

Yacht Club Cove
Homeowners Association Inc.

Declaration
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By-Laws

January 2021



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RESTATED DECLARATION
 YACHT CLUB COVE, INC.
 YACHT CLUB COVE HOMEOWNERS' ASSOCIATION, INC.
 SEPTEMBER 19, 2020
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RESTATED

DECLARATION

YACHT CLUB COVE, INC.

YACHT CLUB COVE HOMEOWNERS ASSOCIATION, INC.

This Restated Declaration, is made this 19th day of September, 2020, by the ("Owners") in the Yacht Club Cove Homeowners Association, Inc., having an office for the transaction of business at 502 South Main Street, Canandaigua, New York, 14424.

WITNESSETH

WHEREAS, the Owners are the record owners of the real property described in Article II of this Declaration in a residential community known as Yacht Club Cove, with open spaces and other common facilities for the benefit of said community; and

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

WHEREAS, the Owners desire that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, Yacht Club Cove Homeowners Association, Inc. was incorporated under the not-for-profit corporation law of the State of New York for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Owners, for themselves, their successors and assigns, declare that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof, as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

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

1. "Association" shall mean and refer to the Yacht Club Cove Homeowners' Association, Inc.
2. "Association Property" shall mean and refer to all land, improvements, and other properties heretofore or hereafter owned by, or in possession of, the Association.
3. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Yacht Club Cove Homeowners' Association, Inc.,

4. as it may from time to time be supplemented, extended, or amended in the manner provided for herein.
5. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Canandaigua, or (ii) shown as separate lot upon any recorded or filed subdivision map.
6. "Unit" shall mean and refer to each completed dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the City of Canandaigua) including garage, deck or patio, situated upon the Property and/or dwelling unit on the Property which has been occupied as a residence.
7. "Property" shall mean and refer to all properties as are subject to this Declaration.
8. "Developer" shall mean and refer to Yacht Club Cove, Inc., its successors and assigns prior to builder transition.
9. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, or the fee interest in any lot or unit, whether or not such holder actually resides in such unit or on such lot.
10. "Member" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERTO

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 City of Canandaigua, County of Ontario and State of New York, and is more particularly described in Schedule A attached hereto and made a part hereof, all of which property shall be hereinafter referred to as the Property.

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 Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property, together with the covenants, conditions, and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

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

Section 3.01. Formation of the Association. Pursuant to the Not-for Profit Corporation Law of New York, Yacht Club Cove Homeowners' Association, Inc. (the "Association"), was 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 was formed in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-For-Profit Corporation Law as the same may be amended from time to time.

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

Section 3.03. Voting; Mortgagee's Control of Votes. Each Owner and owners of additional parcels added to the scheme of this Declaration pursuant to Section 2.02, shall be entitled to one vote notwithstanding the number of Lots or Units owned. Notwithstanding anything to the contrary which may be contained in this Declaration, if a mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Unit which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date of initial canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Owner contrary to the position of such mortgage holder shall not be counted in such canvass.

Section 3.04. Interest in More than One Unit. If any person or entity owns or holds more than one Unit, such Owner shall only be entitled to one vote.

Section 3.05. Units Owned or Held by More than One Person or by a Corporation. When any Unit is owned or held by more than one 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 Unit and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Unit. 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 or Unit merely 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 or her 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 and the Certificate of Incorporation and By-Laws of the Association and the Not-For-Profit Corporation Law of the State 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, the establishment of extended canvass periods for voting 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 of 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 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 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 approves such settlement as being in the best interests of the Association. The foregoing right of the indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Developer conveyed to the Association certain tracts of land within the Property for the use and enjoyment of the Members. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property". The Association must accept any such conveyance made by the Developer provided such conveyance is made without consideration.

Each Lot and the Common Area shall be subject to an easement for the encroachments created by construction, settling and overhangs, of the townhouse units, garages or other improvements as designed or constructed. A valid easement for the said encroachments and for the maintenance of same, so long as they stand shall and does exist.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licenses, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Section 4.03 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01 hereof.

Every Member shall also have an easement for ingress and egress by vehicle or on foot, as described in Section 4.06 hereof, and the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however that any conveyance or encumbrance referred to in Section 4.03 below shall be subject to said easement of each Member for ingress or egress.

