

MONROE COUNTY CLERK'S OFFICE

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Receipt # 1430386

Index DEEDS

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No. Pages : 43

Instrument AMENDMENT TO DECLARATION

Date : 06/15/2016

Time : 03:18:25PM

Control # 201606150615

TT # TT0000017823

Ref 1 #

Employee : RebeccaZ

Return To:
BOX 93
PAL

THOMAS CREEK HOMEOWNERS ASSOCIATION INC

COUNTY FEE TP584	\$	5.00
MISCELLANEOUS COUNTY FEE	\$	0.00
COUNTY FEE NUMBER PAGES	\$	210.00
RECORDING FEE	\$	45.00
STATE FEE TRANSFER TAX	\$	0.00

Total \$ 260.00

State of New York

TRANSFER AMT

MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

TRANSFER AMT

\$1.00

ADAM J BELLO

MONROE COUNTY CLERK



Box 93
(PAL)

**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND LIENS
THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION is made the 6th day of June, 2016, by the Thomas Creek Homeowners Association, Inc.

WHEREAS, a Declaration of Covenants (the "Original Declaration") was recorded in the Monroe County Clerk's Office on August 7, 1987 in Liber 7167 of Deeds at page 29 , and

WHEREAS, a Supplemental Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Supplemental Declaration") was recorded in the Monroe County Clerk's Office on August 8, 1989 in Liber 7701 at page 64 ;

WHEREAS, the undersigned Thomas Creek Homeowners Association, Inc. ("HOA") consists of members who are the owners of certain subdivided real property in the Town of Perinton, Monroe County, New York, more particularly described in the Original Declaration and Supplemental Declaration, said land in its entirety being hereinafter referred to as "Properties"; and

WHEREAS, the HOA desires to subject the Properties to those certain covenants, agreements, easements, restrictions, charges, and liens as hereinafter set forth;

WHEREAS, the Original Declaration permits amendment of the Original Declaration with the consent of 2/3 of the Owners;

WHEREAS, the requisite number of Owners have consented to this Amended and Restated Declaration; and

WHEREAS, THOMAS CREEK HOMEOWNERS ASSOCIATION, INC. is a New York Not-for-Profit Corporation formed for the purposes described in its Certificate of Incorporation;

NOW, THEREFORE, the HOA hereby declares that all of the Properties shall be subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Properties for and during the period of time specified hereafter, and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

2016 JUN 15 PM 3:18
MONROE COUNTY CLERK

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ARTICLE I
DEFINITIONS

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

- A. "ASSOCIATION" shall mean and refer to THOMAS CREEK 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 Declaration 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. "HOME" shall mean and refer to each completed dwelling, as evidenced by issuance of a Certificate of Occupancy by the Town of Perinton, including garage, situated upon the Properties or any such structure or improvement on the Properties which is intended to be occupied as a residence or in conjunction with a residence.
- E. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as defined above) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Perinton or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- F. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- G. "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, whether or not such holder actually resides in the Home constructed on such Lot.
- H. "PROPERTIES" shall mean and refer to all properties as are subject to this Declaration as described in Schedule A attached hereto, including all Lots and Association Property in Phases 1 and 2 of the Thomas Creek Subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Perinton, 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 "Properties".

Section 2.02. 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 Properties 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 Properties 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 has been formed, to own, operate, and maintain 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 and in the Certificate of Incorporation and By-Laws of the Association, and as they may be amended from time to time. Subject to the additional limitations provided in this 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 definition of the words "Owner" as found in Article I, above.

Section 3.03. Voting. There shall be one class of Membership. All Owners, shall be Class A Members. All Members shall vote equally, i.e., one (1) Member one (1) vote, regardless of the number of Lots owned.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. 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 that number of votes prescribed herein 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, votes may be cast by an appropriate officer of such corporation.

Section 3.06. 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 3.07. Assigning Right to Vote. Any 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 3.08. 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, in 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. Association Property. The Association, owns certain tracts of land within the Properties for the use and enjoyment of the Members, which land shall hereinafter be referred to as "Association Property".

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 and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner.

Every Member (and such Member's guests, licensees, tenants and invitees) 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 4.04 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, and/or Properties, 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 Properties 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 two-thirds (2/3) of the total votes of all Members 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.

(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 two-thirds (2/3) 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 60 days in advance of the vote on the proposed agreement.

(e) as may be needed from time to time, to draw water more or less equally from Lot Owners' outdoor hose bibs for maintenance. Lot Owners shall have the responsibility to have their water supply valve for the outdoor bibs in the open position from May 1st through October 31st of each year. Notwithstanding the above, pursuant to Article XI of this Declaration, the Lot Owner has the duty to water the lawn associated with the Home;

(f) if installed by the Sponsor, to connect the light post serving each Lot to the panel box of the Lot Owner's home, with the cost of consumption to be paid by the Lot Owner.

