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**RESTATED  
DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS - HEARTLAND ESTATES  
(THE HEARTLAND ESTATES DECLARATION)**

**DATED: January 8, 2020**

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**NOTE: THIS DOCUMENT STAYS WITH THE UNIT.**

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**RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - HEARTLAND ESTATES  
(HEARTLAND ESTATES DECLARATION)**

THIS RESTATED DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Unit Owners of the Heartland Estates Homeowners Association, Inc., Village of Webster, New York, being referred to hereinafter as “the Unit Owners.”

**WITNESSETH**

WHEREAS, the undersigned Unit Owners are the Owners of Units located on subdivision lots located within the real property described in Article II of this Restated Declaration, which real property is known as “Heartland Estates”; and

WHEREAS, a Declaration of Protective Covenants, Conditions and Restrictions (“The Heartland Estates Declaration”) was recorded in the Monroe County Clerk’s Office in Liber 9606 of Deeds at page 364; and

WHEREAS, the Unit Owners wish to amend and restate such Declaration of Protective Covenants, Conditions and Restrictions - Heartland Estates; and

WHEREAS, pursuant to the aforementioned Declaration, Article XII, the Declaration may be amended or rescinded by an instrument signed by not less than 90%, pursuant to the original Declaration, of the Unit Owners of Heartland Estates; and

WHEREAS, the undersigned Unit Owners represent more than the required number of votes of the Unit Owners; and

WHEREAS, the Unit Owners desire to provide for the preservation of the values and amenities in said community; and, to this end, desire to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Unit Owners have deemed it desirable, for the efficient preservation of the values and amenities in said community to create a not-for-profit corporation, to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, HEARTLAND ESTATES HOMEOWNERS ASSOCIATION, INC. has been incorporated under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the undersigned Unit Owners, for themselves, their successors and assigns, declare that the real property described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions,

restrictions, easements, charges and liens (sometimes referred to as “covenants, conditions and restrictions”) hereinafter set forth.

## ARTICLE I DEFINITIONS

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

- (A) “Association” shall mean and refer to the Heartland Estates Homeowners Association, Inc.
- (B) “Association Property” shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association and also referred to as “common property.”
- (C) “Building” shall mean and refer to each of the 13 Buildings in Heartland Estates containing a total of 41 Units.
- (D) “Common Utilities” shall mean and refer to any common sanitary sewer line and common storm sewer line servicing Heartland Estates.
- (E) “Declaration” shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Heartland Estates (The Heartland Estates Declaration) as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- (F) “Institutional First Mortgage Lender” shall mean and refer to a bank, savings and loan association, life insurance company, pension trust, trust company, the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or any lender approved by Fannie Mae or Freddie Mac which holds a first mortgage on a Unit.
- (G) “Lot” shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Village of Webster; and (ii) shown as a separate lot upon any recorded or filed subdivision map, upon which a Unit has been constructed.
- (H) “Owner” shall mean and refer to the holder of record title to any Lot or Unit.
- (I) “Property” shall mean and refer to all properties as are subject to this Declaration, as defined in Section 2.01 following.



- (J) “Recording Office” shall mean and refer to the official office for the recording of land documents in the County of Monroe.
- (K) “Unit” Each of 41 single family residences as constructed within one of the Buildings, including the garage.
- (L) “Unit Owner” shall mean and refer to the holder of record title to any Lot or Unit.

## 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 Village of Webster, County of Monroe and State of New York, all of which property shall be hereinafter referred to as the “Property”. The real property subject to this Declaration is known and described in Schedule A attached hereto.

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

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Association was formed to own, operate, and maintain the Association Property, if any, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members Unit Owners. All Unit Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership.

Section 3.03. Voting. Each Unit Owner shall be entitled to only one (1) vote, no matter how many Lots or Units are owned.

Section 3.04. Assigning Right to Vote. Any Unit Owner shall be entitled to assign such Owner’s 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.

Section 3.05. Selection, Powers and Duties of Directors. The nomination, election, powers and duties of the Board of Directors and the filling of vacancies on the Board of Directors shall be governed as set forth in the By-Laws of the Association.