Each Unit Owner shall be granted an exclusive right to the use of one designated boat dock. The following boat docks have been designated to the following Unit Addresses:

Boat Dock No. 1	27 Yacht Club Drive	Boat Dock No. 42	102 Yacht Club Drive
Boat Dock No. 2	29 Yacht Club Drive	Boat Dock No. 43	68 Windward Way
Boat Dock No. 3	31 Yacht Club Drive	Boat Dock No. 44	104 Yacht Club Drive
Boat Dock No. 4	33 Yacht Club Drive	Boat Dock No. 45	70 Windward Way
Boat Dock No. 5	35 Yacht Club Drive	Boat Dock No. 46	72 Windward Way
Boat Dock No. 6	1 Leeward Lane	Boat Dock No. 47	63 Windward Way
Boat Dock No. 7	3 Leeward Lane	Boat Dock No. 48	65 Windward Way
Boat Dock No. 8	5 Leeward Lane	Boat Dock No. 49	106 Yacht Club Drive
Boat Dock No. 9	7 Leeward Lane	Boat Dock No. 50	YCC
Boat Dock No. 10	9 Leeward Lane	Boat Dock No. 51	67 Windward Way
Boat Dock No. 11	11 Leeward Lane	Boat Dock No. 52	69 Windward Way
Boat Dock No. 12	2 Leeward Lane	Boat Dock No. 53	25 Leeward Lane
Boat Dock No. 13	4 Leeward Lane	Boat Dock No. 54	23 Leeward Lane
Boat Dock No. 14	58 Cove Road	Boat Dock No. 55	21 Leeward Lane
Boat Dock No. 15	56 Cove Road	Boat Dock No. 56	19 Leeward Lane
Boat Dock No. 16	54 Cove Road	Boat Dock No. 57	17 Leeward Lane
Boat Dock No. 17	52 Cove Road	Boat Dock No. 58	15 Leeward Lane
Boat Dock No. 18	50 Cove Road	Boat Dock No. 59	13 Leeward Lane
Boat Dock No. 19	6 Leeward Lane	Boat Dock No. 60	108 Yacht Club Drive
Boat Dock No. 20	8 Leeward Lane	Boat Dock No. 61	71 Windward Way
Boat Dock No. 21	37 Yacht Club Drive	Boat Dock No. 62	73 Windward Way
Boat Dock No. 22	39 Yacht Club Drive	Boat Dock No. 63	110 Yacht Club Drive
Boat Dock No. 23	41 Yacht Club Drive	Boat Dock No. 64	75 Windward Way
Boat Dock No. 24	43 Yacht Club Drive	Boat Dock No. 65	77 Windward Way
Boat Dock No. 25	45 Yacht Club Drive	Boat Dock No. 66	79 Windward Way
Boat Dock No. 26	47 Yacht Club Drive	Boat Dock No. 67	81 Windward Way
Boat Dock No. 27	51 Cove Road	Boat Dock No. 68	112 Yacht Club Drive
Boat Dock No. 28	59 Cove Road	Boat Dock No. 69	22 Leeward Lane
Boat Dock No. 29	57 Cove Road	Boat Dock No. 70	114 Yacht Club Drive
Boat Dock No. 30	55 Cove Road	Boat Dock No. 71	20 Leeward Lane
Boat Dock No. 31	53 Cove Road	Boat Dock No. 72	18 Leeward Lane
Boat Dock No. 32	90 Yacht Club Drive	Boat Dock No. 73	116 Yacht Club Drive
Boat Dock No. 33	92 Yacht Club Drive	Boat Dock No. 74	16 Leeward Lane
Boat Dock No. 34	94 Yacht Club Drive	Boat Dock No. 75	14 Leeward Lane
Boat Dock No. 35	96 Yacht Club Drive	Boat Dock No. 76	12 Leeward Lane
Boat Dock No. 36	61 Windward Way	Boat Dock No. 77	10 Leeward Lane
Boat Dock No. 37	60 Windward Way	Boat Dock No. 78	YCC
Boat Dock No. 38	62 Windward Way	Boat Dock No. 79	YCC
Boat Dock No. 39	YCC	Boat Dock No. 80	101 Yacht Club Drive
Boat Dock No. 40	100 Yacht Club Drive	Boat Dock No. 81	103 Yacht Club Drive
Boat Dock No. 41	66 Windward Way	Boat Dock No. 82	105 Yacht Club Drive
Boat Dock No. 83	107 Yacht Club Drive	Boat Dock No. 94	YCC
Boat Dock No. 84	109 Yacht Club Drive	Boat Dock No. 95	YCC
Boat Dock No. 85	111 Yacht Club Drive	Boat Dock No. 96	YCC
Boat Dock No. 86	113 Yacht Club Drive	Boat Dock No. 97	YCC
Boat Dock No. 87	115 Yacht Club Drive	Boat Dock No. 98	YCC
Boat Dock No. 88	117 Yacht Club Drive	Boat Dock No. 99	YCC
Boat Dock No. 89	YCC		
Boat Dock No. 90	YCC		
Boat Dock No. 91	YCC		
Boat Dock No. 92	YCC		
Boat Dock No. 93	YCC		

The Unit Addresses above set forth shall permanently have the boat docks as above designated and the right to such designated boat dock shall automatically pass to subsequent Owners of subsequent Unit Addresses. Subject designations may only be changed by amendment to this Declaration. No boat longer than 27 feet, including all bow and stern extensions, and a beam width of 8 feet 6 inches shall use said boat dock.