(g) to maintain Association entrance signs whether located on Association Property or one or more Lots.

Section 4.04. 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.

Section 4.05. 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 4.06. 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 Properties.

Section 4.07. Environmental Considerations. 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, in its discretion, may 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 4.08. Common Access Easement. All Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over any private rights of way, all walkways and drives located on the Association Property and the Association shall have an access easement to each Lot for the maintenance, repair and replacement of property or facilities, the maintenance of which is the responsibility of the Association, including but not limited to the entrance signage announcing the development.

Section 4.9. 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 X 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 **PARTY WALLS**

Section 5.1. General Rules of Law to Apply. Each wall built as part of the original construction of the Homes on the Lots whether or not such wall is on the dividing line between two (2) adjacent Lots, which shall serve and separate two adjoining Homes shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 5.2. Easement. Each Owner shall have an easement to enter upon the Lot of an adjacent Owner for the purpose of maintaining or making repairs to a party wall. This easement is to be limited to the area of the other Owner's Lot reasonably necessary to effect said repairs, and such easement must be used in a reasonable manner so as not to unnecessarily interfere with the other Owner's enjoyment of his or her Lot. The area where such work is performed is to be restored to its condition prior to entry, as near as possible.

Section 5.3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 5.4. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. Any restoration of the wall shall be of the same or similar materials as the original wall. All work shall be performed in a good and workmanlike manner.

Section 5.05 Negligence. Notwithstanding any other provision of this section, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by willful acts or negligence causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5.06 Right of Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VI ASSESSMENTS

Section 6.01. 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 or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year ("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 also shall be the personal obligation of the Owner of such Lot at the time the assessment falls due.

Section 6.02. 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 liability insurance covering the Association Property obtained pursuant to Article X of this

Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as, and not in limitation, any private rights of way, landscaped areas, and for such other needs as may arise.

In addition, the Maintenance Assessment shall be used to provide services to the Lots to repair, maintain and replace exterior siding, roofs, gutters, downspouts, driveways and walkways (including plowing and shoveling), to paint the following: exterior trim, windows, doors, and privacy fences originally installed with the Home, and to care for trees, shrubs, and grass. The Maintenance Assessment shall also be used to establish reserves for capital improvements that are required to be performed by the Association. Notwithstanding the foregoing, the Association shall not be responsible for repair or replacement of foundations, windows, (including skylights and egress windows), window wells, doors (including garage doors, screen or storm doors), or grading of the Lots.

Section 6.03. Notice of Assessments. Assessments shall 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. 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 6.04. 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.

Section 6.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot shall be apportioned by dividing the total annual Maintenance Assessment by the total number of Lots then subject to the lien of this Declaration.

Section 6.06. 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 two-thirds (2/3) 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 6.07. Special Assessments for Capital Improvements and Other Needs. 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 for the purpose of defraying, in whole or in part, the cost of any capital improvements or for repairs which may become necessary as a result of a casualty loss caused by nature, not otherwise covered by insurance and creating a budget deficit for the fiscal year, 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, as

well as for items for which the Association is responsible regarding the Lots, provided that for any Special Assessment for any capital improvement amounting to more than 30% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) 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 6.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 6.03 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 ten percent (10%) per annum, (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, under no circumstances, shall 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 at the request of a mortgagee, shall 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 6.09. 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 6.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall 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 6.11. 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 6.12. 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 to the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called.

Section 6.13. 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, 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;
 - (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 VII MAINTENANCE AND REPAIR

Section 7.01. Maintenance and Repair by the Association. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including the private rights of way, common area pathways and common area landscaping. The Association shall be responsible for snowplowing of the private rights of way, walks, and the individual driveways serving each Home. The Association shall also provide road and driveway re-sealing and re-surfacing, when needed.

In addition, the Maintenance Assessment shall be used to provide services to the Lots to repair, maintain and replace exterior siding, roofs, gutters, downspouts, driveways and walkways (including plowing and shoveling), to paint the following: exterior trim, windows, doors and privacy fences originally installed with the Home, and to care for trees, shrubs, and grass. The Maintenance Assessment shall also be used to establish reserves for capital improvements that are required to be performed by the Association. Notwithstanding the foregoing, the Association shall not be responsible for repair or replacement of foundations,

windows, (including skylights and egress windows), window wells, doors (including garage doors, screen or storm doors), or grading of the Lots.

