nature shall be permitted on any Lot, with the exception of drilling related to the installation of water wells and except for any such operation undertaken by the Sponsor or its contractors.

(r) Letter and Delivery Boxes. So long as it owns any Unsold Units, the Sponsor shall have the right to determine the location, color, size, design, lettering, and all other particulars of all mail or newspaper delivery boxes and standards and brackets and name signs for such boxes, so long as such standards are in compliance with the regulations of the United States Postal Service.

(s) Clotheslines. Outdoor clotheslines or drying yards of any kind are prohibited.

(t) No Above Ground Swimming Pools. No above ground swimming pools shall be permitted.

(u) Open Fires. No open fires shall be permitted except with the prior written approval of the Board or as permitted by the Rules and Regulations.

(v) Government Limitations. All Units are subject to all restrictions and limitations imposed by all Governmental Authorities, including all zoning ordinances subdivision ordinances, and other laws, statutes, or regulations. Nothing in this Declaration shall be deemed to permit any action which is prohibited by Applicable Law or to require any action which is prohibited by Applicable Law.

(w) Certain Connections to Sanitary Sewer Systems Prohibited. No Owner shall connect or allow or suffer to be connected, any sump pump, roof drain, cellar drain or footing drain to the sanitary sewer system.

(x) Garbage and Refuse Disposal. No Lot shall be used, maintained, or allowed to become a dumping ground for scraps, litter, leaves, limbs or rubbish. Trash, garbage or other waste shall not be allowed to accumulate on any Lot and shall not be kept except in sanitary containers located and installed in the manner approved by the Sponsor or Board. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall not be visible from the street or from any private or common driveway except for those times designated for collection by the appropriate waste management and collection authority approved by the Board of Directors.

(y) Signs. No sign of any kind shall be displayed to the public view on or from any Unit or Lot except such signage as approved by the Sponsor or the Board, as the case may be (as provided in Article VIII hereof), and except signs used by Sponsor and its agents to advertise Units for sale or lease. Notwithstanding the foregoing, the Sponsor shall have the right to use such signs as the Sponsor deems appropriate to promote the sale or lease of Units (including the Lots).

(z) Radio and Television Antenna; Fences. No exterior radio, television or satellite dish antenna (or appurtenances thereto) may be installed on any Unit unless the installation, and the location, color and design of the antenna have been approved by the Sponsor or the Board, as the case may be (as provided in Article VIII hereof). No fence shall be located on any Lot unless the installation, color, height, type and design of, and the materials comprising, the fencing have been approved by the Sponsor or the Board, as the case may be (as provided in Article VIII hereof).

(aa) Outside Lighting. Floodlighting or any other outside lighting with high intensity, bright lamps is prohibited. Only low-level lighting designed to accent the areas where it is needed shall be used. All exterior lighting fixtures (including, without limitation, wall and pole mounted units) shall use a horizontal cut-off lens/shield (or similar device) to divert lighting downward. The height of lighting poles shall not exceed fifteen (15) feet.

(bb) Landscaping. Only native vegetation shall be used for landscaping. No native vegetation shall be removed from any Lot except such removal as is reasonably necessary for the construction of improvements and landscaping as approved by the Sponsor or the Board in accordance with Article VIII hereof. It is the Sponsor's intent that the majority of the Lot remain in its natural state and that the landscaped areas be minimized. Only pesticides, herbicides and fertilizer that are consistent with the USDA-SCS Soil Pesticide Interaction Rating Guide will be used. Only pesticides that have a minimum potential for leaching or loss from runoff, and only chemicals with a half-life of seventy (70) days or less will be used. Fertilizers, pesticides, and herbicides which cannot be analyzed in a laboratory will not be applied on site. Spraying unauthorized chemicals shall render the Owner personally liable for any pollution created by said chemicals. Additions to the normal landscape such as birdbaths, statues, water and fish pools, benches, rock or brick borders, wagon wheels, pink flamingoes and any other such yard decorations are prohibited unless specifically approved by the Sponsor or Board, as the case may be, as provided in Article VIII hereof.