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

1. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interest of the Members.
2. To grant easement or right-of-way to any public or private utility corporation, government agency or political subdivision, or cable television franchisee with or without consideration.
3. To dedicate, sell, transfer, abandon, partition or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Members) 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 all Unit Owners who shall vote by written ballot, which shall be sent to all Unit Owners and lending institution first mortgagees of Units whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgages on 33-1/3% or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable.
4. 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 sixty (60) days, in advance of the date, or initial date, of the canvass thereof.
5. To charge reasonable admission and other fees for the use of Association Property.

Section 4.04. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines and cable television lines located on each Lot, or within any Unit shall be owned by the Owner of such Lot or Unit. Every Owner shall have an easement in common with the Owners of other Lots or Units to maintain and use all pipes, wires, conduits, drainage area and public utility lines and cable television lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use pipes, wires, conduits, drainage areas and public utility lines and cable television lines servicing, but not located on, such other Unit or Lot.

The Association shall have the right of access to each Unit and Lot for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas, public utility lines or cable television lines located on any lot or within any Unit and servicing any other Unit or Lot. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot and Unit of such Owner or Owners to secure the payment thereof. Maintenance and repair of sewer and water laterals, however, are the responsibility of the individual Lot owner.

The Association shall have easement over the exterior walls of various Units for the placement, maintenance, repair and replacement of utility banks and telephone pedestals. The Association shall also have an easement across Lot #58 so as to permit the installation and continued maintenance and repair of the yacht club building force main. Said easement is 15 feet in width.

Section 4.05. Common Access Easement. All Owners and their guests, mortgagees, licensees, and invitees shall have an easement in common with one another over Association Property and over all walkways, sidewalks, roadways, driveways, parking areas and docks located on the Lots and the Association shall have an easement of access to each Lot and Unit for the following purposes:

1. To permit the maintenance, repair, and replacement of roadways, sidewalks, walkways, driveways, parking areas, boat docks, light fixtures bordering the roadways, docks, and walkways and any other property of the Association, or any other property or improvement, the maintenance and repair of which is the responsibility of the Association.
2. For access to each Lot and Unit for the maintenance, repair, and replacement of the exterior siding, roofs, gutters, patios, and decks of the Units and for maintenance, replacement and repair of the roadways, driveways, parking areas, docks, walkways, and sidewalks situate on any Lot.
3. For access to each Lot and Unit for the maintenance, repair, and replacement of any item for which the Association is responsible to include utility banks and telephone pedestals.

Section 4.06. Maintenance of Association Facilities. In order to preserve and enhance the property value and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

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, condominiums and cooperatives.

Any decision to discontinue independent professional management of certain Association duties and functions and establish self-management thereof shall require prior written consent of 66% of all Unit Owners, written notice of which proposed decision shall be sent to all Unit Owners and to all lending institution first mortgagees of Unit whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon. No such decision shall be made if lending institutions which together are first mortgages of 33-1/3% or more of the Units advise the Association in writing prior to the date set forth voting on proposed change that they are opposed to such change, which opposition shall not be unreasonable.

Section 4.08. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Article VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.09. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property 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, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation of eminent domain proceeding to all institutional first mortgagees of Units 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 the State of New York.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Unit 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 the Association:

1. Annual assessments of charges for the maintenance and operation of Association Property and for the maintenance of property for which the Association is responsible (Maintenance Assessments).
2. Special Assessments for capital improvements (Special Assessments) together hereinafter being referred to as Assessments.

