

**Kimry Moor Homeowners Association**

**Amended and Restated**

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

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**Amended and Restated  
DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS**

THIS DECLARATION, made this 24<sup>th</sup> day of July, 2024, by the Members of the Kimry Moor Homeowners Association Ltd., amends and restates the declaration of covenants, restrictions, easements, charges and liens originally filed on October 30, 1974, by HARRY POUSHTER, hereinafter referred to as Developer, as amended on November 29, 1977, February 26, 2009, and July 1, 2016.

**W I T N E S S E T H**

WHEREAS, the Developer was the owner of the real property described in Schedule A of this Declaration, and desired to develop thereon a residential community, together with common lands and facilities for the sole use and benefit of the residents of such community and their guests; and

WHEREAS, the Developer desired to provide for the preservation of the values and amenities in such community and for the maintenance of such common lands and facilities, and, to this end, desired to subject the real property described in Schedule A, to the covenants, 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 Developer deemed it desirable, for the efficient preservation of the values and amenities in such community, to create an agency to which was delegated and assigned the powers of maintaining and administering the community facilities, administering and enforcing the covenants and restrictions, and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has caused to be incorporated under the laws of the State of New York, as a Not-For-Profit Corporation, the Kimry Moor Homeowners Association, Ltd., for the purpose of exercising the aforesaid functions,

WHEREAS, the Developer declared that the real property described in Schedule A, annexed hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as “covenants and restrictions” or “Declaration”) hereinafter set forth,

WHEREAS, the Members of Kimry Moor Homeowners Association Ltd., amended the declaration from time to time, and further desire to amend and restate this declaration in its entirety to provide clarity for its Members,

NOW, THEREFORE, the Members of the Kimry Moor Homeowners Association Ltd., declare that the Declaration is amended and restated as follows:

## **ARTICLE I Definitions**

### **Section 1. Word Definitions**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a) "Association" shall mean and refer to KIMRY MOOR HOMEOWNERS ASSOCIATION, LTD., its successors and assigns.
- b) "The Properties" shall mean and refer to all property including Lots, Units and Common Areas, as are subject to this Declaration, and which are described in Schedule A.
- c) "Common Areas" shall mean and refer to those areas of land, including the facilities constructed thereon, shown on any subdivision map of The Properties or by any other means so designated but specifically excluding "Lots" and any "Units" erected thereon. Such areas are intended to be devoted to the common use and enjoyment by the members of the Association as herein defined, and are not dedicated for use by the general public.
- d) "Lot" shall mean and refer to any plot of land intended and subdivided for residential use, shown on any subdivision maps of The Properties, but shall not include Common Areas as herein defined.
- e) "Unit" shall mean a single family residence built upon a Lot as shown on the subdivision map(s) of the Properties, specifically excluding the Clubhouse and Common Areas.
- f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder of a mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- g) "Developer" shall mean and refer to PARKS & POUSSHTER, its successors and assigns in the development of The Properties.
- h) "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support of each adjoining property, situate, or intended to be situate, on the boundary line between adjoining Lots.

- i) "Member" shall mean and refer to all Owner(s) of units and/or the following occupants of units: spouse(s), domestic partner(s), parent(s) or children of Owner(s), grantor(s) of trusts, or life tenants.
- j) "Development", "Project", and "Community" shall all mean and refer to the Kimry Moor residential community as constructed by the Developer.
- k) "By-Laws" shall refer to the By-Laws of the Kimry Moor Homeowners Association, Ltd. as amended.

## **ARTICLE II Voting Rights in the Association**

Each unit shall be entitled to one (1) vote. When more than one (1) person or entity holds an ownership interest in any Unit, the vote attributable to such Unit shall be exercised as such owners agree, but in no event shall more than one (1) vote be cast with respect to any unit.

## **ARTICLE III Property Rights in the Common Areas**

### **Section 1. Members' Easements of Enjoyment**

Subject to the provisions of Section 3 of this Article III, every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. Subject to Article XII, Section 4 of the By-Laws, a Tenant shall have the right and easement of enjoyment in and to the Common Areas, in lieu of the Owner.

### **Section 2. Title to Common Areas**

The following covenant shall run with the land and be binding upon the Association, its successors and assigns.

