

AMENDED AND RESTATED DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS
COLONIAL HEIGHTS HOMEOWNERS ASSOCIATION, INC.

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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
COLONIAL HEIGHTS HOMEOWNERS ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION is made the th10 day of May, 2018, by the Colonial Heights Homeowners Association, Inc.

WHEREAS, a Declaration of Covenants (the "Original Declaration") was recorded in the Monroe County Clerk's Office on November 29, 1985 in Liber 6817 of Deeds at page 48, and

WHEREAS, two Supplemental Declarations of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Supplemental Declarations") were recorded in the Monroe County Clerk's Office in Liber 6934 at page 192 and Liber 7059 at page 300, respectively; and

WHEREAS, a Certificate of Change which amended the Original Declaration was filed in the Monroe County Clerk's Office on December 9, 1988, in Liber 7516 at page 255; and

WHEREAS, the undersigned Colonial Heights 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 Declarations, 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, and in some cases the approval of 51% of mortgagees of the townhouses ;

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

WHEREAS, the HOA has determined that mortgagee consent is not required;

WHEREAS, COLONIAL HEIGHTS 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.

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 COLONIAL HEIGHTS 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. "TOWNHOUSE" 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 and attached to at least one other townhouse by means of a party wall or otherwise..
- 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 Townhouse 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, 2 and 3 of the Colonial Heights 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) 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.

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

Section 4.04 Rights of Lot Owners.

(a) Each Lot Owner shall have an easement over Association Property and over the property of adjacent Lot Owners for the performance of routine maintenance on a Lot Owner's Townhouse, provided, however, the right of entry shall be exercised upon reasonable notice to the adjoining Lot Owner, except in the case of an emergency, shall be limited to reasonable times, and shall be exercised so as not to impair the enjoyment of the adjacent Lot. The easement area shall be limited to that area reasonably necessary to effect repairs and maintenance of the Owner's Townhouse. The easement area shall be used for actual repairs and maintenance only; the storage of material, supplies and other objects associated with the work to be completed shall not be permitted. The Owner entering on an adjacent Lot shall perform the contemplated work with dispatch, and shall be responsible for all costs for the repair and restoration of any damage caused to the adjacent Lot, including, but not limited to, structural repairs, replacement of lawns, bushes and similar objects. An Owner entering upon an adjacent Lot shall indemnify and hold

harmless the adjacent Lot Owner against any and all claims, which may arise by virtue of the repair or maintenance work performed.

(b) Each Lot Owner shall also have an easement for the exclusive use and enjoyment of the Lot Owner's driveway.

(c) Each Lot Owner shall also have an easement for the exclusive use and enjoyment of the Lot Owner's patio or deck, as originally constructed, serving the Owner's Townhouse.

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot.

Section 4.06. 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 4.07. 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 4.08. 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 4.09. 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 4.10. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the

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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 5.01. General Rules of Law to Apply. Each wall built as part of the original construction of the Townhouses 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 5.02. 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 5.03. 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 5.04. 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 and casualty insurance covering the Association Property and the Townhouses obtained pursuant to Article X of this Declaration, for the maintenance, repair and replacement of the Townhouses and 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, light posts, mailboxes, patios and decks, driveways and walkways (including plowing and shoveling), to paint the following: exterior trim, windows, doors, and privacy fences/railings originally installed with the Townhouse, 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 or doors (including garage doors, screen or storm doors).

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. Monthly payment dates, due on the first of each month, 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 20% 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 and disbursements, 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 51% 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 Townhouse. 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, patios and decks, driveways and walkways (including plowing and shoveling), to paint the following: exterior trim, windows, doors and privacy fences/railings originally installed with the Townhouse, 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 or doors (including garage doors, screen or storm doors).

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 wire/conduit laterals, water laterals, storm sewer laterals and sanitary sewer laterals servicing a Townhouse 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 Townhouses. 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 Townhouses. If Townhouses are not appropriately maintained by the Lot Owner, then the Association may maintain the Townhouse 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 Townhouse 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 Townhouse 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 Townhouse to make necessary repairs or to prevent damage to any Townhouse 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 30 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. Sixty (60) 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 Townhouse 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 Townhouse 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 Townhouses (ii) liability insurance on the Association Property, (iii) directors' and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

(i) Fire and Casualty. Coverage shall be for the unit value of each Townhouse under the "single entity" concept, i.e. covering the full replacement cost of the Townhouses as initially built and including the wall to wall carpeting, flooring, 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 Townhouses, but not the liability of Owners arising from occurrences within such Owner's Townhouse or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) Personal injury, (iii) medical payments, (iv) cross liability and (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 shall carry insurance for their own benefit, including insurance on their personal property and furnishings, upgrades and betterments, and covering liability within their Townhouse 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, other than approved real estate (for sale or lease) signs shall be placed for display to the public view on any Lot or other portion of Properties, except with the consent of the Association (variance). Approved real estate signs include one window sign advertising for sale or lease and up to three temporary directional signs on real estate open house days.

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. 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 Townhouse. 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 Townhouse 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 Townhouses shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage or driveway.

Section 11.19 Awnings and Window/Door Coverings. No awnings, shutters, storm doors, window guards or other exterior window and/or door coverings, decorative or protective, may be installed without the prior written consent of the Association (variance).

