

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

THIS DECLARATION, made this \_\_\_ day of \_\_\_\_\_, 2022 by CORNHILL COMMONS HOMEOWNERS ASSOCIATION, INC., a New York not-for-profit corporation, which has offices at, New York, being hereinafter referred to as "the Association".

W I T N E S S E T H :

WHEREAS, the Association is the successor-in-interest to the Sponsor that established the Association and the community therein by a Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens dated August 13, 1982 and recorded in the Monroe County Clerk's Office on August 13, 1982 on Liber 8187 Page 193, *and*

WHEREAS, the Association desires to maintain of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and, to this end, desires to amend and restate said original Declaration,

NOW THEREFORE, by vote of at least sixty-six and two-thirds percent (66 2/3%) or more in number and in Common Interest of all the Owners, herein described, the Association, for itself, its successors and assigns, declares the real property described in Section 2.01 hereof, and such additional property as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

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. "ASSOCIATION" shall mean and refer to the CORNHILL COMMONS HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "DECLARATION" shall mean and refer to this amended and restated document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.

- D. "DETACHED HOME" shall mean a single family dwelling not attached to any other dwelling on the Property.
- E. "DOUBLE DETACHED HOME" shall mean a two (2) family dwelling not attached to any other dwelling on the Property.
- F. "DOUBLE TOWNHOUSE" shall mean a two (2) family dwelling on the Property that is attached to at least one (1) other Townhouse or Double Townhouse by means of a party wall or otherwise.
- G. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Rochester or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- H. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- I. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- J. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.
- K. "TOWNHOUSE" shall mean a single family dwelling on the Property that is attached to at least one (1) other Townhouse or Double Townhouse by means of a party wall or otherwise.
- L. "UNIT" shall mean and refer to each completed Detached Home, Double Detached Home, Townhouse or Double Townhouse, as evidenced by issuance of a Certificate of Occupancy issued by the City of Rochester, including garage, situated upon the Property or any such structure on the Property which is intended to be occupied as a residence.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
ADDITIONS THERETO

Section 2.01. Initial Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Rochester, County of Monroe and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as "Initial Property".

Section 2.02. Additional Property. With an affirmative vote by at least sixty-six and two thirds percent (66 2/3%) in number and in Common Interest of all Owners, the Association, its successors and assigns, shall have the right to bring additional properties within the scheme of this Declaration.

The additions authorized under this Article shall be made by filing or recording a Supplemental Declaration with respect to the additional properties which shall extend the scheme of the covenants, conditions, restrictions, easements, charges and liens of this Declaration to such properties and thereby subject such additions to assessment for their just share of the Association expenses. The Supplemental Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

Section 2.03. Mergers. Upon a merger or consolidation of this Association with another association as provided in its 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 this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE.III  
THE ASSOCIATION STRUCTURE,  
MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Association was formed to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set

forth in the original Declaration, and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, and as they may be amended from time to time. The Association, by vote of sixty-six and two-thirds percent (66 2/3%) in number and in Common Interest of all Owners, herein described, are hereby amending and restating the original Declaration. Subject to the additional limitations provided in this Amended and Restated Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a Not-for-Profit Corporation as contained in the Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" as found in Article I of this Declaration.

Section 3.03. Voting. Each Owner shall be entitled to one (1) vote, no matter how many Lots are owned by an Owner. There are 159 Lots on the Property covered by this Declaration, consisting of 126 Townhomes and 33 Detached Homes. Accordingly, there shall be 159 votes in the Association. Additional properties may be subjected to the provisions of this Declaration pursuant to Section 2.02 hereof. Owners of each Lot on such additional properties shall be entitled to one (1) vote only, no matter how many Lots are owned by an Owner.

Section 3.04. Lots Owned or Held by More Than One Person or by Corporation. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common ownership or interest, such Owners shall collectively be entitled to only one vote for such Lot, and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. In the case of a corporate Owner, the one vote may be cast by an appropriate-officer of such corporation.