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

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including, but not limited to, the payment of taxes on Association Property, if any; any utility services to the Property which are commonly metered or billed; all casualty, liability and other insurance covering the Association Property, the Units and the Association's officers, and directors pursuant to Article IX of this Declaration; for the maintenance, repair and replacement of all roadways, parking areas, driveways, walkways, sidewalks, docks, and other improvements for which the Association is responsible, whether on Association Property or not, and the maintenance, repair and replacement of the Unit exteriors (siding, roofs, gutters, fences, railings and driveways, but not including stoops or steps or stairs) placed on the Property; and the painting of exterior trim and the exterior of doors and windows which open from the Unit; the cost of labor, equipment, materials, management and supervision thereof; and for such other needs as may arise. The amount of the reserves shall not be less than the reasonable requirements of existing or proposed lenders, holders and insurers of the first mortgages on the Units.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessment provided for herein shall commence on the day on which the first Unit is conveyed. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessment shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Unit at least thirty (30) days in advance of each annual Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Units and/or Lots. Once Assessments have commenced pursuant to Section 5.03 herein, the Owner of each Unit and/or Lot subject to this Declaration shall be liable for payment of full Maintenance Assessments, and Special Assessments, if any.

Section 5.05. Basis for Maintenance Assessment. Subject to the provisions of Section 5.04 herein, the annual Maintenance Assessment shall be the same for all Units subject to this Declaration so that the number of assessed Units divided into the total amount which the Board of Directors shall deem necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine annual Maintenance Assessment for each Unit.

Section 5.06. Change in Basis of Assessment. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Unit Owners voting in person or by proxy, written notice of which change shall be sent to all Unit Owners and lending institution first mortgagees of Units whose names appear on records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that no such change shall be made if lending institutions which together are first mortgagees on 33- 1/3% or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certificate of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Ontario.

Any change in the basis of Assessments shall be equitable and nondiscriminatory within the following classifications: (i) Units paying full Maintenance Assessments and (ii) Units and/or Lots paying less than full Maintenance Assessments pursuant to Section 5.04 above.

Section 5.07. Special Assessment for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than twenty-five percent (25%) of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Unit Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Unit Owners at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof is not paid on the due date established pursuant to Section 5.03 hereof, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and attorney fees 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's heirs, devisees, personal representatives, successors and assigns. In addition to this lien rights, the personal obligation 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 thirty (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 the overdue Assessment or installment thereof, and, if not paid within thirty (30) days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of

interest then permitted by law, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner, and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorney's fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: (i) attorney's fees, (ii) other costs of collection, (iii) late charges, (iv) interest and (v) then delinquent Assessment or installments thereof beginning with the amount past due for the longest period. The Board of Directors may in their sole discretion require that Assessments be paid by certified check or money order for good cause shown.

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

As provided in Section 1.08 herein, voting rights for any Member delinquent in the payment of their Assessments shall be suspended until such delinquency is cured.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to a Unit Owner of a default in paying Assessments, may as its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of said Assessments.

Section 5.10. 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 Assessment in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of any Owner or lessee with respect to a Unit which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Unit), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Unit, 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 a date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender on the Unit on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The Lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Unit 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 Unit pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property of liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purpose, set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion of the Board of Directors acting in its absolute discretion.

Section 5.14. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power to:

1. Assign and pledge all revenues received and to be received by it under any provision of this Declaration, including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
2. 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:
 - a. Assess the Maintenance Assessments on a given day in each year, and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate of rates;
 - b. Establish sinking funds and/or other security deposits;
 - c. Apply all funds received by its 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;
 - d. Establish such collection, payment and lien enforcement procedures as may be required by the note holders; and
 - e. Provide for the custody and safeguarding of all funds received by it.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the buildings and improvements on Association Property, the maintenance, repair, and replacement of all roadways, parking areas, driveways and walkways on the Property, both Association owned and individually owned, and the maintenance of all landscaped areas, including lawn mowing and maintenance, on the Property, both Association owned and individually owned, shall be the responsibility of, and at the cost and expense of the Association, except that the Association shall not be responsible for any landscaping installed by or at the direction of a Unit Owner or Unit occupant. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing more than one Unit and for which a utility company or other entity is not responsible, whether or not such lines are on Association Property, shall also be the responsibility of, and an expense of, the Association, except that the maintenance and repair of sewer and water laterals are the responsibility of the individual Lot owner being served said laterals.

With respect to Association Property, the Association shall maintain, repair and replace all buildings and other improvements, including roadways, parking areas, driveways, walkways, docks, retaining walls, and landscaped areas on Association Property. The Association shall also be responsible for snow removal from all roadways, parking areas, and driveways.

Units. With respect to the Units, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts, roofs, paint the exterior trim and the exterior of windows which open from a Unit, and caulk the windows and the exterior of doors opening from Units, including the exterior of garage doors, but shall not repair or replace doors, including garage doors.

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall paint or stain, repair and replace fences, railings or decks initially installed by the Developer, and maintain, repair and replace all walkways, driveways, roadways, and parking areas.