Section 11.20 Machinery. No machinery, refrigeration or heating devices, other than those originally provided with the Townhouse or lighting fixture other than standard electric lights shall be installed or operated in or about any Townhouse 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 Townhouse, 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.

Any exterior lighting shall not adversely impact the Association's property or the adjacent Townhouses. 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 Townhouse 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 Townhouse. All Owners shall keep their Townhouse in good condition and repair. If an Owner fails to do so, the Association may repair the Townhouse 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 Townhouse. No Townhouses may be leased for a period of less than 12 months. No portion of a Townhouse may be leased. Any lease must be on a standard form provided by the Association. A fully executed copy of the lease along with tenant contact information and vehicle information shall be provided to the Association prior to the tenant taking occupancy. No Townhouse 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 three (3) of the Townhouses may be leased at any one time and Board approval is required. 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. Exceptions to this policy are at the sole discretion of the Board.

Owners of rented Townhouses shall be responsible for any damage done to the Properties by a tenant, his family, pets or guests. Any fines imposed on tenants for

violations of the Declaration, By-Laws or rules or regulations of the Association shall be the responsibility of the Owner. Failure by Owners to pay fines shall be treated like unpaid assessments and the Association shall have the same remedies as for an unpaid assessment.

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 Owner and tenant written notice that the rent payments shall be payable to the Association until the Owner is current in payments due to the Association. No tenant may be evicted for paying the rental due to the Association instead of the Owner.

ARTICLE 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. Upon request, an 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 Townhouses, such mortgagees shall be notified of the proposed amendment by certified mail, return receipt requested and 51% of the mortgagees of the Townhouses 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, 2047, 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.

COLONIAL HEIGHTS HOMEOWNERS
ASSOCIATION, INC.

By: Tanya Ryan Penna
Tanya Ryan Penna, President

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

On the 10th day of May in the year 2018 before me, the undersigned, personally appeared Tanya Ryan Penna, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

LISA MARIE GUARINO
Notary Public - State of New York
No. 01GU6318076
MONROE COUNTY
My Commission Expires 1/20/2019

Lisa Marie Guarino
Notary Public

The undersigned, as Secretary of the Colonial Heights Homeowners Association, Inc., hereby certifies that at a meeting of Owners on April 24, 2018, duly called and held, at which a quorum was present, in person or by proxy, this Amended and Restated Declaration was approved by at least 66 2/3 % of the Members of the Association. Signature pages are on file with the Board of Directors.

Paul Sanelli
Paul Sanelli, Secretary

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe and State of New York, being part of Colonial Heights Townhouses, as shown in an instrument survey map drawn by L.E.K. Associates, dated April 12, 1984, and filed in the Monroe County Clerk's Office in Liber 230 of Maps, page 15, which property is Phase One of Colonial Heights Townhouses located in Town Lot 38, Township 12, Range 4, Town of Perinton, County of Monroe, State of New York, being more particularly described as follows:

Commencing at the southwest corner of Lot #10 as shown on a map of Colonial Heights Subdivision filed in the Monroe County Clerk's Office in Liber 225 of Maps, at page 60 on January 25, 1984; thence

- (1) N 08° 00' 53" E along the west line of said Lot #10 a distance of 179.27 feet to the northwest corner thereof; thence
- (2) S 82° 02' 28" E along the north line of said Lot #10 a distance of 182.82 feet to the northeast corner thereof; thence
- (3) N 04° 47' 20" W a distance of 482.79 feet to a point; thence
- (4) S 89° 12' 15" W a distance of 126.31 feet to a point; thence
- (5) N 0° 47' 20" W a distance of 9.18 feet to a point; thence
- (6) S 85° 12' 40" W a distance of 113.94 feet to a point; thence
- (7) S 04° 47' 20" E a distance of 297.78 feet to a point; thence
- (8) S 06° 03' 15" W a distance of 104.59 feet to a point; thence
- (9) S 07° 57' 32" W a distance of 55.05 feet to a point in the north line of Lot #11 as shown on a map of Colonial Heights Subdivision filed in the Monroe County Clerk's Office in Liber 225 of Maps at page 60; thence
- (10) S 85° 37' 05" E a distance of 62.64 feet to a point at the northeast corner of said Lot #11 of Colonial Heights Subdivision; thence
- (11) S 08° 00' 53" W, a distance of 168.59 feet along the east line of said Lot #11 to the southeast corner thereof; thence
- (12) E along the northerly bounds of the cul-de-sac at the north end of Colonial Drive on a curve with a radius of 60 feet a distance of 30.32 feet to the point and place of beginning.

All as shown on a resubdivision map of Colonial Heights Townhouse Subdivision, Phase I, prepared by Herman J. Klingenberger, L.S. dated November 7, 1985 and filed in the Monroe County Clerk's Office on November 18, 1985 in Liber 235 of Maps, page 16.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe, and State of New York, being known and described as Phase 2, Colonial Heights Townhouse Subdivision, as shown on an amended map by Herman J. Klingenberger, Licensed Surveyor, dated January 13, 1986, and filed in the Monroe County Clerk's Office at Liber 236 of Maps, page 27.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Perinton, County of Monroe, and State of New York, being known and described as Phase 3, Colonial Heights Townhouse Subdivision, as shown on an amended map by Herman J. Klingenberger, Licensed Surveyor, dated January 13, 1986, and filed in the Monroe County Clerk's Office at Liber 236 of Maps, page 27.