Section 3.06. 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, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, 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, whether or not such person is a director or officer at the time such expenses are incurred, except that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that: (i) the acts of the director or officer were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated; or (ii) such director or officer (or a member of such director's or officer's family) personally gained a financial profit or other advantage to which such beneficiary was not legally entitled; provided, that in the event of a settlement or other nonadjudicated disposition, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. Funds to cover the above expenses, including fees of counsel, may be advanced by the Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that: (i) the recipient is not entitled to indemnification; or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

#### **ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**

Section 4.01. Common Utilities. The common utilities, if any, shall be owned by the Association, unless owned by a Municipal Agency, and subject to the provisions of this Declaration, for the use and enjoyment of the Unit Owners.

Section 4.02. Rights and Easements of Unit Owners. Subject to the rights and easements of the Association set forth in Sections 4.03 and 4.04 below, each Unit Owner (and such Owner's guests, licensees, tenants and invitees) shall have the right and easements to use, maintain, repair and replace any pipes, wires, cables, conduits, drainage areas, fiber optic lines such as Greenlight Networks and other utility lines servicing such Unit Owner's Lot (Unit) but located on another Lot or in another Unit. Entry to a Unit shall require reasonable 24-hour notice to the Unit Owner, unless an emergency exists.

All of such rights and easements shall be appurtenant to and shall pass with the interest of a Lot Owner as defined in Article I, Section 1.01 of this Declaration.

Section 4.03. Rights of Association. In accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the following rights:

- a. Adopt Rules and Regulations - to adopt rules and regulations relating to the use, operation and maintenance of the Property for the safety and convenience of the users thereof or to enhance the preservation of such



facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Unit Owners, and to establish penalties for the infraction thereof;

- b. Grant Easements to Utility Companies and Governmental Entities - to grant easements or rights of way, with or without consideration to any public or private utility corporation, cable television company, fiber optic, cable networks, governmental agency or political subdivision;
- c. Transfer, Lease, Sell, Exchange or Encumber Association Property or Acquire or Lease Real Property - to dedicate, sell, transfer, donate, lease, abandon, partition, encumber or otherwise dispose of, all or any part of the Association Property which the Association owns or to acquire or lease other real property for such purposes and subject to such conditions as may be agreed to by the Association and the transferee or transferor. Such action (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Unit Owners) shall require a "Hearing" as described in Section 4.06 below and the consent of Unit Owners of not less than 75% of all Lots who shall vote by written ballot which shall, not less than 10 days nor more than 50 days in advance of the date or initial date of the canvass thereof, be sent to all Unit Owners and to those lending institution first mortgagees of Lots whose names appear as such on the books or records of the Association. No such conveyance shall be made if lending institution first mortgagees of 51% or more of the Lots subject to first mortgages held by lending institutions whose names appear as such on the books or records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable; and
- d. Enter into Agreements for Performance of Duties - to enter into agreements for the performance of its various duties and functions including agreements with other homeowners' associations, condominiums and cooperatives for common maintenance, management and other services, materials and supplies.

Section 4.04. Easements of Association. The Association (and its employees, contractors and agents) shall have the following easements over each Lot:

- a. Utility Line Maintenance - for the use, installation, maintenance, repair and replacement of any pipes, wires, cables, conduits, drainage areas, light standards and other utility lines located on such Lot and servicing the Lots;

- b. Utility Banks and Telephone Pedestals - for installation, maintenance, repair and replacement of utility banks, cable pedestals, and telephone pedestals free standing or on the exterior walls of Buildings;
- c. Other Maintenance on Lots - for the installation, maintenance, repair and replacement of any improvements on the Lots, including walkways, fencing, walls, retaining walls, signage areas, landscaping, lawns, driveways, roadways and Unit exteriors, and for snow removal, to the extent the Association is obligated to undertake such installation, maintenance, snow removal, repair and replacement under this Declaration;
- d. In Conjunction with Maintenance - to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvements constructed on the Lots or comply with any maintenance obligations set forth in this Declaration; and
- e. Water for Watering of Lawns - to tie into and use water from any Unit for the watering of any signage areas, garden areas, or other maintenance which the Association is obligated to perform. This provision in no way absolves the individual Unit Owner of the responsibility of watering their own lawns, as provided for in the Association Rules and Regulations.