Section 3.05. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.06. Assigning Right to Vote.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.07. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration,

the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled.

#### ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The land conveyed to the Association, by the recording of the original Declaration, authorized certain tracts of land within the Property for the use and enjoyment of the Members, which land are hereinafter be referred to as "Association Property". The Association accepted such land, which remains and shall remain subject to the following rights and easements set forth below.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Association as set forth in Section 4.04 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner. Every Member also shall have an easement for ingress and egress by vehicle or on foot over Association Property and the common utility and conduit

easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

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

- (a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;
- (b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;
- (c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of at least sixty-six and two-thirds percent (  $66 \frac{2}{3}\%$ ) in number and in Common Interest of all Owners who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on  $33 \frac{1}{3}\%$  or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;
- (d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of at least sixty-six and two-thirds percent (  $66 \frac{2}{3}\%$ ) in number and in Common Interest of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the vote on the proposed agreement;

- (e) to use water or electricity from outdoor taps or sockets on any Lot, the cost of which shall be reimbursed to the Lot Owner based upon the difference calculated between the current utility bill and the average of the last two (2) preceding utility bills.

Section 4.04. Easements Reserved to Association for Benefit of Additional Property. Easements are reserved herein over the Initial Property as described in Section 2.01 hereto for the benefit of lands described as Additional Property in Section 2.02 hereof for the following purposes:

- (a) ingress and egress over the roadways within the Initial Property;
- (b) use and connection with utility lines and related facilities including, but not limited to, telephone, water, gas, electric, sewer and cable television.

Upon the connection of lines and/or facilities servicing such land area comprising all or part of the Additional Property, should such lands not be subjected to the provisions of this Declaration by the recording of a Supplemental Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of the operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot. The Association shall have the right of access to each Lot and residential dwelling thereon for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot or within any residential dwelling thereon. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Lot Owner or Owners, it shall be considered a special expense allocable to the Lot Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Lot Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots to secure the payment thereof.

Section 4.06. Hydrants. The Association will own and maintain any hydrants on Association Property and the water lines connecting the hydrants to the City Water System. Maintenance and water charges will be the responsibility of the Association.

Section 4.07. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.08. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.

Section 4.9. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Board of Directors shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment.

Section 4.10. Common Access Easement. The Association and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways, driveways and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.11. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of the Association Property not so taken 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 remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

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 New York.



ARTICLE V  
ASSESSMENTS

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments");
- (b) special assessments for capital improvements ("Special Assessments"),

hereinafter collectively referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as landscaped areas, and of the Townhouse and Double Townhouse exteriors, including roof, gutters, and downspouts repairs and maintenance, exterior siding, and door maintenance, including the painting of exterior surface frame and trim of windows and doors, the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise, but excluding the repair or maintenance of any glass surface, patio, wood deck, stoop or stair.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day as determined by the Board of Directors of the Association. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long

as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. The Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, except that, the Maintenance Assessment on Lots owned by the Association which do not receive specific services funded through such Maintenance Assessments shall be reduced by the actual savings realized by the Association, if any. Therefore, the Association shall pay the Maintenance Assessments, earmarked for (i) common land area expenses, (ii) reserves, and the administrative expenses. The Association shall not be obligated to pay Maintenance Assessments earmarked for common exterior building expenses or fire and casualty insurance for the Townhouses or Double Townhouses.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot for which Assessments have commenced pursuant to this Declaration shall be apportioned in the following manner:

- (a) There shall be two (2) classes of Maintenance Assessment. The first class shall include all Lots and shall be referred to as "Class A." The second class shall include all Lots upon which a Townhouse or Double Townhouse is constructed and shall be referred to as "Class B."
- (b) Within each class, a Double Townhouse will be assessed at one and one-half (1 1/2) times a Townhouse, and a Double Detached Home will be assessed at one and one-half (1 1/2) times a Detached Home.
- (c) The following items shall be considered common expenses and includable in the Maintenance Assessment for Class A Lots:
  - I. Association Property expenses:
    1. snow removal;
    2. street light maintenance;
    3. road repairs.
  - II. Common utility expenses:
    4. electric, street lighting charge;
    5. water, hydrant charge.