(cc) Lease Restrictions. An Owner shall not lease any portion of a Unit (other than the entire Unit), nor shall an Owner lease a Unit to a lessee for a base term of less than four (4) months. All leases must be in writing. As provided in Section 10.09 hereof, each tenant shall be subject to this Declaration, the By-Laws and all Rules and Regulations. A copy of such signed lease must be promptly submitted to the Board of Directors and/or the managing agent, if there be one. The provisions of this subsection do not apply to the Sponsor. For purposes of this Section 9.01, the term “lease,” includes, without limitation, occupancy agreements, management agreements and similar agreements.

(dd) Use of Homeowner Association Property. Other than for the development of the Private Roadway, the lands owned by the Association shall be restricted in their use, and shall remain as undeveloped lands, with the exception of the construction, maintenance, repair and replacement of trails, walkways and appurtenances for passive recreational use, which may be developed subject to any and all applicable regulations pertaining thereto, and for such other purposes as may be necessary or desirable to install and properly maintain, repair and replace utilities and/or drainage for which easements are granted and/or reserved. The intent of this restriction is to generally preserved the lands owned by the Association in their natural condition, such that they are not substantially altered, except as aforesaid.

(ee) Flags Permitted. Subject to reasonable conditions promulgated from time to time by the Board relating solely to size and location, nothing in this Declaration shall be deemed to prohibit displaying of the American flag on any Lot or on Association Property.

(ff) Building Envelope; Limits on Clearing. Homes may only be constructed within the one (1) acre developable envelope shown on the Subdivision Map. A single contiguous area of not more than twenty thousand (20,000) square feet may be cleared on a Lot for building purposes. For illustration purposes, a diagram showing the one (1) acre developable envelope and the contiguous area of twenty thousand (20,000) square feet of clearing is attached to, and made a part of, this Declaration as Schedule “C.” It is understood that Schedule “C” is for illustration purposes only and that the size and shape of the Lots and the locations and configurations of the one (1) acre developable envelope, the septic area and the clearing area and the driveway on each of the Lots will differ from what is shown on Schedule “C” hereof.

(gg) Wildfire Suppressant and Mitigation Measures. The following measures shall be taken to suppress and mitigate the wildfire potential in the Community:

(1) The Association shall provide Owners with information about the ecosystem in which the Community exists, including, without limitation the unique role of wildfire in the Community. Owners who understand the issue will be better equipped to maintain their Homes in a manner which will keep the Homes safe from wildfire.

(2) The Association shall, from time to time review the “natural screening” in the Community to make sure such screening generally conforms to Firewise concepts. As required by Section 9.01(b) hereof, only native vegetation shall be used for landscaping; however, the planting of volatile fuels within thirty five feet (35’) of a Home is to be discouraged.

(3) The driveways on the Lots shall conform to the applicable standards of the National Fire Protection Association at the time the driveways are constructed (and, to the extent practicable, reconstructed) with regard to width, length, bridgeload limits and turnarounds.

(4) To better provide for safe ingress and egress for wildland firefighters to access individual Homes, each Owner shall keep the vegetation alongside the portion of the Private Roadways which border his Lot below three feet (3') in height for a distance of five feet (5') back from the edge of the pavement of such portion of the Private Roadway.

(5) A sign composed of non combustible material showing the 911 address of the Home shall be placed at the end of each driveway.

(6) Two exits from the Community should be in place at all times in order to facilitate evacuation from the Community in the event of an emergency.

THE BOARD OF DIRECTORS MAY PROMULGATE SUCH OTHER RULES AND REGULATIONS, FROM TIME TO TIME, AS MAY BE NECESSARY OR DESIRABLE TO PRESERVE AND ENHANCE THE PROPERTY OF THE ASSOCIATION AND THE UNITS.