To the extent reasonably appropriate any such entry onto a Lot (i) shall be on reasonable notice to the Unit Owner of the Lot to be entered, except that, in an emergency, such entry may be without notice, and (ii) may include entry to any improvement on such Lot.

Section 4.05. Damage Resulting from Use of Easement. Subject to rights of recovery under law or pursuant to other provisions of this Declaration, any damage to any Lot or other portion of the Property or to any improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement or other right granted or reserved herein, shall be promptly repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, to the condition in which it existed immediately prior to the damage.

Section 4.06. Hearing Procedures. Where the Board of Directors is required, in accordance with the provisions of this Declaration, to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.06 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be conveyed to all Unit Owners in accordance with any provisions of this Declaration relating to the giving of notice. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The presence of Unit Owners in person or by proxy, entitled to cast 2/3 of all the votes of the Unit Owners shall

constitute a quorum, as stated in the bylaws. The Hearing will be held at a reasonably convenient time and location for the Unit Owners. All Unit Owners shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a Proposal, a Hearing is required pursuant to more than one section of this Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

## **ARTICLE V**

### **ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW**

Section 5.01. Imposition, Personal Obligation, Lien. Each Unit 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 the Property ("Maintenance Assessments");
- b. special assessments for capital improvements, unbudgeted or extraordinary expenses or underfunded reserves ("Special Assessments");

together hereinafter being 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 late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Unit Owner of such Lot at the time the Assessment falls due. Upon a transfer of title to a Lot, Assessments shall be adjusted as provided in Section 5.12 below.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund: (i) the maintenance, preservation, operation and improvement of the Property and the promotion of the recreation, safety and welfare of the Unit Owners, including but not limited to, the payment for any utility services to the Property which are commonly metered or billed (including electricity for the commonly metered lighting of the common private roadway), all casualty, liability and other insurance obtained pursuant to Article IX of this Declaration; (ii) the maintenance, repair and replacement of all facilities as required in Article VI of this Declaration; (iii) the cost of labor, equipment, materials, management and supervision for all of the above; (iv) such other maintenance responsibilities as the Association elects to undertake pursuant to Section 6.01 of this Declaration; and (v) such other needs as may arise.

Section 5.03. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot assessed shall be the same for all Lots, so that the annual Maintenance Assessment for each Lot shall be determined each year by dividing the number of Lots liable for the payment of Maintenance Assessments pursuant to Section 5.01 into the total amount that the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained), and any debts incurred by the Homeowner's Association.

Section 5.04. Special Assessment. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that fiscal year and/or in one or more of the following years, for the purpose of (i) defraying, in whole or in part, the cost of any construction, reconstruction or replacement of, or repair of the Property or to any improvements or landscaping on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto or (ii) funding unbudgeted or extraordinary expenses. Before levying such a Special Assessment the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.06 of this Declaration if the Special Assessments exceeds 100% of the then current amount of the Annual Maintenance Assessment. Not less than 10 nor more than 60 days after such Hearing, the Board of Directors shall: (i) for any Special Assessment for an amount in excess of 100% of the then current amount of the annual Maintenance Assessment, obtain the consent of the Unit Owners of 67% or more of all Lots who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Unit Owners at least 30 days in advance, setting forth the purpose of the meeting; and (ii) for any Special Assessment, obtain the approval of not less than two-thirds (2/3) of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Unit Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.05. Notice of Assessments. Maintenance Assessments provided for herein shall be on a full year basis. The Board of Directors of the Association shall fix the amount of the Maintenance Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Maintenance Assessments shall be due and payable monthly unless the Board of Directors establishes other installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial annual Maintenance Assessments as long as said Maintenance Assessments are established at least 30 days before due. Written notice of the annual Maintenance Assessments shall be sent to every Unit Owner subject thereto.