III. Reserves:

6. asphalt sealing;
7. asphalt resurfacing;
8. street lighting;
9. miscellaneous.

(d) The following items shall be considered common expenses and includable in the Maintenance Assessment for Class B Lots:

I. Common land area expenses:

1. ground maintenance, lawns, beds and tree care;
2. sidewalk repairs.

II. Common exterior building expenses:

3. roof repairs and maintenance;
4. gutter and downspout repair and maintenance;
5. exterior siding, wall and door repair and maintenance, including the painting of exterior surface frames and trim of windows and doors, but excluding the repair and maintenance of any glass surface, patio, wood deck, stoop or stair;
6. fire and casualty insurance for Townhouses and Double Townhouses;
7. miscellaneous.

III. Reserves:

8. roof replacement;
9. exterior siding and wall replacement;
10. gutter and downspout replacement;
11. sanitary, water and storm sewer lateral replacement;
12. concrete walk replacement;
13. emergency contingency.

- (e) The following items shall be considered common administrative expenses and includable in the Maintenance Assessment for Class A and B Lots, respectively, in proportion to the relative dollar amounts established under (c) and (d) above;

I. Common administrative expenses:

1. office supplies and equipment;
2. legal fees;
3. financial audit fees;
4. insurance, common area liability and casualty, officers' and directors' liability and fidelity bond;
5. income and real property tax;
6. petty cash;
7. management fee.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than sixty-six and two-thirds percent (66 2/3%) in number and in Common Interest of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. 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 Monroe.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of at least sixty-six and two-thirds percent ( 66 2/3%) in number and in Common Interest of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first Such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

The Board of Directors, when giving notice to a Lot 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 the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance 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 Maintenance 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 effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee of such Lot), 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 Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these 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 property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion of the Board of Directors acting in its absolute discretion.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power;

- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;

(b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

(1) assess the Maintenance Assessment on a given day in each year and, subject to the limitation on amount specified herein, to assess the same at a particular rate or rates;

(2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;

(3) provide for the custody and safeguarding of all funds received by it;

(4) establish sinking funds and/or other security deposits; and

(5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

## ARTICLE VI MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all roadways, parking areas and walkways on the Association Property, snow removal from all roadways, parking areas and walkways on the Association Property, the maintenance of all landscaped areas on Association Property, and the maintenance of the hydrants on Association Property and the water lines connecting the hydrants to the City Water System shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including roadways, parking areas, driveways, walkways and landscaped areas on Association Property. The Association shall also be responsible for snow removal from roadways, parking areas, driveways and walkways on Association Property.

b. Maintenance of Townhouses and Double Townhouses. With respect to the Townhouses and Double Townhouses, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts and roofs; paint the trim, windows and doors, but shall not repair or replace window panes or doors, or maintain, repair or replace patios or wood decks. Exterior items which are vinyl coated

and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations.

- c. The water, storm sewer and sanitary sewer laterals serving a Townhouse or Double Townhouse will be maintained by the Association for required repairs from the street to, but not including the unit owner's Lot line. Maintenance and repair shall be limited to leakage and structural failure only. Notwithstanding the foregoing, the Association **shall not** be responsible for maintenance and repair if the underlying problem was caused by the actions of the Lot Owner.

The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company, (iii) the maintenance, repair or replacement of any sanitary, water or storm water laterals on Lots improved by Detached Homes or Double Detached Homes, or (iv) the maintenance, repair or replacement of Detached Homes or Double Detached Homes.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner or the Association shall be made at the cost and expense of such Lot Owner or the Association, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not repaired 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 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s), have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense, of the Association.

## ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Association to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Board of Directors. The Board of Directors shall approve all proposed improvements, additions, modifications or alterations to any existing improvements or any proposed change in the use of a Lot or any other portion of the Property, including Association Property, after transfer of title to such Lot or other portion of the Property.