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 Units or other improvements 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 Units or other improvements to the Lots. In the event the Association elects to discontinue the performance of some or all of the maintenance responsibilities with respect to the Units or other improvements to the Lots, said maintenance will be the responsibility of and at the cost and expense of individual Unit Owners.

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

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 herein, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, or (ii) the maintenance, repair or replacement of any doors, windows or skylights, or (iii) the maintenance, repair or replacements of any sewer lines, water lines, or other utility lines which are maintained, repaired, and replaced by a municipality, public authority, special district, utility company, or cable television company. Maintenance, repair, and replacement of sewer and water laterals are the responsibility of the individual Unit owner.

Any maintenance, repair, or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 herein, but which is occasioned by a negligent or willful act or omission of an Owner including (i) any family member, tenant, guest, or invitee of such Owner, (ii) any family member, guest, or invitee of the tenant of such Owner, and (iii) any guest or invitee of (a) any member of such Owner's family, or (b) any family member of the tenant of such Owner shall be made at the cost and expense of such Owner, as the case may be. If such maintenance, repair, or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Owner's Maintenance Assessment, and, as part of that Assessment, shall constitute a lien on the Unit, as the case may be, to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for the maintenance, repair, and replacement of Unit exteriors, driveways, fences, lawns, and plantings on the Property, which schedules and regulations should take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property. The Association may not, by act of omission, change, waive or abandon any such schedules or regulations, unless consent to in writing by not less than two-thirds (2/3) of the total votes of all Owners voting in person or by proxy, written notice of which shall be sent to all Unit Owners and lending institution first mortgagees of Units whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date of voting thereon, setting forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33-1/3% or more of the Units advise the Association in writing, prior to the date set for voting on the proposed changes, waiver, or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

Section 6.04. Access for Repairs, Replacements and Maintenance. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owners(s), have the right to enter upon any portion of

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

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. Enforcement of the provisions of the Declaration pertaining to the exterior appearance of the Property and control over any change in use or any additions, modifications, or alterations to any exterior improvement on said Lot or to said Unit or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee as provided in Section 7.02 herein.

Section 7.02. Composition and Function of Architectural Standards Committee. The Architectural Standards Committee (the Architectural Committee) shall be a permanent committee of the Association and shall (i) review and submit to the Board of Directors for approval, all proposed additions, modifications, or alterations to any improvement or any proposed change in the use of a Lot or Unit or any other portion of the Property (including Association Property) after transfer of title to such Lot or Unit or other portion of the Property, and (ii) enforce those provisions of the General Covenants and Restrictions set forth in Article X. The Architectural Committee may also 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) for terms of two 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. The Architectural Committee may be limited to an advisory capacity, with final approvals and/or enforcements resting solely with the Board of Directors, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. No exterior addition, modification, or alteration shall be made on or to such Lot or Unit or other portion of the Property or to improvements located thereon, unless and until a plan or plans therefore, in such form and detail have been submitted to, reviewed by the Architectural Committee and approved by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 herein for any of the following reasons:

1. Failure of such plans to comply with protective covenants, conditions, and restrictions contained in the Declaration and which benefit or encumber the Unit or other portion of the Property;
2. Failure to include information in such plans as requested;
3. Objection to the site plan, exterior design, appearance, or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking;
4. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
5. Failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations; and

6. Any other matter which, in the reasonable judgment and recommendation of the Board of Directors to the Architectural Committee, would render the proposed improvements, uses or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof, or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 herein, the Architectural Committee shall make a recommendation to the Board of Directors, and upon approval shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any) and, if requested by the applicant shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or Unit or portion of the Property shall be final as to such Lot or Unit or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvements or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or Unit or portion of the Property, (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule, or regulations, zoning, building, health or other code or ordinance; and (iv) that prior to the start of any work, the Architectural Committee is advised of the date work is to start, is provided with a list of the contractor or contractors doing the work, and submit evidence of liability and workmen's compensation insurance currently in force from each contractor or contractors. No work may be performed on the Property without evidence of insurance. Approval of any plans for use in connection with any Lot or Unit or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or Unit or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee has reviewed and the Board 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 7.04 herein. 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 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within sixty (60) days after submission thereof, said applicant may notify the Committee in writing, and the Board of Directors, of that fact. Such notice shall be sent by certified mail, return receipt requested to both the Architectural Committee and the Board of Directors. The plans shall be deemed approved by the Committee not later than the latter of:

1. Ten (10) days after the date of receipt of such notice, if such notice is given; or
2. Ninety (90) days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Recommend Rules and Regulations. Subject to the provisions of Section 7.12 herein, the Architectural Committee may, from time to time, recommend rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses, provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to recommend approval or disapproval of any plans submitted for approval, or to waive the exercise of the Board of Directors to arbitrate disputes arising

between the Architectural Committee and the Unit Owner or Owners, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration, By-Laws or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. 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 Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee and the Board of Directors. The recommendation for approval or disapproval of plans by the staff members, individual member or subcommittee will be subject, however, to the reasonable review of the Board of Directors, in accordance with procedures to be established by the Committee. Functions of the Architectural Committee may be limited or expanded, from time to time, upon two-thirds (2/3) vote of the Board of Directors.