Except as provided above, The Lot Owner shall be responsible for all maintenance, repair and replacements to his Lot and all improvements located thereon, whether ordinary or extraordinary. The Lot Owner may take steps to control or remove ice, but may not use salt or any other corrosive material or chemical that may harm or degrade the improvement over time. Additionally, and not in limitation of the foregoing, the water, storm sewer and sanitary sewer laterals servicing a Home shall be maintained at the sole cost and expense 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.

Section 7.02 Maintenance of Lots and Homes. Except as specifically assumed by the Association as set forth above, individual Lot Owners are responsible for the interior and exterior maintenance of their Lots and Homes. If Homes are not appropriately maintained by the Lot Owner, then the Association may maintain the Home and charge the Lot Owner the cost of performing the maintenance, said charge shall be deemed to be a Maintenance Assessment and payable as such, and if unpaid the Association shall have the same rights and privileges as for the non-payment of Maintenance Assessments, including without limitation the right to place a lien on the Lot and foreclose the lien in collection proceedings.

Section 7.03. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Properties made pursuant to Section 7.01 and 7.02 above, including but not limited to the appropriate maintenance of the Home by the Lot Owner, which is occasioned by the failure or a negligent or willful act or omission of a Lot Owner, shall be made at the cost and expense of such Lot Owner. 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 7.04. 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 Properties. 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 materials and the enhancement and preservation of the appearance and value of the Properties.

Section 7.05. Access for Repairs. The Association (and its employees, contractors and agents) upon reasonable notice to the Owner(s), shall have the right to enter upon any portion of the Properties and into and upon any Home 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 Properties and into any Home to make necessary repairs or to prevent damage to any Home or any portion of the Properties. The repair of any damage caused in gaining access shall be at the expense of the Association.

ARTICLE VIII ARCHITECTURAL CONTROLS

Section 8.01. Control by Association. Enforcement of those provisions of the Declaration pertaining to exterior appearance of the Properties and control over any change in use or any additions, modifications or alterations to any exterior improvement (including landscaping) on any Lot or other portion of the Properties, including but not limited to Article XI, shall be the responsibility of the Association, acting through the Board of Directors, or through the Architectural Standards Committee when one is appointed by the Board of Directors (hereinafter referred to as the "Architectural Committee") as provided in Section 8.02 below.

Section 8.02. Composition and Function of Architectural Standards Committee. The Architectural Committee of the Association, may be appointed by, and shall serve at the discretion of the Board of Directors, and 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 Properties, including Association Property, working within guidelines and policies established by the Board of Directors. The Architectural Committee also may assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three (3) or more persons, as determined by the Board of Directors of the Association, (all of whom shall be Board members), for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 8.03. Submission of Plans to Architectural Committee. No improvement, exterior addition, modification or alteration shall be made on or to any Lot or other portion of the Properties or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee, working within guidelines and policies established by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 8.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee, working within guidelines and policies established by the Board

of Directors, may disapprove any plans submitted pursuant to Section 8.03 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 Properties;
- 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 Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Properties or portion thereof or with improvements or uses in the vicinity.

Section 8.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 8.03 above, the Architectural Committee 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 Properties shall be final as to such Lot or portion of the Properties 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 Properties, 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 Properties 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 Properties.

Section 8.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 8.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 8.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee 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 8.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee 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 Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee'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 8.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Architectural Committee 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 Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Architectural Committee.

Section 8.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, 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 Properties. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment,

negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 8.11. 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 Properties, the Architectural Committee, within a reasonable period of time, shall issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Properties, 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 Architectural Committee, may be imposed for issuance of such Certificate. Any such Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

ARTICLE IX ENCROACHMENTS

Section 9.01. If any Home or other improvements associated with it, such as decks, walks or other improvements encroaches on another Lot by up to two feet as a result of the construction of the improvement, then there shall be an easement for such encroachment and for the maintenance of same as long as the Home shall stand.

ARTICLE X INSURANCE AND RECONSTRUCTION

Section 10.01. 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: (i) fire and casualty insurance on the Properties and the Homes(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:

(i) Fire and Casualty. Coverage shall be for the unit value of each Home under the "single entity" concept, i.e. covering the full replacement cost of the Homes as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings and all machinery servicing the Homes 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, and wall coverings) made by present or prior Owners or occupants.

The policy shall have the following provisions: (a) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association, (b) a provision that the policy cannot be canceled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (c) 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, (d) a provision that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all known mortgagees of Lots, and (e) waiver of reduction of pro-rata liability of the insurer as a result of insurance carried by the Lot Owner.

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 2 below.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of two-thirds (2/3) of the 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.

(ii). Liability. The liability insurance shall cover the Association Property, the directors and officers of the Association, the managing agent, if any, and all Owners of Homes, but not the liability of Home Owners arising from occurrences within such Owner's Home 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 (v) contractual liability.