Section 5.06. 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 5.07. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.05 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 Lot which shall bind such Lot



in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. A notice of lien may be filed by the Association in the Recording Office providing notice that: (i) delinquent Assessments are outstanding with respect to a specified Lot; and (ii) such delinquent Assessments and any future Assessments due are a continuing lien until paid, but such filing shall not be necessary to perfect or establish the priority of such continuing lien. 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 a specified number of 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 20% 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 10 days after the due date: (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Unit Owner; and (iii) the Association may bring legal action against the Unit Owner personally obligated to pay the same or foreclose the lien against the Lot of such Owner, and the cost of such proceedings, including actual 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 Unit Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

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

Section 5.08. Notice of Default. The Board of Directors, when giving notice to an Unit Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Association's records. The mortgagee shall have the right to cure the Lot Unit Owner's default with respect to the payment of such Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.



Section 5.10. Assessment Certificates. Upon written demand of the Unit Owner, the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate: (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (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 such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, or title insurer of, or lender, on the Lot on which such certificate has been furnished.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide 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 the Unit Owner of such Lot from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.12. Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Lot, Maintenance Assessments and any Special Assessments which: (i) may be payable in installments; or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in the adoption of the Special Assessment: (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installation due dates; and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the Lot on the date which such Assessment is initially due.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors of the Association, upon the consent of not less than 67% of the Unit Owners.

Section 5.14. 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 Assessments 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 Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.03 hereunder, to assess the same at a particular rate or rates;
  - (2) establish sinking funds and/or other security deposits;
  - (3) 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;
  - (4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
  - (5) provide for the custody and safeguarding of all funds received by it.

## **ARTICLE VI MAINTENANCE RESPONSIBILITY**

### **Section 6.01. Maintenance and Repair Responsibilities.**

Attached to this Declaration, and marked as Schedule B, is a matrix specifying the responsibilities of maintenance by the Association and the Unit Owners.

The Association shall not have the responsibility to maintain, repair or replace exterior modifications made by or at the direction of any Unit Owner or Unit occupants unless the Association agrees to maintain specific items installed by or at the direction of the Owner or Unit occupants.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repair as set forth in Section 4.03, Rights of the Association and Section 4.04, Easements of Association, of this Declaration.

**Section 6.02. Maintenance Occasioned by a Negligent or Willful Act or Omission.** Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a

negligent or willful act or omission of an Unit Owner, the tenant of such Unit Owner, their families or invitees or contractor or employee compensated or hired by the Unit Owner, shall be made at the cost and expense of such Unit 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 Unit Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of Property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Unit Owner(s), have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that, in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

## **ARTICLE VII ARCHITECTURAL CONTROLS**

Section 7.01. Control by Association. Enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to the exterior of any Unit or other improvement on said Lot or other portion of the Property, visible from the exterior, shall be the sole responsibility of the Association, acting through the Board of Directors.

Section 7.02. Submission of a Request for a Variance to Board of Directors. No exterior addition, modification or alteration, including change of color or style, shall be made on or to such Unit, Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Board of Directors requires, have been submitted to, and reviewed and approved by, the Board of Directors. The Board of Directors may charge and collect a reasonable fee for costs that are incurred in the examination of plans submitted for approval and discuss the estimated cost with the Unit Owner prior to making any expenditure.

Section 7.03. Basis for Disapproval of a Variance Request by Board of Directors. The Board of Directors may disapprove any variance request submitted pursuant to Section 7.02 above for any of the following reasons:

- a. failure of such variance request to comply with any protective covenants, conditions and restrictions, including those contained in this Declaration, and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such variance request 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, proposed parking, height, bulk or appropriateness;
- 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, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Board of Directors would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity or is not consistent with the approved architecture, materials and colors utilized throughout the Heartland Estates Townhouse Development and is not of comparable quality;
- g. any variance requiring a building permit or other official document according to local/state/federal law will require conditional approval; such variance will be granted only when the above documentation has been obtained from the appropriate authority and presented to the Board.