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with the laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or Unit or other portion of the Property. Neither Association, the Board of Directors, 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 judgement, 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 7.11. Architectural Committee Variance Request. Upon written request of any Owner, lessee or occupancy (or any prospective Owner, lessee, mortgagee or title insurer) of a Lot or Unit or other portion of the Property the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a Variance Request in writing signed by a member of the Architectural Committee stating, as of the date of such Variance Request, whether or not the Lot or Unit or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Variance Request. Any such Architectural Committee Variance Request, 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 Variance Request was issued.

Section 7.12. Restrictions on Change of the Board of Directors Controls, Rules or Regulations. The controls set forth in this Article VII and any rules and regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Owners voting in person or by proxy, written notice of which change shall be sent to all Unit Owners and lending institution first mortgagees of Units whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon and shall set forth the purposed of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33- 1/3% or more of the Units advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE VIII

PARTY WALLS

Section 8.01. Party Walls. Each wall which is built as part of the original construction of the Units, whether or not such wall is on the dividing line between two adjacent Lots, and which serves as the exterior limit of buildings on both lots, shall be considered a Party Wall.

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

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

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

Section 8.04. Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall.

Section 8.05. Destruction of a Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit which used the wall may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half (1/2) the cost of such restoration) from the Owner of the other Unit which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts of omissions.

Section 8.06. Encroachments or Projections. If any Unit encroaches or projects up to three (3) feet upon or over any other Unit or Lot or upon or over any portion of the Association Property, or if the patio or deck servicing a Unit encroaches or projects upon or over any portion of the Association Property, as a result of (i) original construction, (ii) settling or shifting, or (iii) replacement as a result of fire, condemnation, eminent domain proceedings or proceedings of similar import and effect, such encroachments or projections shall be permitted and valid easements for such encroachments or projections and the maintenance thereof shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

An easement shall exist for encroachments or projections of (i) Units as built of up to three (3) feet onto or over Association Property or other Lots or Units, and (ii) patios or decks as built onto or over Association Property.

Section 8.07. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same, which are described in this Article, shall run with the land and shall bind the heirs, successors, and assigns of each Owner.

ARTICLE IX

INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. To the extent reasonably obtainable, and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate, unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (i) fire and casualty insurance, (ii) liability insurance, (iii) directors' and officers' liability insurance, (iv) fidelity bond and (v) workmen's compensation insurance, with coverages to be as follows:

1. Fire and Casualty. The policy shall cover the interest of the Association, the Board of Directors and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value (without deduction for depreciation) of all improvements on the Property under the "single entity" concept, i.e., covering the Units as initially built and including the wall-to-wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings and all machinery servicing the Units and common facilities, excluding the land, foundations, and personal property of Unit Owners and occupants, any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, built-ins and wall coverings) made by the present or prior Unit Owner or occupant.

This policy shall have the following provisions, endorsements and coverages:

- i. Extended coverage, including debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage;
- ii. Inflation guard;
- iii. Coverage for loss of Maintenance Assessments from Unit Owners forced to vacate because of fire or other insured against casualty;
- iv. Waiver of any right to claim by way of subrogation against individual Unit Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association;
- v. An exclusion from the "no other insurance" clause of individual Unit Owners' policies so that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Unit Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Unit Owners or mortgagees;
- vi. A provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control;
- vii. Cross-liability giving the Unit Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant;
- viii. A provision that the policy may not be cancelled (including cancellation for non-payment of premium) substantially modified, invalidated or suspended, without at least sixty (60) days prior written notice to all of the insured, including all mortgagees of Units reported to the insurance carrier or its agent;
- ix. A provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage; and
- x. A provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or from such other source as the Board of Directors shall determine to be

acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land, foundations and improvements made by present or prior Unit Owners or occupancy) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

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

Flood Insurance. No portion of the Property is located in a Flood Hazard Zone. However, if in the future any portion of the Property is determined to be located in an area subsequently identified by the federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Units and other insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program, or 100% of the current replacement cost of all such Units and other insurable property, whichever is greater.