(iii). 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..

(iv). 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.

(v). 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.

(vi). 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 available only at demonstrably unreasonable cost.

(vii). 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 VI of this Declaration.

Section 10.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any improvement, 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. 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, taking into account 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 excess funds shall be retained by the Association and used in any manner approved by the Board of Directors.

Section 10.03. Insurance Carried by Owners. Owners of Homes shall carry insurance for their own benefit, including insurance on their personal property and furnishings, upgrades and betterments, and covering liability within their Home and such policies shall contain waivers of subrogation. Such policies are frequently referred to as "HO-6" policies. 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 XI
GENERAL COVENANTS AND RESTRICTIONS

Section 11.01. Advertising and Signs. No sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Properties, including but not limited to temporary signs advertising property for sale or rent, or marketing signs of service vendors and contractors, except with the consent of the Association.

Section 11.02. Pets. The Association may, from time to time, (i) impose reasonable rules and regulations concerning pets and (ii) prohibit certain types of pets entirely. Home owners shall be permitted to keep up to 2 dogs or up to 2 cats or one cat and one dog 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. Provided an Owner obtains the prior written consent of the Association, an underground pet containment system may be installed. Assuming the Owner has installed an underground pet containment system, a pet may be let outdoors within the area of the underground pet containment system in the company of a responsible person, but need not 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.

Section 11.03. Out Buildings, Protective Screening and Fences. No out building, fence, or wall of any kind shall be installed or erected upon any portion of the Properties. No screen planting of any kind shall be planted, installed or erected upon any portion of the Properties unless approved by the Association. Adherence to Town code and zoning requirements of the governing municipality shall be the sole responsibility of the Lot Owner.

Section 11.04. 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 Properties, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 12 hours of a scheduled pick-up, at such place on the Lot or other portion of the Properties designated by the Association so as to provide access to persons making such pick-up. 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 Properties.

Section 11.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic 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 Properties without the prior written approval of the Association.

Section 11.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Properties, 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 electro-magnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 11.07. Pools. No permanently installed in-ground or above ground pools shall be permitted on any portion of the Properties.

Section 11.08. Dwelling in Other Than Residential Home. 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 Properties, except with the consent of the Association.

Section 11.09. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Properties, except with the consent of the Association. The Association in regulating antenna or dishes shall abide by the requirements of the Federal Telecommunications Act of 1996, as amended.

Section 11.10. Trees and Other Natural Features. No trees shall be removed from any Lot or portion of the Properties, 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 Properties.

Section 11.11. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Properties except with the consent of the Association, subject, however, to the Town of Perinton Zoning Code and the Parks and Recreation Law of the State of New York.

Section 11.12. Commercial and Professional Activity on Property. No wholesale or retail business, service occupation or home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Properties without the consent of the Association, except that Association consent shall not be required for a legal home occupation requiring no visitor parking or employee parking.

Section 11.13. Outside Storage. Outside storage or parking for more than one 48 consecutive hour period per month of any commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited without the consent of the Association.

Section 11.14. Outdoor Repair Work. With respect to a Lot or other portion of the Properties, 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.

While using the garage for repair work, or painting, sanding, refinishing and such other similar activities, the overhead garage door shall be closed.

Section 11.15. Oversized, Commercial and Unlicensed Vehicles. Unless approved by the Association or used in connection with the maintenance of the Properties, the following shall not be permitted to remain overnight on the Properties for more than 48 hours within any month:

- a. any vehicle that cannot fit into a garage of a Home with the overhead garage door closed;
- b. commercial vehicles of a weight of two (2) tons or more, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 11.16. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Properties.

Section 11.17. Permanent Outdoor Recreational Equipment. No permanent outdoor recreational equipment shall be permitted.

Section 11.18 Garages. Garages may be used for vehicular parking only and may not be modified for any other use. Occupants of Homes shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage and shall cause the garage door to be kept in a closed position, except for ingress and egress, whenever possible.

Section 11.19 Awnings and Window/Door Coverings. No awnings, shutters, window guards or other exterior window and/or door coverings, decorative or protective, may be installed without the prior written consent of the Association. However, storm doors may be installed in compliance with Architectural Committee guidelines.

Section 11.20 Machinery. No machinery, refrigeration or heating devices, other than those originally provided with the Home or lighting fixture other than standard electric

lights shall be installed or operated in or about any Home without prior written consent of the Association.

Section 11.21 Unauthorized Parking. Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the Properties or an occupant's driveway, shall be towed from the premises at the expense of the respective owner of such vehicle. The Association, Managing Agent or authorized employee of either, may order such removal on behalf of the Association after giving reasonable notice to the owner of the vehicle to remove such unauthorized parked vehicle, if such owner can be readily located, and shall not be liable for any costs, loss or damage of any nature whatsoever, directly or indirectly, resulting therefrom. Notice is not required prior to removing a vehicle blocking the egress and ingress of another party or impeding access by emergency vehicles.