Section 7.04. Approval of Board of Directors. Upon approval or qualified approval by the Board of Directors of any plans submitted pursuant to Section 7.02 above, the Board of Directors shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in this Declaration which benefit or encumber the Lot or portion of the Property, and (iii) that such plans and any qualifications or conditions



attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property. Unless stated otherwise, the Unit Owner will be responsible for any future maintenance issues associated with the approved variance. This responsibility is passed on to all future Owners of the Lot or Unit for which the variance was approved.

Section 7.05. Written Notification of Disapproval. In any case where the Board of Directors disapproves any plans submitted hereunder, the Board of Directors shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based as set forth in Section 7.03 above.

Section 7.06. Failure of Board of Directors to Act. If an applicant has not received notice from the Board of Directors within 60 days of a "confirmed" submission of plans, as required by Section 7.02 above, the plans shall be deemed approved.

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

Section 7.08. Delegation of Functions. The Board of Directors may authorize an architectural committee of at least three members to perform any or all of the functions of the Board as long as the number and identity of such architectural committee, and their function and scope of authority have been established by a resolution of the entire Board of Directors. The approval or disapproval of plans by the architectural committee will be subject, however, to the reasonable review of the Board of Directors, in accordance with procedures to be established by the Board.

Section 7.09. Records of Meetings; Regulations. The Board of Directors shall keep minutes of its meetings and maintain records of all votes taken at its Meetings. The Board of Directors shall make such records and current copies of its rules and regulations available at a reasonable place and at reasonable times for inspection by all persons.

Section 7.10. Liability of Board of Directors. No action taken by the Board of Directors or any member, committee, employee or agent hereof, 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 Unit or other portion of the Property. Every person or other entity submitting plans to the Board of Directors agrees, by submission of such



plans, that no action or suit will be brought against the Association or the Board of Directors (or any member, committee, employee or agent thereof) in connection with such submission.

Section 7.11. Architectural Certificate. Title to a Unit may not be transferred until an Architectural Certificate has been issued by the Board indicating that the Unit is in compliance with the Declaration, Bylaws and Rules and Regulations of the Association. Upon written request of any Unit Owner, (or any prospective Unit Owner, mortgagee, or title insurer) of a Unit or other portion of the Property, the Board of Directors shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Certificate") signed by a member of the Board of Directors or the Managing Agent stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Certificate. Any such Architectural 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 VIII PARTY WALLS**

Section 8.01. Party Walls. A wall shall be considered a party wall where all of the following conditions are met:

- a. the wall is built as part of the original construction of the Units; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two (2) adjoining Units, whether or not the wall is on the dividing line between such Units.

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

In any event where it is necessary for an Unit Owner (or said Unit Owner's authorized employees, contractors or agents) to enter upon a Lot or within a Unit owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Unit Owner, shall be limited to reasonable times, and shall be exercised so as not to unreasonably impair the right of the adjacent Unit Owner to the use and quiet enjoyment of said adjacent Unit.

by the Board of Directors. Please refer to the Rules and Regulations for specific and current Board approved directives regarding signs.

Section 10.08. Fences, Gates, Dog Houses. No fence, gates, dog houses or other temporary or permanent structures of any kind and nature will be erected on the Property without the prior written consent of the Board of Directors.

Section 10.09. Antennas. No television or radio antenna or any other type of receiving or transmitting antenna nor awnings or other projections or structure shall be attached or erected on the exterior of Units or on any Lot, except satellite receivers not exceeding 18" in diameter, which location must be approved by the Board of Directors.

Section 10.10. Landscaping. No Unit Owner shall move, remove, add or otherwise change the landscaping on the Property without the authorization of the Board of Directors through the approval of a specific variance request. Refer to the specific section of the Rules and Regulations addressing all landscaping matters.

Section 10.11. Painting. No Unit Owner shall paint the exterior surfaces of windows, walls or doors opening out of his Unit.

Section 10.12. Swimming Pools, Boats, Trailers, Motorcycles, Bicycles, Motor Homes, Campers, Motor Vehicles. Unit Owners are precluded from constructing in-ground or above-ground swimming pools and from storing boats, trailers, motorcycles, bicycles, motor homes, campers or motor vehicles of any kind other than a licensed private passenger type shall be parked on the premises except in the Unit garage, nor shall any person park a motor vehicle or otherwise obstruct any resident's use of ingress or egress to any sidewalk, garage or driveway, nor may any motor vehicle be parked on the roadways when parking would obstruct access by emergency or service vehicles.