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

Section 10.01. Declaration Runs With the Land. The provisions of this Declaration shall bind the Property and the Units, shall be construed as running with the land and shall inure to the benefit of, be binding upon, and be enforceable by the Sponsor (for so long as the Sponsor owns any Units or Projected Units), the Association (being hereby deemed the agent for all of its Members), any Owner and 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 the beneficiaries hereof by reason of 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 10.02. Enforceability. Each Owner and each Person acquiring an interest in a Unit or other portion of the Property, or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument by which he becomes an Owner or becomes subject to the provisions of this Declaration incorporates or refers to this Declaration) covenants and agrees for himself and for his heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration, including personal responsibility for the payment of all Assessments and other charges which may become liens against his property and which become due while he is an Owner or during any tenancy.

Section 10.03. No Waiver for Failure to Enforce. The failure of any 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 Sponsor, the Association (or any officer, Director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of this Declaration.

Section 10.04. Default Notices to be Sent to First Mortgagees. Each Owner shall notify the Association of the name and address of the First Mortgagee of such Owner's Unit, if any. Upon receipt of such notice, the Association shall thereafter mail to such First Mortgagee, at the address for such First Mortgagee on file with the Association, a duplicate copy of any notice of default sent by the Association to such Owner with regard to the violation by such Owner of any provision of this Declaration. It shall be the responsibility of the Owner to promptly notify the Association of any change in the First Mortgagee or the address to which notices should be sent. So long as the Association sends the notice to the First Mortgagee at the address then on file with the Association, then the Association may take any and all rights and remedies it has under this Declaration, regardless of whether or not the mortgagee actually receives the notice.

Section 10.05. Amendment.

(a) Subject to Subparagraphs (b), (c), (d) and (e) of this Section, this Declaration may be modified, altered or amended at any duly called meeting of Members provided that:

(1) A notice of the meeting containing a full statement of the proposed modification, alteration, or amendment has been sent to all the Members on the books and records of the Association no less than thirty (30) days nor more fifty (50) days prior to the date of the meeting; and

(2) Two-thirds (2/3) of all Members of the Association approve the change; and

(3) An instrument evidencing the change is duly recorded in the Office of the Sullivan County Clerk. Such instrument need not contain the written consent of the required number of Members, but shall contain a certification by the Board of Directors of the Association that the consents required by this Section for such change have been received and filed with the Board of Directors.

(b) Until the Transfer of Control Date, the prior written consent of the Sponsor shall be required for any amendment, alteration or modification, which adversely affects an interest or right of the Sponsor (as determined by the Sponsor in its sole judgment) to become effective.

(c) Notwithstanding anything herein to the contrary, prior to the sale of any Units to purchasers, the Sponsor may, from time to time, unilaterally modify, alter, amend or supplement this Declaration for any reason by recording an instrument in the Office of the Clerk of Sullivan County, New York containing the modification, alteration, amendment or supplement and executed by the Sponsor. Such instrument shall also recite that as of the date of the instrument there are no Owners in the Association other than the Sponsor.

(d) Notwithstanding any other provisions of this Declaration to the contrary, if an amendment to this Declaration is necessary or desirable in the judgment of the Board to cure any ambiguity or to correct or supplement any provisions of this Declaration that is defective, missing or inconsistent with any other provisions hereof, or if such amendment is necessary or desirable in the judgment of the Board to conform to the requirements of Applicable Law with respect to Association Property or the Units, then at any time and from time to time the Board may, by resolution, effect an appropriate corrective amendment without the approval of (or prior notice to) the Owners or other Person upon receipt by the Board of an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this subsection. Each amendment of the type described in this subsection shall be effective upon the recording in the Sullivan County Clerk's Office of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by the President.

(e) Notwithstanding anything in this Declaration to the contrary, prior to the Transfer of Control Date, the Sponsor may, from time to time, unilaterally amend, modify, alter, or supplement this Declaration: (1) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration or any other Governmental Authority; or (2) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Lots or Units.

Section 10.06. Conflict with Applicable Laws or Deed Restrictions. The provisions of this Declaration shall not be taken as permitting any action or thing prohibited by the Applicable Laws (including without limitation zoning laws), or by specific restrictions imposed by any deed or lease.