Section 7.02. Submission of Plans to the Board of Directors. No improvement, exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Board of Directors requires, have been submitted to, and reviewed and approved by the Board of Directors. If the Board of Directors requires additional assistance in reviewing any plans, it may contract with an outside expert and may charge and collect a reasonable fee for the examination of plans submitted for approval by the outside expert.

Section 7.03. Basis for Disapproval of Plans by Board of Directors. The Board of Directors may disapprove any plans submitted pursuant to Section 7.02 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, or proposed parking;

- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, preservation, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Board of Directors would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.04. Approval of Board of Directors. Upon approval or qualified approval by the Board of Directors of any plans submitted pursuant to Section 7.02 above, the Board of Directors shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record, together with such qualifications, or provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.05. Written Notification of Disapproval. In any case where the Board of Directors disapproves any plans submitted hereunder, the Board of Directors shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.03. In any such case, the Board of Directors shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.06. Failure of Committee to Act. If any applicant has not received notice of the Board of Directors approving or disapproving any plans within 45 days after submission thereof, the applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;
- b. Seventy (70) days after the date the plans were originally submitted.

Section 7.07. Committee's Right to Promulgate Rules and Regulations. The Board of Directors may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Board of Directors to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board of Director's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.08. Delegation of Functions. The Board of Directors may authorize its staff, subcommittees, or individual members of the Board of Directors to perform any or all of the architectural review functions of the Board of Directors, as long as the number and identity of such staff or members, and the functions and scope of authority have been established by a resolution of the entire Board of Directors. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Board of Directors, in accordance with procedures to be established by the Board of Directors.

Section 7.9. Liability of Board of Directors. No action taken by the Board of Directors or any subcommittee, employee or agent thereof for architectural review, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Board of Directors, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Board of Directors agrees, by submission of such plans, that no action or suit will be brought against the Association or the Board of Directors, or any member, subcommittee, employee or agent thereof, in connection, with such submission.

Section 7.10. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Association, the Board of Directors shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Compliance Certificate") signed by a member of the Board of Directors stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Compliance Certificate.

Any such Architectural 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 Architectural Compliance Certificate was issued.

ARTICLE VIII  
PARTY WALLS AND ENCROACHMENTS

Section 8.01. Party Walls. Each wall which is built as part of the original construction of the Townhouses or Double Townhouses, whether or not such wall is on the dividing line between two (2) adjacent Lots, and which serves as the exterior limit of the two (2) Townhouses or Double Townhouses, shall be considered a party wall.

Section 8.02. Maintenance of Party Walls. Each Townhouse or Double Townhouse Owner whose Townhouse or Double Townhouse contains a party wall shall have an easement to enter upon the Townhouse or Double Townhouse with which the party wall is shared to effect necessary repairs or maintenance of the party wall. Each Townhouse or Double Townhouse Owner shall be responsible for the ordinary maintenance and repair of such Townhouse or Double Townhouse Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two (2) Townhouse or Double Townhouse Owners who share such wall.

In any event, where it is necessary for a Townhouse or Double Townhouse Owner, its authorized employees, contractors or agents, to enter upon a Townhouse or Double Townhouse owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Townhouse or Double Townhouse Owner, shall be limited to reasonable times, and shall be exercised so as not to impair enjoyment of said adjacent Townhouse or Double Townhouse.

Section 8.03. Exposure of Wall. A Townhouse or Double Townhouse Owner who, by negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used and Workmanship. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Townhouse or Double Townhouse which used the wall may restore it. The Townhouse or Double Townhouse Owner who undertakes such restoration shall be entitled to a contribution equaling one-half (1/2) the cost of such restoration from the Owner of the other Townhouse or Double

Townhouse which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of a Townhouse or Double Townhouse Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Townhouse or Double Townhouse Owner.