Section 10.13. Air Conditioners. No Unit Owner shall install, or permit to be installed, any window mounted or through the wall mounted air conditioning unit in his Unit.

Section 10.14. Repair of Motor Vehicles. No repair of motor vehicles shall be made in any of the roadways, driveways or common areas in the development nor shall such areas be used for storage parking of any boat, trailer, camper, bus, truck or commercial vehicle without the written permission of the Board of Directors.

Section 10.15. Disturbances. No Unit Owner shall make or permit any disturbing noises in any building or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Unit Owners.

Section 10.16. Residential Purposes Only. Units may be used for residential purposes only.

Section 10.17. No Obstruction of Common Area. The common area shall not be obstructed, littered, defaced or misused in any manner.

Section 10.18. Owner is Liable for Damage to Association Property. Every Unit Owner shall be liable for any and all damage to the common area and the property of the Association, which shall be caused by said Unit Owner or such other person for whose conduct he is legally responsible.

Section 10.19. No Interior Structural Alterations. No interior alterations to a Unit are permitted which would impair the structural soundness of any part walls, reduce the levels of fire safety in neighboring Units or diminish the heat and sound insulation between Units.

Section 10.20. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, wood piles, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored or allowed to accumulate outdoors. All such trash shall be kept within the garage or in the Owner's Unit. Trash containers may be placed in the open within 24 hours of a scheduled pick up, at such place designated by the Board of Directors or the Architectural Committee so as to provide access to persons making such pick up. The Board of Directors or the Architectural Committee may, in its discretion, adopt to promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the property.

Section 10.21. Commercial Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the property, except the conducting of business by telephone or online. The restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.22. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted within the property unless authorized by the Board of Directors or the Architectural Committee.

Section 10.23. Leasing. All Unit Owners who purchased their Units prior to the recording of this Restated Declaration may lease their Units until transfer of title to the Unit.

Anyone purchasing a Unit after the recording of this Restated Declaration is subject to the following rental policy: No more than 10% of Units (4 Units) may be rented at any one time. Leases (or similar arrangements, with or without rental) to immediate family members (parents, siblings, children, or grandchildren) shall not be included in this computation. A request for relief from the 10% restriction may be presented to the Board of Directors for consideration upon the demonstration of extenuating circumstances.

Upon recording of this Restated Declaration, current and future Unit Owners who rent their Units are subject to the following directives concerning the rental of Units:

- (a) A minimum initial lease term must be 12 months.
- (b) Only an entire Unit (not rooms or portions of the Unit) may be leased.

- (c) Each Unit rented may be used for single family residential purposes only.
- (d) The lease must be in writing and conform to the legal governing documents of the Association as here set forth.
- (e) Every lease must contain a clause stating that the tenant agrees to abide by the Restated Declaration, By-Laws and Rules and Regulations, as established by the Board of Directors, and set forth in the Member Handbook and other governing documents. It is the responsibility of the Unit Owner or his/her agent to provide these materials to the tenant. If a tenant fails to abide by the rules as set forth in these documents, the Unit Owner will be held responsible and will be subject to the penalties stipulated in these documents.
- (f) The Board of Directors and/or Management must be provided with the name and address of the tenant(s), and a copy of the executed lease.

## **ARTICLE XI ENFORCEMENT, AMENDMENT, DURATION AND INTERPRETATION OF DECLARATION**

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the 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 the Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

### Section 11.02. Enforceability.

a. Actions at Law or Suits in Equity. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Association (being hereby deemed the agent for all of the Unit Owners), and by any member or Unit 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 momentarily 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.

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or of the rules and regulations of the Association or any



committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against an Unit Owner shall be deemed a Special Assessment against the Lot of such Unit Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Association (or any officer, director, employee, member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is: (1) the Unit Owner; or (2) any family member, tenant, guest or invitee of the Unit Owner; or (3) a family member or guest or invitee of the tenant of the Unit Owner; or (4) a guest or invitee of (i) any member of such Unit Owner's family or (ii) any family member of the tenant of such Unit Owner, such costs shall also be a lien upon the Lot owned by such Unit Owner.