Section 10.07. Attorney's Fees. Any party to a proceeding who succeeds in enforcing a provision of this Declaration or enjoining the violation of a provision of this Declaration by or against an Owner (or such Owner's Guest) shall be entitled to reasonable attorney's fees against such Owner.

Section 10.08. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 10.09. Member Responsible for Guests. Every lease, occupancy agreement, management agreement or similar agreement relating to a Unit shall provide that the Guest shall comply in all respects with the terms of this Declaration, the By-Laws and Rules and Regulations, if any, of the Association, but the failure to include such a provision shall not relieve the Guest from his obligation to so comply. If a Guest is in violation of this Declaration, the By-Laws or Rules and Regulations, the Board of Directors shall so notify the Owner of such Unit which such Guest occupies, in writing by certified mail, return receipt requested. Each Owner shall be responsible for any violation of the Declaration, the By-Laws or the Rules and Regulations committed by his Guest. The Board may treat any such violation committed by the Guest as if the applicable Owner had committed it and shall have and may pursue any and all

remedies available to the Board against the Owners, the Guest or both. Without limiting the generality of the foregoing, if an Owner has received notice that his Guest is in violation of this Declaration, the By-Laws or the Rules and Regulations and if the violation is not cured or eviction proceedings commenced by the Owner against the Guest within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may (but shall not be obligated to) institute eviction proceeds against the Guest.

Section 10.10. Abatement and Enjoining of Violations. The violation of any Rule or Regulation adopted by the Board of Directors, or the breach of the By-Laws or the breach of any provision of this Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in this Declaration or the By-Laws:

(a) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; and

(b) to establish a penalty in accordance with Section 10.12 herein. Notwithstanding anything to the contrary herein, the Board of Directors shall not alter or demolish any item of construction unless it shall have first instituted appropriate judicial proceedings. If, thirty (30) days after written notice of any such violation or breach has been given to the Board of Directors by any one or more Owners, and the Board of Directors has failed to take any action to remedy such violation or breach, then one or more aggrieved Owners shall have the right to enjoin, abate or remedy the continuance of any such violation or breach by appropriate legal proceedings at law or in equity. Prior to exercising such right, the Board of Directors, or the aggrieved Owner or Owners, as the case may be, shall, if reasonably possible, notify the Owner and the mortgagee (if the mortgagee shall have notified the Board in writing of its name and address) of the Unit or Units involved and provide a reasonable amount of time for the cure of such violation or breach by the Owner or the mortgagee.

Section 10.11. Obligation and Lien for Cost of Enforcement. If an action or suit (including, without limitation, eviction proceeds brought in accordance with Section 10.09 hereof) is successfully brought by the Association for a violation or breach of the Rules and Regulations, or to successfully enforce the provisions of this Declaration or the By-Laws, the cost of such action or suit, including reasonable legal fees, shall be deemed an assessment, shall constitute a binding personal obligation of the violator, if an Owner, or the Owner responsible for such violator. Such cost shall also be a lien upon the Unit or Units of such Owner and such cost may be enforced and collected in the same manner as Assessments under the By-Laws and this Declaration.

Section 10.12. Penalties and Fines. 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, the By-Laws or the Rules and Regulations, and after affording the alleged violator a reasonable opportunity to appear and be heard, impose monetary and non-monetary penalties, the amount and 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 penalties imposed against an Owner or his Guest shall be deemed an assessment against the Unit of such Owner and, as such,

shall be a charge and continuing lien upon such Unit, shall constitute a binding, personal obligation of the Owner and may be enforced and collected in the same manner as Assessments.

Section 10.13. Compliance and Arbitration. Should any Owner or his Guest fail to comply with any of the provisions of this Declaration, the By-Laws or Rules and Regulations the following procedures may, if the Board so chooses and if practicable, be implemented to obtain compliance:

(a) A committee of three (3) shall be appointed by the Board of Directors and designated the Compliance Committee to serve at the pleasure of the Board of Directors.