Section 8.07. Encroachments and Projections. If any Townhouse or Double Townhouse encroaches or projects upon any other Townhouse or Double Townhouse Lot or upon any portion of the Association Property as a result of the construction of such Townhouse or Double Townhouse, or if any such encroachment or projection shall occur as a result of settling or shifting of such Townhouse or Double Townhouse or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Townhouse or Double Townhouse or portion thereof shall stand. In the event one (1) or more Townhouses or Double Townhouses or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or proceedings of similar import and effect, and such Townhouse(s) or Double Townhouse(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Townhouse(s) or Double Townhouse(s) or portions thereof upon any other Townhouse or Double Townhouse or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand: provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

## ARTICLE IX INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (1) fire and casualty insurance on the Association Property, the Townhouses and Double Townhouses, (ii) liability insurance on the Association Property, (iii) directors' and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

1. Fire and Casualty. Coverage shall be for the full replacement value of the Townhouses or Double Townhouses and other improvements, including those on Association Property, under the "single entity" concept, i.e.

covering the Townhouses or Double Townhouses as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings and all machinery servicing the Townhouses or Double Townhouses and common facilities, excluding the land, foundations, the personal property of Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by present or prior Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, vandalism and malicious mischief; (ii) inflation guar; (iii) coverage for loss of Maintenance Assessment from Owners forced to vacate because of fire or other insured against casualty; (iv) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association; (v) a provision that the policy shall in no event be brought into "contribution" by individual Owners or mortgagees; (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control; (vii) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant; (viii) a provision that the policy may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent; (ix) a provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage; (x) a provision that adjustment of loss shall be made by the Board of Directors; and (xi) a provision that the policy not require the insured to be a co-insurer in the event of loss or claim under the policy.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or otherwise of the full replacement value of the Townhouses, Double Townhouses and Association Property for the purpose of determining the amount of fire insurance to be effected pursuant to this section.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less shall be payable to the Association, and if \$50,000.00 or more, to an Insurance Trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 9.02 of this Declaration.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of not less than sixty-six and two-thirds percent (66 2/3%) of

the entire Board of Directors. All fees and disbursements of the Trustee shall be paid by the Association and shall be a common expense of the Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to the mortgagees as its interest shall appear, subject however to the loss payment provisions in favor of the Association and the Insurance Trustee. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Each Owner and such Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing insurance coverage.

Duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of Townhouses and Double Townhouses.

If the Board of Directors decides not to insure the Townhouses and Double Townhouses or decides to insure the Townhouses and Double Townhouses in an amount less than that necessary to provide for the full replacement or reconstruction of the damaged improvements taking into account co-insurance provisions, each Owner shall, at the Owner's sole cost and expense, purchase and maintain fire and extended coverage insurance in such amounts as from time to time may be required by the Board of Directors, from a company licensed to do business in the State of New York. Such insurance shall be in the standard New York State form and shall cover loss and damage to the Lot, Townhouse or Double Townhouse (including garage), and all other improvements on the Lot. All insurance policies shall cover the interest of the Owner, the Association, and mortgagees, if any, as their interests may appear.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners of Townhouses or Double Townhouses, but not the liability of Townhouse or Double Townhouse Owners arising from occurrences within such Owner's Townhouse or Double Townhouse or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability and (Y) contractual liability.
3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend

suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget, but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.
5. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.
6. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.
7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly 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 Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Townhouse or Double Townhouse, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if the Owners of 75% or more of all Townhouses and Double Townhouses do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Townhouse and Double Townhouse Owners in proportion to the damage to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to a Townhouse or Double



Townhouse Owner until there has first been paid out of such Townhouse or Double Townhouse Owner's share of such funds all liens on such Owner's Townhouse or Double Townhouse. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners of the damaged Townhouses or Double Townhouses in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse or Double Townhouse and any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to the respective mortgagees and Townhouse or Double Townhouse Owners in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse or Double Townhouse and Lot, provided, however, that no part of a distribution that results from an Assessment paid by a Townhouse or Double Townhouse Owner, shall be made to all Townhouse or Double Townhouse Owners and their mortgagees as their interest may appear.