Proceeds of Physical Damage Insurance. The proceeds of all policies of physical damage insurance shall be payable to the Association unless otherwise determined by the Unit Owners pursuant to Section 9.02 of this Declaration.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear, subject, however, to the loss-payment provisions in favor of the Board of Directors. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgage indebtedness.

2. Liability. The liability insurance shall cover the directors and officers of the Association, and all Owners, but not the liability of Owners arising from occurrences within such Owner's Unit or on such Owner's lot. The policy shall include the following endorsements:
 - i. Comprehensive general liability (including libel, slander, false arrest and invasion of privacy);
 - ii. Personal injury;
 - iii. Medical payments;
 - iv. Cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured;
 - v. "Severability of interest" precluding the insurer from denying coverage to a Unit Owner because of negligent acts of the Association or any other Unit Owner;
 - vi. Contractual liability;
 - vii. Water damage liability;
 - viii. Hired and non-owned vehicle coverage;
 - ix. Liability for the property of others;
 - x. Host liquor liability coverage with respect to events sponsored by the Association; and
 - xi. Deletion of the normal products exclusion with respect to events sponsored by the Association.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to

cover all prior officers and members of the Board of Directors and any deductible provision shall apply only to each occurrence and not to each item of damage. If obtainable at reasonable cost, the policy shall not provide for "participation" by the Association or by the officers or directors of the Association. Such coverage shall be in the sum of \$1,000,000.00.

4. Other. 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.

The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available, only at demonstrably unreasonable cost.

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 Unit involved, shall constitute a personal obligation of such Owner and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire of Other Casualty. In the event of damage to, or destruction of, an Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors 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 the insurance proceeds are, for any reason, insufficient to pay all the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against all Owners of the damaged Units in such proportion as the Board of Directors deems fair and equitable taking into account the damage sustained to each Unit and Lot and any negligence which, in the opinion of the Board, contributed to the damage or loss. In the event that insurance proceeds exceed the cost of repair or reconstruction, such surplus shall be paid over to the respective mortgagees and Owners in such proportions as the Board of Directors deems fair and equitable, taking into account the damage sustained to each Unit and Lot.

In the event of damage to, or destruction of, any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Unit Owner or any other party shall have priority to receive any portion of such surplus over such Unit Owner's mortgagee.

Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specification of the damaged improvements as originally built. Any proposed substantial deviation therefrom shall require the written consent of institutional first mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of all Units affected which are subject to the institutional first mortgages as indicated on the records of the Association.

Section 9.03. Insurance carried by Unit Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including coverage for (i) fire, casualty and theft coverage for the Owner's personal property, (ii) boat insurance for the Owner's boat kept at deeded dock, (iii) such Owner's personal liability within the Owner's Unit and on such Owner's Lot, and (iv) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained through the association, provided however, that (i) such policies contain waivers of subrogation, if available, and (ii) 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.

Section 9.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Units, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes or any other charges with respect to the Association Property which are in default and which may become or have become a charge against the Association Property.

ARTICLE X

GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. No sign or other advertising device of any nature shall be placed for display to the public view of any Unit, Lot or other portion of the Property (including temporary signs advertising property for sale or rent), except with an approved variance by the Architectural Committee and the Board of Directors.

Section 10.02. Animals, Birds and Insects. Except for a dog not to exceed forty (40) pounds in weight or one cat owned by an Owner at the time such Owner entered into a contract for the purchase of a Lot or Unit, fish, or birds kept in a cage, no animals, birds, or insects (including replacements, after demise or disposition of any dog or cat owned by any Owner) shall be kept or maintained on any Lot or in any Unit or other portion of the Property, except with the consent of the Board of Directors of the Association which may from time to time (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects, and (ii) prohibit certain types of animals, birds and insects entirely. The Board of Directors of the Association shall have the right to require any Owner or any tenant of the Owner of any family member or guest of any Owner or tenant to dispose of any animal, bird, or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird, or insect 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 (e.g. in the case of a dog or cat, kept leashed at all times). In no event shall a dog or cat be permitted to go unleashed on the Property.

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

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored or allowed to

accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within twenty-four (24) hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Committee so as to provide access to persons making such pick-up. All variance requests for dumpsters and pods must be submitted, reviewed by the Architectural Committee and approved by the Board of Directors prior to placement on the property. The Architectural Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size and type of containers permitted and the manner of storage of the same on any portion of the Property.

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

Section 10.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be, or become, a nuisance or annoyance in 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 radio-active emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to, or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

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

Section 10.08. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property, except with the consent of the Architectural Committee and Board of Directors.