In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities, now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition. The maintenance and repair of the Common Areas, shall include, but not be limited to, the repair of damage to pavements, roadways (other than the town road), walkways, outdoor lighting, buildings, catch basins, and sewer and water lines, connections and appurtenances.

This Section shall not be amended, as provided in Article IX, Section 1, to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas.

### **Section 3. Extent of Members' Rights to Common Areas**

Members Rights in the Common Areas shall be subject to the following:

- a) The right of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, provided that such dedication, transfer or conveyance shall not adversely affect the use of the Common Areas by the Members of the Association.
- b) The right of the Association to grant and reserve easements and rights-of- way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems.
- c) The right of visitors, invitees, and licensees to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways to the nearest public highway;
- d) The right of individual Members to the exclusive use of parking spaces, as provided in Section 4 hereof;
- e) The right of individual Members to the exclusive use of patios, as provided in Section 5 hereof;
- f) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Member for any period during which any lawful assessment remains unpaid, and for a period not to exceed thirty days for any infraction of its published rules and regulations; provided, however, that the right of a Member to ingress and egress over the roads in the Community shall not be suspended;
- g) The rights of the Association, in accordance with law, its Certificate of Incorporation and By-Laws, to borrow money for maintenance or improvement of the Common Areas and the exteriors of Units. In pursuance thereof, the Association may mortgage the same.

### **Section 4. Parking Rights**

Each Lot shall have two parking spaces including the garage. Parking shall be subject to reasonable rules and regulations.

### **Section 5. Patios**

Upon the approval of the Architectural Control Committee and the Board of Directors, each Owner shall have the exclusive right to the use of an area 10 ft. in depth located either at the rear or on the side of the unit for construction of a patio, enclosed porch, or deck as part of the unit except that use of the Area within 6 ft. of an adjoining party wall must have written approval of

the Owner of the adjoining unit, in addition to approval of the Architectural Control Committee and the Board of Directors.

- a) Owner may, at his/her cost and expense including reimbursement of any costs incurred by the Association, apply to the Association for a quit-claim deed covering this area, which shall be authorized by the Board of Directors.
- b) Extension of a Unit, pursuant to this section, whether with or without conveyance of title, shall not operate to further extend the right to use the abutting Common Area.

### **Section 6. Right to Use Common Areas**

Any Owner may delegate, in accordance with the By-Laws of the Association, his/her right of enjoyment to the Common Areas and facilities to the members of his/her family or contract purchasers who reside on the property, except the number of guests using any recreational facility may be limited by the Board of Directors. Reasonable rules may be adopted by the Board of Directors limiting such guest use. The Owner shall be responsible for the conduct of any person using the Association's recreational facilities and shall indemnify the Association for any loss or damage arising out of such use.

## **ARTICLE IV Maintenance and Operation of Common Areas and Facilities**

### **Section 1. Operation and Maintenance of Common Areas by the Association**

The Association, at its sole cost and expense, shall operate and maintain the Common Areas and provide the requisite services in connection therewith.

### **Section 2. Assessments, Liens, and Personal Obligations for Operation and Maintenance of Common Areas by the Association**

- a) For each calendar year, each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall have been so expressed in any such deed or other conveyance, shall be deemed to have covenanted and agreed, to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements.
- b) Such assessments together with any interest and costs of collection, as hereinafter provided, shall be a charge on the land and shall be a continuing lien against the Unit. Such assessments together with any interest and costs of collection, as hereinafter provided, shall also be the personal obligation of the Owner of such Unit at the time when the assessment is levied.
- c) Any assessment not paid within ten (10) days after the due date, shall incur a late charge or charges as determined by the Board of Directors. The Association may file and foreclose a lien against a Unit for any overdue payments of lawful assessments, annual or special, or any

portion thereof, including interest and late charges. The Association may also institute legal action against the Owner, who is personally liable for such amounts. In the event a judgment is obtained, it may include interest, reasonable attorney's fees as determined by the court, together with the costs and disbursements of the action. The personal obligation of the Owner shall not pass to a new Owner but any lien against the Unit shall continue in force.