Section 9.03. Insurance for Detached Homes and Double Detached Homes. Owners of Detached homes and Double Detached homes shall not be covered by the Insurance policies obtained by the Association for (i) fire and casualty and (ii) liability on the Lots whereon Detached Homes and Double Detached Homes are constructed or to be constructed. Owners of Detached Homes and Double Detached Homes shall be responsible for obtaining their own fire, casualty and liability insurance, provided such policies must contain the following provisions: (i) extended coverage, vandalism and malicious mischief; (ii) inflation guard; (iii) coverage for loss of Maintenance Assessment from Owners of Detached Homes and Double Detached Homes forced to vacate because of fire or other insured against casualty; and (iv) waiver of the right of subrogation with respect to individual Owners of Detached Homes or Double Detached Homes, their family members, and the officers and directors of the Association. Moreover, the policies obtained by Owners of Detached Homes and Double Detached Homes must in no manner whatsoever relieve or otherwise affect the liability of the insurance carriers that have issued insurance to the Board of Directors of the Association as provided hereinabove.

Section 9.04. Insurance Carried by Owners. Owners of Townhouses, Double Townhouses, Detached Homes and Double Detached Homes shall not be prohibited from carrying other insurance for their own benefit, provided that such policies contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

## ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for temporary signs advertising the sale of a Unit ("For Sale Signs"), no other signs are permitted without the advance written permission of the Board of Directors, who shall have the right to stipulate the materials,

size, design, style, color, duration and location of an approved sign. With regard to For Sale Signs, the sign must be displayed inside the window of the Unit only and cannot be affixed to the Unit or placed in the garden beds or lawn areas.

Section 10.02. Pets. The Association may, from time to time, (i) impose reasonable rules and regulations concerning pets and (ii) prohibit certain types of pets entirely. No snakes, reptiles, exotic animals, livestock or insects are permitted. Townhouse owners shall be permitted to keep two pets, either dogs or cats, so long as such animals do not disturb or annoy other residents. Pets may be allowed outdoors only when accompanied by a responsible person, and dogs shall be leashed. No above ground or visible pet containment enclosures shall be permitted. The Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to remove any pet, if, in the opinion of the Association acting in its sole discretion, such pet is creating a nuisance because, e.g., the Owner does not clean up after the animal; the animal is too noisy; or the animal is not properly controlled. Dogs and cats must be cleaned up after by their owners. Owners will be responsible for any damage done to the Properties by their pets or those of their tenants, guests or invitees. All Owners must comply with the City of Rochester licensing and leash law.

Section 10.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Board of Directors. Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Board of Directors. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up at the curb or at such place on the Lot or other portion of the Property designated by the Association, so as to provide access to persons making such pick-up. Such containers shall be promptly removed from the pickup area after the pickup is completed. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association.

Section 10.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled to as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 10.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property.

Section 10.08. Dwelling in Other Than Residential Unit. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property, and only in a location pre-approved by the Association.

Section 10.09. Television Antennas. No outside television, radio "C.B." or other communication antenna, except for satellite dishes measuring thirty-six (36) inches in diameter or less and attached to the structure, shall be erected on or to any other portion of the Property, except with the consent of the Association.

Section 10.10. Trees and Other Natural Features. No trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.11. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 10.12. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association.

Section 10.13. Commercial and Professional Activity on Property. Units are to be only used as residences.

Section 10.14. Outside Storage. Outside storage or parking for more than 72 consecutive hours of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except as may be permitted by the Association, (unless prohibited altogether by the applicable zoning requirements).

Section 10.15. Outdoor Repair Work. No work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

Section 10.16. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Association, or maintenance of the Property, the following shall not be permitted to remain overnight on the Properties: a. any vehicle which cannot fit into the garage with the Unit; b. commercial vehicles of a weight of two (2) tons or more, unless garaged; and c. unlicensed motor vehicles of any type, unless garaged.