Section 11.05. Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees. The Association shall be notified by each Unit Owner or such Unit Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Unit. Upon receipt of such notice, the Association may, at its sole discretion, thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Unit Owner with regard to the violation, by such Unit Owner, of any provision of this Declaration.

Section 11.06. Amending Declaration. The Board of Directors shall hold a Hearing in accordance with Section 4.06 herein for the purpose of considering any proposed amendment, except that the Board of Directors may make amendments to this Declaration to correct omissions or errors, which amendments shall not substantially or adversely modify rights of any Unit Owner without such Unit Owner's written consent, or a Hearing.

The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Unit Owners not less than 14 days prior to the date or initial date set for the canvass thereof.



The affirmative vote of Unit Owners of 67% or more of the total number of Lots shall be required for approval of a proposed amendment, except that no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date or initial date set for voting on the proposed amendment.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose Owners specifically consent in writing to such termination, extinguishment or modification, except as provided in Section 11.08 of this Declaration.

Section 11.07. Owner Responsible for Tenants and Guests. Any lease of a Unit shall provide and specify in writing within the lease specific reference to the "Declaration" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant or any guest of an Unit Owner is in violation of this Declaration, or the By-Laws or rules and regulations of the Association, the Board of Directors shall so notify the Unit Owner of the Unit which such tenant occupies or who hosted such guest, in writing by certified mail, return receipt requested. If the violation is not corrected or eviction proceedings are not commenced against the tenant within 14 days after the Unit Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration, including evicting the Tenant.

Section 11.08. Duration and Termination. This Declaration shall continue with full force and effect perpetually unless terminated or its duration shortened by the affirmative vote of not less than 67% of the total number of Unit Owners after a Hearing is held in accordance with Section 4.06 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, duration, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Unit Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Section 11.09. When Amendment or Termination Becomes Effective. Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Recording Office and upon such recording shall be binding from the date of such recording on all the Property unless specifically provided in such amendment or termination. Such instrument need not contain the written consent of the required number of Unit Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. 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 benefitted or bound by the provisions hereof.

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 in making any 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 interests of the Unit Owners and residents of the Property for the purpose of preserving and maintaining the Property 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 it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

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

## **ARTICLE XII GENERAL**

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

Section 12.02. Notice. Any notice required to be sent to any Unit 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 or entity appearing as Unit Owner or mortgagee on the records of the Association at the time of such mailing. All Unit Owners are required to provide the Secretary of the Association, or to a person designated by the Secretary, a current mailing address to which official Association notices may be sent.

Section 12.03. 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, and all references herein to the Board of Directors shall refer to the board of directors (or trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association 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 Unit Owner may petition the 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 responsibility of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

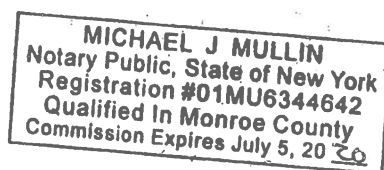
Section 12.04. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other Owners' or residents' association or similar entity.

Attached to this Amendment is a Certification of the Board of Directors of the Association certifying that the required consents of the Unit Owners have been received and filed with the Board of Directors.

**HEARTLAND ESTATES HOMEOWNERS ASSOCIATION,  
INC.**

By Miriam W. Derivan

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



On this 8 day of January, 2020, before me personally came Miriam W Derivan, to me known, who being by me duly sworn, did depose and say that he resides at 100 McKay Drive, Webster, NY 14580, New York; that ~~he~~ she is the President of HEARTLAND ESTATES HOMEOWNERS ASSOCIATION, INC. the corporation described in, and which executed the above instrument; that said corporation has no seal, never having adopted any seal, and that the foregoing instrument was executed without corporate seal by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[Signature]  
Notary Public