Section 11.22 Flammable Substances. No flammable substances or articles deemed hazardous to life, limb or property shall be stored or permitted to be stored anywhere on the Properties, in any dwelling or garage, except in an area so designated for such storage by the Association.

Section 11.23 Lot Owner Improvements. No Lot Owner shall make changes or improvements to the exterior of the Home, its color, or its landscaping, unless he has first received the written permission of the Association. Once any changes or improvements have been made, the Lot Owner shall be solely responsible for its care and maintenance, which care and maintenance shall be of the highest standards as is the custom of the local community. The owner shall be responsible for the watering of the lawn on its Lot.

Any exterior lighting shall not adversely impact the Association's property or the adjacent Homes. Exterior lighting type, style, location, intensity, duration of use, and any other relevant matter shall be subject to the written consent of the Association prior to installation.

All mailboxes shall be the same throughout the Property, as per Association specifications.

Each Home will have a lamp post which shall be left on from dusk to dawn. The Association shall repair the light fixture and shall replace light bulbs when needed. The Owner shall bear the cost of electricity consumed by the lamp post.

Holiday ornaments and decorations shall be permitted for the holiday season only. The holiday season is defined to be 30 days before and after the holiday.

Section 11.24 Flag Poles. No free standing flag poles or halyards above three (3) feet in height shall be permitted, without Association approval.

Section 11.25 Association Property. All members shall have the right to use Association Property for their recreational pleasure, consistent with the terms of this Declaration,

and subject to the following: (1) use shall be in common with all Members and not exclusive by any one Member; (2) use by one Member shall not be a disturbance or annoyance to another Member; (3) use shall be limited to daylight hours; (4) Members are personally responsible for any damage they cause to Association Properties, same being repaired and restored at the Member's sole cost and expense. If not promptly completed by the responsible Member, the Association shall have the option to complete repairs and restoration, and cost of such work shall be assessed to the responsible Member as a special assessment, shall be due upon invoicing by the Association, and shall be a lien upon the Lot of the responsible Member until paid in full.

Section 11.26. Maintenance of Home. All Owners shall keep their townhome in good condition and repair. If an Owner fails to do so, the Association may repair the Home and charge the cost of so doing to the Owner to be treated as a special assessment and be enforceable as such

Section 11.27. Leasing of Homes. No Homes may be leased for a period of less than 12 months. No portion of a Home may be leased. Any lease must be on a standard form provided by the Association. A fully executed copy of the lease shall be provided to the Association. No Home may be sub-leased by the tenant. 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 his 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 more than 8 homes may be leased at any one time. Leases (or similar arrangements, whether with or without rental) to immediate family members (parents, siblings, children or grandchildren) shall not be included in this computation.

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

ARTICLE XII ENFORCEMENT AND AMENDMENT OF DECLARATION

Section 12.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Properties or otherwise occupying any portion of the Properties, whether or not the deed, lease or any other instrument incorporates or refers to this Declaration, 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 this 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 Properties.

Section 12.02. Enforceability. The provisions of the Declaration shall bind the Properties, 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 12.03. 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 12.04. 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 or collect moneys due, 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 Properties owned by such Owner, if any.

Section 12.05. Inspection and Entry Rights. Any agent of the Association 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 Properties 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.

Section 12.06. 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 12.07. Amending 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 two-thirds (2/3) of all Lots which are subject to this Declaration. In voting for such amendment or rescission, the Members' voting rights shall be as set forth in Article III hereof. 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 the event that a proposed amendment materially and adversely affects mortgagees of the Homes, such mortgagees shall be notified of the proposed amendment by certified mail, return receipt requested and 51% of the mortgagees of the Homes must approve the amendment. If no response is received from a mortgagee within 30 days of receipt of the proposed amendment, it shall be presumed that the mortgagee consents to the amendment.

Section 12.08. 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 12.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Properties and the Owners thereof until December 31, 2046, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 12.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of 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 benefited 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 Properties to the end that the Properties 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 12.11. 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 12.12. 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 12.13. 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 XIII GENERAL


Section 13.01. Headings and Captions. The headings and captions contained herein are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 13.02. Notice. Any notice required to be sent to an 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 address of the person who appears as the Owner or mortgagee on the records of the Association at the time of such mailing.

Section 13.03. 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. 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 13.04. 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 or resident's association or similar entity.

THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

By: 
Robert W. Barker , President

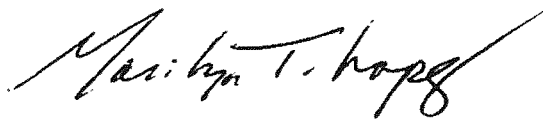
STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 6th day of June in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert W. Barker, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

KIMBERLY A JEFFERY
Notary Public, State of New York
No. 01JE6292871
Qualified in Monroe County
Commission Expires November 12, 2017


Notary Public

The undersigned, as Secretary of the Thomas Creek Homeowners Association, Inc., hereby certifies that at a meeting of Owners on May 24, 2016, duly called and held, at which a quorum was present, in person or by proxy, this Declaration was approved by at least 66 2/3 % of the Members of the Association. Signature pages are on file with the Board.



SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe, New York, and being part of Lot 17, Township 12, on the 4th Range of Townships in the Phelps and Gorham purchase, known and described as Phase I as shown on a resubdivision map of Thomas Creek Estates Subdivision, Section 1, Townhouse Project Phases 1 and 2, by Herman J. Klingenberger, Licensed Surveyor, dated February 3, 1987, and filed in the Monroe County Clerk's Office at Liber 242 of maps, pages 84 and 85.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe, New York, and being part of Lot 17, Township 12, on the 4th Range of Townships in the Phelps and Gorham purchase, known and described as Phase 2 as shown on a resubdivision map of Thomas Creek Estates Subdivision, Section 1, Townhouse Project Phases 1 and 2, by Herman J. Klingenberger, Licensed Surveyor, dated February 3, 1987 and filed in the Monroe County Clerk's Office at Liber 242 of Maps, page 82.

Dearfield Court

BY-LAWS
OF
THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

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ARTICLE I
NAME AND LOCATION

SECTION 1.01 Name and Location. The name of the corporation is THOMAS CREEK HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Association shall be located in the Town of Perinton, County of Monroe and State of New York.

ARTICLE II
DEFINITIONS

As used in these By-Laws, the following terms shall have the definitions ascribed to them below:

SECTION 2.01 Association. Thomas Creek Homeowners Association, Inc., a New York not-for-profit corporation.

SECTION 2.02 Declaration. The document entitled "Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens", as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

SECTION 2.03 Lot. Any portion of the Properties identified as a separate parcel on the tax records of the Town of Perinton or shown as a separate lot upon any recorded or filed subdivision map, with the exception of Association Property as defined in the Declaration.

SECTION 2.04 Member. Every person or entity who is a record owner of a fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract vendors. No person, however, shall be a member of the Association solely on account of ownership of an interest in a Lot solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot subject to assessment by the Association.

SECTION 2.05 Properties. All property within Thomas Creek Subdivision, Sections 1 and 2 and subject to the lien of the Declaration.

SECTION 2.06 Home. A single family dwelling on the Properties.

ARTICLE III
MEMBERS

SECTION 3.01 Membership in the Association. The Members of the Association shall be the Owners of Lots within the Properties, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member. The Association shall have one class of Membership. Class A members shall be all Owners of Lots who shall have full voting rights

ARTICLE IV
MEETINGS OF MEMBERS; VOTING

SECTION 4.01 Annual Meeting. There shall be an Annual Meeting of the Members on the third Tuesday of May at 7:00 p.m., or at such other date and time and at such other place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the annual Meeting shall be a legal holiday, the meeting shall be held on the first day following, which is not a legal holiday. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

SECTION 4.02 Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, and shall be called by the Secretary of the Association at the request in writing of Members of the Association holding not less than the twenty percent (20%) of the votes entitled to be cast at the meeting.

SECTION 4.03 Notice of Meetings. Not less than ten (10) days or more than fifty (50) days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member notice stating the time and place of the meeting and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail, facsimile or electronic mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person without objection to lack or deficiency of notice prior to the conclusion of the meeting, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

SECTION 4.04 Voting Rights. The Class A membership shall have full voting rights, and each Member shall have one vote, regardless of the number of Lots owned.

SECTION 4.05 Quorum and Vote. The presence in person or by proxy of Members having a majority of the total votes of the Membership entitled to vote shall constitute a quorum at any meeting. However, if a meeting cannot be held because a quorum is not present, the majority of the Members present, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours later, until a quorum shall be present in person or by proxy, with the quorum required for each reconvened meeting being one-half (1/2) of the quorum required for the previous meeting, but never less than one-tenth of the total votes of the Membership entitled to vote. Directors shall be elected by the affirmative vote of Members entitled to vote and casting a plurality of the vote cast at a meeting of Members. With respect to all acts other than the election of Directors, the act of Members casting a majority of the votes cast at a meeting shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

SECTION 4.06 Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of elections, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

SECTION 4.07 Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

SECTION 4.08 Joint or Common Ownership. Any one (1) joint or common fee owner of a Lot shall be entitled to cast the vote with respect to the Lot so owned, but all such joint or common owners shall together cast only one (1) vote for each Lot conferring voting rights. If the owners are unable to determine how the vote shall be cast, no vote shall be cast.