(b) The Compliance Committee shall first undertake to obtain compliance with the Rules and Regulations informally, by discussing violations of the same with the person or persons violating them, and seeking to obtain future compliance, or correction of the on-going violations.

(c) Should this informal procedure prove unsatisfactory or not secure future compliance, the Compliance Committee shall then send a written notice to the person violating a Rule or Regulation, and if such person is not an Owner, to the owner responsible for the violator, notifying him of the claimed violation, and requesting, as the case may require, either a correction of the violation, or an assurance that similar violations will not occur in the future. Such notice shall establish a date for compliance.

(d) Should such notice obtain the requested compliance that will dispose of the matter, unless the same or a similar violation of the Rules and Regulations thereafter recurs.

(e) Should such notice not obtain the requested compliance within the time requested, the Compliance Committee shall then be authorized, at its discretion, to establish a monetary and/or non-monetary penalty, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar violations in the future by the same or any other person. Such fine shall become a binding personal obligation of the violator if an Owner, or of the Owner responsible for such violator. Failure to correct the condition or situation which leads to the first fine, for a period of twenty (20) days after the initial fine becomes due and payable shall constitute a second offense. Notice of the imposition of such fine or fines shall be mailed to the violator and/or the Owner responsible for such violator, and shall be paid to the Association within ten (10) days unless the violator requests the right to arbitrate the matter within the ten (10) days before either the Arbitration Committee or the American Arbitration Association (“AAA”), as hereinafter set forth. Should the fine not be paid within the ten (10) days, or if a request to arbitrate is not received within the said ten (10) days, the amount of the fine shall be added to the Owner's Assessments on the first of the month following the termination of the ten (10) day period above set forth, and shall be a lien upon the Owner's Unit.

(f) (1) The Arbitration Committee shall consist of the President of the Board of Directors, as Chairman of the Committee, and two (2) other members of the Board of Directors who shall be appointed by the Board of Directors to serve at the pleasure of the Board of Directors.

(2) Should the alleged violator, or the Owner responsible for the alleged violator (if the violator is not the Owner) request the right to arbitrate the imposition or extent of a fine, as above set forth, before the Arbitration Committee he shall do so in writing, directed to the Board of Directors, within ten (10) days of his receipt of notice of the imposition of said fine. The Board of Directors shall promptly forward the same to the Arbitration Committee which shall meet within twenty (20) days thereafter, on notice to the alleged violator, to hear and dispose of the matter. At such hearing, the alleged violator and/or the Owner responsible for such violator and one (1) or more members of the Compliance Committee may be present and be heard. A decision on the matter shall be made by the Arbitration Committee, by a majority vote, within ten (10) days following said hearing and shall be promptly communicated to the alleged violator and/or the Owner responsible for such violator. If the decision of the Arbitration Committee is to uphold the determination of the Compliance Committee, the provision relating to the payment and enforcement thereof set forth in subparagraph (e) above shall apply. If their decision is in favor of the alleged violator, no fine will be imposed. The decision of the Arbitration Committee shall, to the extent permitted by law, be final and binding upon all parties.

(g) Should the alleged violator, or the Owner responsible for the alleged violator (if the violator is not the Owner) request the right to arbitrate the imposition or the extent of the fine, as set forth above, before the AAA he shall promptly do so in writing in accordance with the rules and regulations of the AAA. The Board of Directors shall be notified at the same time and shall have the right to participate in such arbitration.

(h) In the event the violator is a person other than an Owner or a member of such Owner's immediate family, copies of all notices required to be given to the violator under this Declaration, the By-Laws or the Certificate of Incorporation shall also be given to the Owner of the unit responsible for such violator.