CERTIFICATION OF RECEIPT OF CONSENT  
OF MEMBERS

The undersigned being \_\_\_\_\_ all, \_\_\_\_\_ a majority of the Members of the Board of Directors of HEARTLAND ESTATES HOMEOWNERS ASSOCIATION, INC. (the "Association") do hereby certify, pursuant to Article XII, Section 3 of the Heartland Estates Declaration recorded in the Monroe County Clerk's Office in Liber 9606 of Deeds at page 364 that:

1. ~~Consents to the above Restated Declaration have been received from those Unit Owners of the Lots as set forth on EXHIBIT "T" attached hereto and have been filed with the Board of Directors;~~
2. The number of Unit Owners consenting thereto exceeds the minimum number required to amend pursuant to Article XII of the Heartland Estates Declaration; and
3. All Unit Owners have been given or have waived the proper notice as required.

Miriam W. Serwan

Marlene A. Gallucci

Paul Haggard

Michael J. Reed

Patricia A. Rogstad



MICHAEL J MULLIN  
Notary Public, State of New York  
Registration #01MU6344642  
Qualified in Monroe County  
Commission Expires July 5, 20 20

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

On this 8 day of January, 2020, before me, the subscriber(s), personally appeared Miriam W Derivan, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

[Signature]  
Notary Public

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

On this 13<sup>th</sup> day of January, 2020, before me, the subscriber(s), personally appeared Marlene Ann Gallucci, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

MAEGAN LESSING  
Notary Public, State of New York  
Qualified in Monroe County Reg #01LE6354658  
My Commission Expires February 13, 20 21

Maegan Lessing (Hashell)  
Notary Public

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

On this 14<sup>th</sup> day of January, 2020, before me, the subscriber(s), personally appeared David F Houppert, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

MAEGAN LESSING  
Notary Public, State of New York  
Qualified in Monroe County Reg #01LE6354658  
My Commission Expires February 13, 20 21

Maegan Lessing (Hashell)  
Notary Public

STATE OF NEW YORK )

) SS.:

COUNTY OF MONROE )

On this 14<sup>th</sup> day of January, 2020, before me, the subscriber(s), personally appeared Michael J. Reed, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

SUNSHINE L. BARTNICKI  
Notary Public, State of New York  
No. 01BA6399542  
Qualified in Monroe County  
Commission Expires October 21, 2023

Sunshine L. Bartnicki  
Notary Public

STATE OF NEW YORK )

) SS.:

COUNTY OF MONROE )

On this 15 day of Jan, 2020, before me, the subscriber(s), personally appeared Patricia A. Rockwell, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

Steven F. Gorecki  
Notary Public

Doc #01-3085663

STEVEN F GORECKI  
Notary Public - State of New York  
NO. 01GO6048736  
Qualified in Monroe County  
My Commission Expires Oct 2, 2022

**SCHEDULE A**  
**LEGAL DESCRIPTION OF PROPERTY**

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Webster, County of Monroe and State of New York, being part of Town Lot No. 24 in Section 12 of Township 13, Range 4 and also being part of Town Lot No. 1 in Section 12 of Township 14, Range 4 and being more particularly bounded and described as follows:

Beginning at the point of intersection of the south street line of East Main Street (66' wide right-of-way) with the west right-of-way line of Phillips Road (80' wide right-of-way), thence the following three (3) courses along the west right-of-way line of Phillips Road (1) South 54° 13' 47" East, a distance 49.79 feet to a point (2) South 02° 42' 45" East, a distance of 670.74 feet to a point, (3) South 02° 41' 21" East, a distance of 216.17 feet to a point, thence (4) South 85° 03' 10" West, a distance of 401.17 feet to a point; thence (5) North 00° 34' 00" West, a distance of 65.75 feet to a point, thence (6) North 00° 03' 03" East, a distance of 557.48 feet to a point, thence (7) North 00° 25' 52" West, a distance of 236.00 feet to a point in the south street line of said East Main Street, thence (8) North 74° 11' 38" East and along the south street line of said East Main Street, a distance of 331.88 feet to the point of beginning.

All as shown on a subdivision map entitled "Heartland Estates" filed in the Monroe County Clerk's Office on April 17, 2000 in Liber 304 of Maps at page 4.