SECTION 4.09 Absentee Ballots. On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and that the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be elected, may vote by a proxy which shall be in writing and shall be filed with the Secretary of the Association prior to the meeting.

SECTION 4.10 Waiver and Consent. Wherever the vote of the membership is required by law or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the

meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held shall consent in writing or by email to such action being taken.

ARTICLE V
BOARD OF DIRECTORS

SECTION 5.01 Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be seven (7).

SECTION 5.02 Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. Nominations also may be made from the floor at the Annual Meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election of the Board of Directors as it shall determine, in its sole discretion, but not less than the number of vacancies that are to be filled and such nomination may be made from Members of the Association.

SECTION 5.03 Election. The Members shall elect seven Directors with staggered terms. At each Annual Meeting, the Members shall replace those Directors whose terms have expired and elect such successor Directors for a term of three (3) years. Voting shall be by secret written ballot which shall:

- a. Set forth the number of vacancies to be filled;
- b. Set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- c. Contain space for a write-in for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

SECTION 5.04 Vacancies. Any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors (although less than a quorum) or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of

a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

SECTION 5.05 Removal. At any meeting of Members, duly called at which a quorum is present, the Members may, by the affirmative vote of not less than two-thirds (2/3) of the Members entitled to vote, remove any Director or Directors from office with or without cause and may by plurality vote elect the successor or successors to fill any resulting vacancies for the unexpired term or terms of the removed Director or Directors. In addition the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings.

SECTION 5.06 Compensation. Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. A Director who serves the Association in any capacity other than as a Director or officer, however, may receive compensation therefor.

SECTION 5.07 Regular Meetings. Regular Meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday. A Board member who is not physically present at a meeting may participate by means of a conference telephone call or electronic video screen communication.

SECTION 5.08 Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any three (3) Directors after not less than two (2) days' notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in writing signed by such Director before or after the time of the Special Meeting stated therein, or by email transmission, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting without objection to lack or deficiency of notice prior to the conclusion of such meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of any Special Meeting need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

SECTION 5.09 Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, except as otherwise required by law, by the Certificate of Incorporation of the Association or by these By-Laws. Except in cases in which it is provided otherwise by law, by the Certificate of Incorporation or by these By-Laws, a vote of a majority of Directors present at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a

quorum shall be present, any business may be transacted which might have been transacted as originally called.

SECTION 5.10 Informal Action by Directors. Any action required or permitted to be taken by a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written or electronic consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be. Such written consent or electronic consent shall be filed with the minutes of proceedings of the Board or committee.

SECTION 5.11 Powers of the Board. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or these By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to, the following:

a. To determine, levy and collect the assessments and common charges as provided for in the Declaration.

b. To collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association as permitted by the Declaration.

c. To procure and maintain adequate liability insurance covering the Homes, the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Homes as it deems appropriate.

d. To repair, restore or alter the properties of the Association or such other improvements for which the Association may now or hereafter have such responsibility under the Declaration, as amended, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

e. To promulgate rules and regulations relating to the use, operation and maintenance of the Properties for the safety and convenience of the users thereof or to enhance the preservation and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce fines and penalties for infractions thereof. Fines may be in the amount of \$100 per violation, but with each day of a continuing violation after written notice to the Owner being a separate violation. Such fines may be collected as if they were Maintenance Assessments owed by the Member against whom the fine was levied. The amount of fines may be amended from time to time by the Board.

f. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.

g. To pay all expenses incurred by the Association and all taxes owing by the Association.

h. To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.

i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.

j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.

k. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.

l. 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, however, require the consent of two-thirds (2/3) of the total votes of all Members at any meeting duly called and held or who shall vote upon written ballot which shall be sent to every Member not less than 30 days nor more than 60 days in advance of the canvass thereof. In addition, no such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% 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 by certified mail, return receipt requested, to all lending institution first mortgagees on the 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. If a lending institution does not respond, it shall be presumed that they approve of the conveyance.

m. 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 two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than 10 days nor more than 60 days in advance of the vote on the proposed agreement.

n. Borrowing money on behalf of the Association when required in connection with the operation and maintenance of the Association Property or the Homes provided, however, that (i) the consent of 2/3 of all voting Members, obtained at a meeting duly called and held for such purpose, shall be required for the borrowing of

any sum and (ii) no lien to secure repayment of any sum borrowed may be created on any Lot without the consent of the Lot Owner.

o. Employment of a managing agent to perform such duties as the Board may authorize.

p. To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.