### **Section 3. Annual Assessment Increases**

The Association may increase the annual assessment to provide for inflationary increases and to satisfy the needs of the Association for reasonable maintenance and improvements

- a) The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the community, and in particular, for the maintenance and improvement of the Common Areas and those exterior portions of Units which the Association has a duty to maintain.
- b) Annual assessments may be used for payment of taxes on the Common Areas but not for Units, insurance on Units and Common Areas, repair, replacement and additions, the cost of labor, equipment, materials, management and supervision, and the cost of lawn and landscaping maintenance, snow removal and refuse collection.

### **Section 4. Amount and Payment of Annual Assessment**

The Board of Directors of the Association shall at all times fix the amount of the annual assessment at an amount anticipated to be sufficient to pay the costs of maintaining and operating the Common Areas and performing the maintenance required to be performed by the Association under this Declaration. The amount of the annual assessment shall be uniform for each Unit.

- a) At least fifteen (15) days prior to final adoption of an annual budget, the Board of Directors shall furnish to all owners a copy of the current year's budget together with a statement of actual income and expense incurred during the period commencing January 1<sup>st</sup> of the current year. The Board shall also furnish a copy of the preliminary budget proposed for adoption by the Board.
- b) If there is a change in the amount of the new annual assessment, written notice of the new assessment shall be sent to every Owner not less than thirty days prior to the first day of the quarter following the adoption of the annual budget.
- c) Each annual assessment shall be fully payable as of the first day of the quarter following the adoption of the annual budget. The Board shall have the option to permit quarterly payments due on the first day of January, April, July and October.

This Section shall not be amended as provided in Article IX, Section 1, to eliminate the notice provisions or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Areas and perform the services required to be performed under this Declaration or the By-Laws.

## **Section 5. Special Assessments for Capital Improvements**

In any calendar year, in addition to an annual assessment, the Association may levy a special assessment (which must be fixed at a uniform rate for all Units), in an amount no higher than the maximum annual assessment currently in effect. The Special Assessment shall be to defray, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement, including the necessary fixtures and personal property related thereto.

- a) A Special Assessment must have the consent of two-thirds of the votes of the Owners voting in person or by proxy at a special meeting duly called for this purpose.
- b) Written notice shall be sent to all Owners not less than thirty days in advance of the meeting, setting forth the purpose of the meeting. The due date of any assessment shall be fixed in the Resolution authorizing such assessment.

## **Section 6. Paid Property Manager**

The Board of Directors of the Association may employ the services of a professional manager or managerial firm to supervise all of the work, labor, services, materials and such maintenance of units, clubhouse, pool, driveways and roads which the Association is required to furnish or maintain by this Declaration or the By-Laws.

The Professional Manager may bid to perform work, labor and services and furnish materials to the Association, subject to such rules and safeguards enacted by the Board of Directors to assure fair and open bidding, as contained in Article XX, Section 2 of the By-Laws.

## **Section 7. Fee from New Owners**

At the time of acquiring title to a Unit, the new Owner shall pay to the Association, a sum fixed by the Board of Directors. Such payment shall not be considered a payment of any part of the annual assessment.

## **Section 8. Subordination of the Lien to Mortgages**

To induce lenders to grant mortgages upon units, the lien of assessments shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Unit. Such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any proceedings 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 subsequent assessment. This section shall not be amended as provided in Article IX, Section 1.

## **Section 9. Exempt Property**

The following properties subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (a) all properties dedicated or conveyed to a governmental body, district, agency or authority; (b) all Common Areas, as defined in Article I, Section 1, hereof. No unit shall be exempt from assessments, charges or liens.

## **ARTICLE V Party Walls, Insurance, Land Rights, Mediation, Etc.**

### **Section 1. Party Walls**

#### a) General Rules of Law to Apply.

To the extent not inconsistent with the general rule of law this Article shall apply to each party wall or similar item built as part of the original construction of the units upon The Properties and any replacement thereof.

In the event any portion of any structure, as originally constructed by the Developer, protrudes over an adjoining Lot as a result of natural causes, such structure shall not be deemed to be an encroachment. Such protrusion shall be deemed a perpetual easement to the adjoining Owner. Owners shall not maintain any action for the removal nor any action for damages. The foregoing shall also apply to any replacements of any structures if same are constructed in conformity with the original structures or party walls constructed by the Developer. The foregoing conditions shall be perpetual in duration and shall not be subject to the provisions of this Declaration governing amendment of covenants and restrictions.