Section 10.17. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Association.

Section 10.18. Chain Link Fences. Unless otherwise consented to by the Association, no chain link fence shall be erected anywhere on the Property.

Section 10.19. Leasing of Property. All present Unit Owners, who are titled owners to a Lot **prior** to the recording date of this Amended and Restated Declaration, are permitted to lease their Lot during the period of their ownership, so long as they are in compliance with the provisions of this Section. **However, commencing with the recording date of this document, when a present Unit Owner sells their Lot, any future right to lease the Lot shall immediately cease and the home must be occupied by and in possession at all times by the new Owner.** For purposes of this section, "leasing" shall also include short-term arrangements such as "Air BnB, "VRBO, HOMEAWAY" and similar short term rentals for vacation or special event or similar purposes. For two-unit detached homes, at least one side must be owner-occupied if the Unit Owner complies with the requirements above. Occupancy of a Lot by the Owner and/or by immediate relatives of the Owner (parents, grandparents, siblings, children) shall be considered occupancy by the Owner. Copies of all existing leases must be provided to the Board of Directors. Leases made in violation of these provisions shall be voidable by the Association. If the Board elects to void a lease, the landlord shall be deemed to have appointed the Association as its agent to evict the tenant in a summary proceeding brought in the landlord's name. The landlord shall be liable for all costs and expenses of such proceeding, including reasonable attorney's fees.

No Property may be sub-leased by the tenant. All tenants and their guests and pets, if any, must comply with the Declaration, By-laws and rules of the Association. If the tenant violates any of these documents, the Owner of the Lot will be fined. Failure to pay these fines will be treated like a failure to pay assessments, with the same remedies available to the Association.

Existing leases must comply with the density requirements of the City of Rochester. These rules limit the number of permitted occupants. No more than four (4) unrelated people may live in a dwelling at any time.

All existing leases shall provide that if the Owner does not pay his or her assessments within thirty (30) days of their due dates, the Owner assigns the rent payments to the Association. The Association shall give the Owner and tenant written notice that the rent payments shall be payable to the Association until the Owner is current in payments due to the Association. No tenant may be evicted for paying the rental due to the Association instead of the Owner.

## ARTICLE XI ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in as or to a portion of the Property or otherwise occupying any portion of the Property, whether or not the deed, lease or any other instrument incorporates or refers to the Declaration, hereby covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the 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 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the 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 to or subsequent thereto. No liability shall attach to 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 the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action; including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any.

Section 11.05. Inspection and Entry Rights. Any agent of the Association or the Board of Directors may at any reasonable time or times, upon not less than 24 hours' notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Board of Directors determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the view of street traffic, or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration.

Section 11.07. Amendment or Rescinding. Unless otherwise specifically provided for herein, this declaration may be amended or rescinded upon the consent in writing of the Owners of not less than sixty-six and two-thirds percent (66 2/3%) or more in number and in Common Interest of all Lots which are subject to this Declaration.

In voting for such amendment or rescission, the Owner of each Lot, shall have one (1) vote for each Lot owned.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least 30 days prior to the date set for voting on said proposed amendment or rescission.

In addition to the approval of the Lot Owners, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and making and finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and other residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization or approval, as herein provided, the Association may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the consideration set forth in the immediately preceding paragraph hereof.

Section 11.10. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing

prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.11. 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 11.12. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII GENERAL

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

Section 12.02. Right Reserved to Impose Additional Protective Covenants. The Association reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Association, Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known of the person who appears as the Association, Owner or mortgagee on the records of the Association at the time of such mailing, or if sent by electronic or facsimile means to a known address previously provided by the recipient.

Section 12.04. 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 or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject



to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.05. Right of Association To Transfer Functions. Unless otherwise specifically provided 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 or residents association.

CORNHILL COMMONS HOMEOWNER'S  
ASSOCIATION, INC.

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

SCHEDULE "A"