ARTICLE XI INSURANCE TO BE CARRIED

Section 11.01. Insurance to be Carried. The Board of Directors shall obtain and maintain on behalf of the Association: (i) liability insurance; (ii) fidelity bond; and (iii) workers' compensation insurance (if required by law), with coverages to be as follows:

(a) Liability. The liability insurance shall cover the Directors and Officers of the Association and all Members, but not the liability of the Members arising from occurrences within or on such Member's Unit (including without limitation on the Lot). The policy shall include the following endorsements:

(1) comprehensive general liability (including libel, slander, false arrest and invasion of privacy):

(2) personal injury (including death);

- (3) medical payments;
- (4) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured;
- (5) "severability of interest" precluding the insurer from denying coverage to an Owner because of negligent acts of the Association or any other Owner;
- (6) contractual liability;
- (7) water damage liability;
- (8) hired and non-owned vehicle coverage;
- (9) liability for the damage to or loss of property of others;
- (10) host liquor liability coverage with respect to events Sponsored by the Association; and
- (11) deletion of the normal products exclusion with respect to events Sponsored by the Association.

(b) Directors' and Officers' Liability. The Directors' and Officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors and any deductible provision shall apply only to each occurrence and not to each item of damage. Notwithstanding anything in this Declaration to the contrary, the Board may, from time to time, choose not to obtain or maintain Directors and Officers liability insurance.

(c) Fidelity Bond.

(1) The fidelity bond shall cover all directors, officers and employees, if any, of the Association, who handle Association funds. The bond shall name the Association as obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association at any given time, but in no event less than a sum equal to six months' aggregate assessment on all Units, plus reserves and other funds on hand. In the event a professional property manager is employed or retained by the Association, such professional property manager, serving the Association under a Contract (not as an employee of the Association) shall maintain a fidelity bond in the same amounts as the Association, naming the Association as Obligee, and provide the Board of Directors with a copy of such bond. The professional property manager, if named as an employee of the Association, shall then be added to the Association's bond.

(2) Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$50,000 for dishonest acts and \$50,000 for forgery.

(d) Workers' Compensation. Workers' compensation insurance shall be obtained when, as and if the Association is required by Applicable Law to obtain it. Such insurance shall cover any employees of the Association, as well as any other person working on behalf of the Association, including the directors and officers of the Board of Directors.

(e) Other.

(1) The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time, including without limitation "umbrella" catastrophe coverage.

(2) The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Article XI or for any loss or damage resulting from such failure.

(3) In the event of damage to Association Property, the deductible will be an Assessment. The Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Unit involved, shall constitute a personal obligation of such Owner and shall be enforceable and collectible in the same manner as Assessments under Article V of this Declaration.

(4) The Board of Directors shall review the coverage with the agent at least annually to assure adequacy of coverage.

(5) No portion of the Property is located in a Flood Hazard Zone. However, if in the future any portion of the Property is determined to be located in an area subsequently identified by the Federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Units and other insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program, or one hundred percent (100%) of the current replacement cost of all Units and other insurable property, whichever is greater.

(6) The proceeds of all policies of physical damage insurance, if less than \$50,000 shall be payable to the Association, and if more than \$50,000 to an insurance trustee (as defined in Section 11.02 hereof to be applied for the purpose of repairing, restoring or rebuilding, unless otherwise determined by the Owners pursuant to Section 11.02 of this Declaration. This \$50,000 limitation shall increase automatically by eight percent (8%) each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon consent of Owners by an

affirmative vote of not less than sixty-seven percent (67%) of the authorized votes of the Owners.

Section 11.02. Insurance Trustee. The Insurance Trustee shall be any bank, trust company or law firm located in the State of New York, designated by the Board of Directors. All reasonable fees and reasonable disbursements of the Insurance Trustee shall be paid by the Board of Directors and shall constitute an Assessment of the Association. In the event the Insurance Trustee resigns or fails to qualify, the Board of Directors shall designate a new Insurance Trustee which shall be a bank, trust company or law firm located in the State of New York.

Section 11.03. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Association Property, insurance proceeds, if any, shall be payable to the Association. The Board of Directors shall disburse the proceeds to contractors engaged in the repair and restoration of such Association Property, in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute an Assessment and the Board of Directors shall assess all the Owners for such deficit and for a performance bond and labor and materials payment bond, if required, as part of the Assessments.

Section 11.04. Insurance Carried By Owners.