#### b) Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall or similar item shall be shared equally by the Owners who make use thereof in proportion to such use.

#### c) Destruction by Fire or Other Casualty.

If a party wall or similar item is destroyed or damaged by fire or other casualty, any Owner who has used the same may restore it, and if the other Owner, thereafter makes use thereof, they shall contribute to the cost of restoration thereof in proportion to such use subject, however, without prejudice, to any rule of law regarding liability for negligent or willful acts or omissions.

#### d) All risk insurance.

Blanket all risk insurance will be provided by the Association in the broadest coverage available shall be maintained in amounts adequate to cover recreational areas, swimming pool and all buildings, including additions. Public liability will be provided with a limit of liability of at least \$1,000,000 for each occurrence. This single limit of liability includes Bodily Injury Liability, Property Damage Liability, and has been broadened to include Personal Injury Liability

(coverage for libel, slander, defamation of character and invasion of privacy). The policy shall have an Inflation Guard endorsement which automatically increases the limit of liability for all the building structures by one percent (1%) each quarter. The blanket policy will have a ninety percent (90%) co-insurance clause. The policy will be written on a "replacement value" basis.

e) Extent of Coverage.

In the event of destruction by fire or other casualty wherein approximately eighty percent (80%) of the structure is destroyed, or the damage exceeds eighty (80) percent of the total value of the buildings erected on the site, the homeowners of record of eighty percent (80%) of the units may elect not to rebuild.

### **Section 2. Weatherproofing**

Notwithstanding any other provisions of this Article, an Owner who by his/her negligent or willful act causes the party wall or similar item to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

### **Section 3. Right to Contribution Runs with Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

### **Section 4. Mediation**

Any and all disputes arising out of or in connection with this Article shall first be mediated by the Board of Directors of the Association or a committee of three Members designated by the Board. If such mediation is unsuccessful for a period of sixty (60) days, following submission to the Board, the parties to such dispute shall be free to pursue their legal rights to resolve such dispute.

### **Section 5. Amendment**

This entire Article V shall not be amended, as provided in Article IX, Section I, to substantially impair the rights and obligations herein stated.

## **ARTICLE VI Architectural Control**

No building, carport or other accessory building, shall be erected on any lot other than one single family Unit with attached patio and garage. Unless approved by the Board of Directors, no building shall be altered or fence, wall or other structure, and no change in topography, landscaping or any other item constructed by the Developer, shall be commenced, erected or maintained upon The Properties. Furthermore, no exterior addition to any structure or change or alteration thereto including, without limitation, painting, be made, until the plans and

specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to the Architectural Control Committee. The Board of Directors may adopt, modify or disapprove of the recommendations of the committee.

In the event the Board fails to approve or disapprove such proposal as to design and location within sixty (60) days after complete plans and specifications have been submitted to the Architectural Control Committee, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matter specifically prohibited by any other provision of this Declaration.

## **ARTICLE VII Use of Property**

### **Section 1. Uses and Structures**

- a) No Lot and/or Unit shall be used except for residential purposes.
- b) No Unit or any part thereof shall be used for any purpose except as a private Unit for one family.
- c) No business of any kind be conducted on any lot, and without limiting the generality of the foregoing, no professional office shall be maintained on any Lot notwithstanding that such use may conform with the applicable State of New York and Town of Manlius zoning ordinances and codes.
- d) No noxious or offensive activity shall be conducted in any Unit or on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No boat, trailer, tent, shack or other structure shall be located, erected or used on any Lot or parking areas, roadway and/or driveway, temporarily or permanently.
- e) No motor vehicle shall be parked in any lot or portion of the Common Area, except private passenger vehicles, which are currently registered and operable.
- f) Vehicles other than private passenger vehicles owned by a resident or owner of the unit may be parked for a period of 7 days without approval by the Board of Directors, in the most distant spaces in the parking area adjacent to the Club House, provided said vehicles are currently registered and operable.
- g) Private passenger vehicles shall exclude construction vehicles, buses, recreational vehicles, and trailers. Larger vehicles such as pick-up trucks and sport utility vehicles (SUVs) may be considered private passenger vehicles provided that the vehicle is currently registered as a passenger vehicle with the Department of Motor Vehicles (DMV) and is equipped with

applicable insurance coverage as a passenger vehicle. Private passenger vehicles may not be used for commercial purposes, including hauling goods and services, or carrying passengers for money. All private passenger vehicles must be kept in good repair. No private passenger vehicle may have more than four (4) wheels, nor contain commercial, political or promotional signage.