SECTION 5.12 Duties of the Board. It shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.

b. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:

(1) Fix the amount of Special Assessments and Maintenance Assessments and other assessments to be assessed and levied against each Lot at the time or times and in the manner provided in the Declaration.

(2) Send written notice of each assessment to every owner of a Lot subject thereto at the time and in the manner provided in the Declaration.

(3) Take reasonable action consistent with the Declaration to collect assessments due the Association and not timely paid, and to bring an action at law against the Member personally obligated to pay the same.

d. Issue, or cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a Certificate states an assessment has been paid, such Certificate shall be conclusive evidence of such payment.

e. Procure and maintain adequate liability and hazard insurance for the Association Property, and for the Homes.

f. Cause the Association Property, and on the default of the Lot Owner, the exteriors of the Homes to be maintained.

g. Cause all officers or employees having fiscal responsibilities to be bonded, as the Board of Directors may deem appropriate.

h. Prepare annual financial statements of the Association which are to be mailed or e-mailed to each Member by April 15th of each year.

SECTION 5.13 Performance of Duties; Conflict of Interests. The Directors and Officers of the Association may freely make contracts, enter transactions or otherwise act for and in behalf of the Association relating to or incidental to its operations, notwithstanding the fact that they may also be acting as individuals or as Directors of the Association and as agents for other persons or business concerns or may be interested therein as stockholders of said corporations or business concerns or otherwise, provided, however, that all such dealings shall at all times be at arm's length for and in the best interests of the Association and otherwise lawful. The Directors and Officers shall comply with the Association's conflict of interest policy adopted pursuant to the NYS Not- For- Profit Corporation Law.

ARTICLE VI OFFICERS

SECTION 6.01 Officers. The officers of the Association shall be the President (who shall be a member of the Board of Directors), one (1) or more Vice Presidents (the number to be determined by the Board of Directors), the Secretary and the Treasurer and shall be appointed by the Board of Directors. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Two (2) or more offices may not be held by the same person.

SECTION 6.02 Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

SECTION 6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold offices until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 6.04 Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless

otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6.05 President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall preside at all meetings of Directors and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

SECTION 6.06 Vice President. The Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

SECTION 6.07 Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

SECTION 6.08 Treasurer. The Treasurer shall have the duty to oversee the management and proper safekeeping of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President, the Board or these By-Laws.

SECTION 6.09 Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

SECTION 6.10 Compensation. No executive officers of the Association shall receive any stated salary for their services, provided that nothing herein contained shall preclude any executive officer from serving the Association in any other capacity and receiving compensation therefor.

ARTICLE VII COMMITTEES

SECTION 7.01 Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one (1) or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided, however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to these By-Laws or a plan of merger or consolidation.

SECTION 7.02 Committees of the Association. The committees of the Association shall be the Architectural Standards Committee, the Nominating Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors, except that the Architectural standards Committee shall consist of only Board members. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration. All decisions of the committees of the Association shall be subject to the final approval of the Board.

SECTION 7.03 Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE VIII
FINANCE

SECTION 8.01 Checks. All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer and countersigned by one (1) Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

SECTION 8.02 Fiscal Year. The fiscal year of the Association shall be the twelve (12) calendar months, ending December 31st of each year, unless otherwise provided by the Board of Directors.

SECTION 8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members and filed within 20 days thereafter at the principal office of the Association.

ARTICLE IX
BOOKS AND RECORDS

SECTION 9.01 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

ARTICLE X
CORPORATE SEAL

SECTION 10.01 Corporate Seal. The Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

ARTICLE XI
AMENDMENTS


SECTION 11.01 Alteration, Repeal or Amendment. These By-Laws may be altered, repealed or amended and new By-Laws may be adopted at any regular or special meeting of the Members, by vote of a majority of Members entitled to vote present in person or by proxy.

SECTION 11.02 Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XII
INDEMNIFICATION

SECTION 12.01 Indemnification. To the extent permitted by law, the Association shall indemnify and hold harmless any person made a party to any proceeding by reason of the fact that such person is or was a Director or officer of the Association against any loss or expense incurred by said person by reason of such proceeding, including the settlement thereof, except in relation to matters which such person is adjudicated to be liable for gross misconduct in the performance of that person's duties.

The undersigned, as Secretary of the Thomas Creek Homeowners Association, Inc., hereby certifies that at a meeting of Owners on May 24, 2016, duly called and held, at which a quorum was present, in person or by proxy, the above By-Laws were approved by at least 51% of the votes of the Members in attendance. Signature pages are on file in the Association office.



Name: Marilyn T. Lopez
Title: Secretary