(a) Each Member shall, at such Member's expense, obtain and maintain adequate casualty insurance for the full replacement value of his Unit, including, without limitation, the contents of the interior of such Member's Unit and liability insurance for occurrences within the Unit (including, without limitation, on the Lot). Evidence of such insurance shall be provided to the Board of Directors annually upon the anniversary date of the policy. Upon the failure to provide such evidence or a lapse of such policy, the Board of Directors may (but shall not be obligated to) obtain the required insurance and the cost of such shall constitute a charge against the defaulting Unit, and as such, shall become a lien upon the Unit, enforceable and collectible in the same manner as other Assessments as set forth in Article V of this Declaration.

(b) In the event of damage to or destruction of any Unit, repair and/or restoration of the Unit shall be undertaken promptly and in substantial accordance with the plans and specifications of the damaged or destroyed Unit as originally built. Any substantial deviation therefrom shall require written submission of such deviations to the Architectural Control Committee and written approval from the Board of Directors in accordance with Article VIII of this Declaration. The word "promptly" as used in this Section shall mean repair and restoration to begin, weather permitting, not more than sixty (60) days from the date of receipt of the insurance proceeds by Owner of such Unit, provided, that if new or revised permits from a Governmental Authority are required, a reasonable time shall be allowed to procure such permits.

ARTICLE XII GENERAL

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretation of the content hereof.

Section 12.02. 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.

Section 12.03. (Reserved).

Section 12.04. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions affecting the Property and the Units prior to the conveyance of any lands encumbered by this Declaration.

Section 12.05. Notice. All notices hereunder shall be in writing and sent by mail, by depositing same in a post office or letter box, in a postpaid sealed wrapper, addressed, if to the Board of Directors, at the office of the Board of Directors and if to an Owner or Unit Mortgagee, to the address of such Owner or Mortgagee as such address appears on the books of the Association and if to the Sponsor, to the address of the Sponsor as appears on the books of the Association. It shall be the duty of each Owner and Mortgagee to provide his or its current address to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of this Declaration, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent of such notice.

Section 12.06. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation. Upon such assignment, the successor corporation shall have all 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 had been an original party and all references herein to the Board of Directors shall be deemed to refer to the Board of Directors of such successor corporation. Any such assignment shall be accepted by the successor corporation under written agreement pursuant to which the successor corporation expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, the Covenants, Conditions, Restrictions, Easements, Charges and Liens imposed hereunder shall, nevertheless, continue and any Member may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation to take over the duties and responsibilities of the Association, such corporation to exist subject to the conditions provided herein with respect to an assignment and delegation to a successor corporation.

Section 12.07. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' association or similar entity.

Section 12.08. Notices to Mortgagees. Each Person holding a mortgage on a Unit (whether or not a First Mortgage) and each insurer or guarantor of such mortgage which has given its name to the Board shall be entitled to receive written notice from the Board of Directors of the occurrence of: (a) any condemnation or casualty loss affecting a material portion of the Association Property or the terms security its mortgage; and (b) any proposed action which mortgagees, insurers or guarantors may object to.

Section 12.09. Private Roadways to Remain Private; Exception. The Private Roadways are intended to be, and shall remain, private until such time (if ever) as all or portions of such Private Roadways are expressly granted and dedicated to a Governmental Authority for highway purposes.

IN WITNESS WHEREFORE, the undersigned, has caused this Declaration to be executed by its duly authorized representative as of the date first above written.

MOUNTAIN ROAD PRESERVE, LLC

By: _____
_____, Member

STATE OF NEW YORK }
 } ss:
COUNTY OF

On the ____ day of _____ in the year 2009 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the corporation upon behalf of which the individual acted, executed the instrument.

Notary Public

**SCHEDULE “A”
LEGAL DESCRIPTION OF LANDS INITIALLY TO BE SUBJECT TO THE
DECLARATION**

**SCHEDULE “B”
LEGAL DESCRIPTION OF ALL LANDS POTENTIALLY IN THE COMMUNITY**