It is intended that none of the excluded vehicles shall be parked overnight outside the garage, except for trailers or recreational vehicles, which may park in a Homeowner's driveway for one (1) overnight for the purpose of charging and loading the vehicle.

h) Other vehicles used by owner of the unit may be parked for a period as approved by the Board of Directors in the most distant spaces in the parking area adjacent to the Clubhouse, provided said vehicles are currently registered, inspected, and operable.

i) Vehicles of contractors performing services in the Properties, may be parked in that same area.

j) Storage units (e.g. PODS) for short-term packing or unpacking before or after a move or temporary storage during construction may be in the driveway. The Resident shall give notice to the Management Company and the Board of Directors of the expected time frame the unit will be in the driveway.

## **Section 2. Alterations**

No alteration or addition to or repainting of the exterior of any unit shall be made unless it shall conform in architecture, material and color to the neighborhood and shall have been approved in accordance with Article VI of this Declaration.

## **Section 3. Signs**

No sign of any kind shall be displayed to the public view on any Unit or Lot, except a one-family name sign of not more than one hundred square inches and/or a sign required for security purposes. A temporary sign of not more than two square feet, advertising the property for sale or rent, may only be displayed in a window. No such sign shall be illuminated. A portable sign of not more than two square feet may be displayed in front of a unit during an "Open House" showing of the unit for a maximum of four hours per day on weekends. Contractor signs are permitted upon the premises at which services are being done.

## **Section 4. Drilling and Mining**

No drilling, development operations, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall wells, tanks, tunnels, excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for any matter shall be erected, maintained or permitted upon any Lot.

### **Section 5. Animals**

No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on any Lot, except dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that not more than three pets in the aggregate may be kept in any such Unit or Lot.

Dogs and Cats in the Common Area must be on a leash at all times, and it is the responsibility of the Owner to dispose of any droppings in a proper and sanitary manner. Failure to comply with the foregoing provisions will subject the owner to fines as imposed by the Board of Directors.

### **Section 6. Garbage and Rubbish**

Garbage and rubbish shall not be dumped or allowed to remain on any Lot, but shall be deposited in sealed plastic bags, in covered containers, in accordance with the rules, regulations and ordinances of applicable governmental agencies, the collection contractors and the Association.

### **Section 7. Laundry**

Exterior laundry lines and the like are prohibited; nor may laundry be hung outside of a Unit.

### **Section 8. Antennae**

The Association shall have the right to arrange for a cable (CATV) or community antenna television system. No individual radio, television or similar towers shall be erected or continued to be maintained on any Lot or attached to the exterior of any Unit. Nothing herein contained shall prohibit TV dishes, which may only be erected after approval has been obtained from the Board of Directors acting upon the recommendation of the Architectural Control Committee, in accordance with Article VI, hereinabove.

### **Section 9. Fences**

No fence, fabricated, growing or otherwise (other than those originally constructed by the Developer) shall be erected on any Lot or attached to the exterior of any Unit, without the approval required by Article VI. Any such permitted fence shall be maintained by the Owner, erecting the same, at his/her sole cost and expense.

### **Section 10. Obstruction and Storage**

There shall be no obstruction of the Common Areas, nor shall anything be stored in the Common Areas.

### **Section 11. Displays and Awnings**

Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls or doors of a Unit, and no awning or canopy shall be affixed to or

placed upon the exterior walls or doors, roof or any part thereof, or exposed on or at any window, with out the prior approval or the Architectural Control Committee Holiday decorations may be displayed in a subdued and proper manner.

### **Section 12. Plantings**

No owner or occupant shall plant or install any trees, bushes, shrubs or other plantings, or authorize the same to be done, on any portion of the Common Areas, without the approval of the Grounds Committee and the Board of Directors.

### **Section 13. Noise and Odors**

Owners shall not cause or permit any unusual or objectionable noise or odors to emanate from the inside or outside of their Units.

### **Section 14. Visibility at Intersections**

No hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any Lot within the triangular area formed by the street lines and a line connecting them at points thirty feet from the intersection of the street lines. The same sight line limitations shall apply on any Lot within ten feet from the intersection of a street line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. This section shall not apply to grades, slopes and other formations of the terrain, whether natural or created by the Developer.

### **Section 15. Easements**

- a) In addition to existing perpetual easements, the Association may grant further temporary or permanent easements.
- b) Owners shall have a right of ingress and egress to the nearest public highway over and through all Common Areas, including, but not limited to, private roads, streets and walkways, and driveways, but only to the extent reasonably required for access.

### **Section 16. Prohibition against Amendment**

Article VII shall not be amended as provided in Article IX, Section 1, except to clarify the restrictions herein or to create additional restrictions.

## **ARTICLE VIII Exterior Maintenance**

### **Section 1. Exterior Maintenance**

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance of the Lot and/or Unit, as follows: exterior painting and/or power washing of Units, maintaining walks and any protective screening or plantings required by the Association. The Association shall also maintain any irrigation systems, sewer and water lines and appurtenances between the exterior trap and/or cleanout and the street line. The Association shall also clear snow from driveways and walks and collect trash and garbage. The Association shall provide such exterior maintenance at the sole cost and expense of the Association.

### **Section 2. Disrepair of Lots**

In the event the Owner of any Lot shall fail to reasonably maintain those portions of the premises which are the Owner's obligation to maintain, the appropriate Committee shall direct the Owner in writing, to correct the condition within twenty (20) days. The Owner may appeal to the Board of Directors, which after a hearing, shall decide the appeal by a three-fourths vote of all Directors. In the event of a decision adverse to the Owner, the Association through its Agents shall correct the condition, at Owner's cost.

### **Section 3. Amendments to this Article**

This entire Article shall not be amended except to clarify any matter or to enlarge the scope of the Association's obligations.

## **ARTICLE IX General Provisions**

### **Section 1. Duration and Amendment**

The covenants and restrictions of this Declaration are real covenants and shall run with and bind the land forever and shall inure to the benefit of, and be enforceable by the Association and any Owner subject to this Declaration, his/her respective heirs, successors and assigns. Except as specifically prohibited, these covenants and restrictions may be amended but not nullified by an instrument approved by fifty-six (56) Owners of Units, and duly recorded, agreeing to change said covenants and restrictions, in whole or in part; provided, however, that no such amendment shall be effective, unless written notice of the proposed amendment is delivered to every Owner at least thirty (30) days in advance of any action taken.

## **Section 2. Notices**

Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member on the records of the Association at the time of such mailing. All notices to the Association shall be via certified mail, return receipt requested.

## **Section 3. Access at Reasonable Hours**

As required to carry out the duties of the Association, its duly authorized agents and employees shall have the right to enter upon any Lot/or Unit at reasonable hours, on any day except Sundays and religious holidays provided that reasonable prior notice shall have been given except in an emergency.

## **Section 4. Enforcement**

- a) The Association, and any Owner shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, or failing to pay any assessment, to restrain violations, to require specific performance and/or to recover damages, and against the land to enforce any lien created by these covenants.
- b) Primary right to bring suit hereunder is vested in the Association and no action or proceeding shall be commenced by any other party in interest without such party first having notified the Board of Directors of the Association by certified mail, return receipt requested, of the matter in question and having allowed the Board sixty (60) days within which to commence the requested legal proceeding.
- c) Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.
- d) If successfully adjudicated in favor of the Association, all expenses of enforcement, including without limitation, interest, costs and reasonable attorneys' fees, shall be specifically chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien thereon, collectible immediately and in the same manner as assessments hereunder.

## **Section 5. Severability**

In the event any one or more of the provisions contained in this Declaration of Covenants, Restrictions, Easements, Charges and Liens or in the By-Laws shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Declaration, but and this Declaration shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein or therein.

**Section 6. Governing Law**

This Declaration of Covenants, Restrictions, Easements, Charges and Liens or in the By-Laws shall be construed and enforced in accordance with the laws of the State of New York.