Section 10.09. Television and Radio Antennas. No outside television antenna, shortwave radio antenna, or antenna for any other transmission or receiving, shall be erected on any Lot or upon any Unit or other portion of the Property, except with the consent of the Architectural Committee and the Board of Directors.

Section 10.10. Trees and Other Natural Features. No trees shall be removed from any such transferred Lot and Unit or other portion of the Property, except with the recommendation of the Architectural Committee and approval by the Board of Directors.

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

Section 10.12. Snowmobiles. No snowmobiles or similar motor vehicle, including unlicensed motored vehicles, shall be operated on any portion of the Property.

Section 10.13. Residential Use Only. Except as provided in Section 10.14 herein, the property shall be used only for residential purposes and purposes incidental and accessory thereto. No garage may be converted for use other than its intended purpose for vehicular parking.

Section 10.14. Commercial and Professional Activity on Property. No business, profession or home industry shall be conducted in or on any Lot or other portion of the Property without the recommendation of the Architectural Committee and approval by the Board of Directors.

Section 10.15. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited, unless recommended by the Architectural Committee and approved by the Board of Directors.

Section 10.16. Outdoor Repair Work. With respect to a Lot and Unit, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof.

Section 10.17. Oversized, Commercial and Unlicensed Vehicles. The following shall not be permitted to remain overnight on the Property.

1. Any vehicle which cannot fit into a garage as part of each Unit;
2. Commercial vehicles, unless garaged;
3. Unlicensed motor vehicles of any type, unless garaged.

Section 10.18. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted within the area comprising Yacht Club Cove. No clotheslines of any type shall be permitted on any Lot or Unit or other portion of the Property.

Section 10.19. Garages and Garage Doors. Garages may be used for vehicular parking only and may not be modified for any other use. Owners and other occupants of Units shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage and shall cause the garage door to be kept in a closed position, except for ingress and egress, whenever possible.

ARTICLE XI

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

Section 11.02. Enforceability.

1. Actions at Law or Suits in Equity. The provisions of the Declaration shall bind the property and be construed as running with the land and shall inure to the benefit of and be enforceable by the Association (being hereby deemed the agent for all its Members) and 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.
2. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or rules and regulations of the Association or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Unit Owner or Unit Occupant shall be deemed a Special Assessment against the Unit of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Unit, shall constitute a personal obligation of the Unit Owner, and shall be collectable in the same manner as Assessments under Article V of this Declaration.

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

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

Section 11.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Committee) may at any reasonable time or times, upon not less than twenty-four (24) hours notice to the Owner or occupant, enter upon a Unit or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with the By-Laws or 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 11.06. Default Notices to be Sent to Mortgagees. The Association shall be notified by each Unit Owner or such Unit Owner's mortgagee of the name of the mortgagee of any mortgage on such Owner's Unit. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.07. Amending or Rescinding. 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 Units or Lots which are subject to this Declaration.

In voting for such amendment or rescission, Owners shall have one (1) vote for each Unit owned.

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

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

Section 11.08. Owner Responsible for Tenants. Any lease of a Unit shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall notify the Owner of the Unit which such tenant occupies, in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.09. Community Wide Lease Limitation. At no time may more than 20% of the total number of Units, or such lower number as may be required by any so-called secondary mortgage market source, be leased, rented, licensed, or let (collectively referred to as "leased"). The Board representing the Association shall try to ensure that all members who wish to lease their Units are granted an opportunity to do so.

Section 11.10. When Amendment or Rescission Becomes 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 Clerk of the County of Ontario. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.11. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2035, and shall otherwise be extended for successive periods of ten (10) years.

Section 11.12. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of the Declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approval, rules or regulations,

the Association shall take into consideration the best interests of the Owners and residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

Section 11.13. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.14. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.15. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII

GENERAL

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

Section 12.02. 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 12.03. Right of the Association to Transfer Interest. Notwithstanding any other provisions herein to the contrary, the Association and its successors, shall at all times, have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder, shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.04. Right of the Association to Transfer Functions. Unless otherwise specifically prohibited herein, or within the Certification 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.

CERTIFICATION OF CONSENT

The undersigned being the Managing Agent for the Yacht Club Cove Homeowners Association, Inc. pursuant to a Declaration recorded in the Ontario County Clerk's Office in Liber 1260 of Deeds at pages 192 on April 28, 2011, certify that:


- (1) Consents for the Restated Declaration dated September 19, 2020 have been received from the Owners as set forth in Exhibit I attached hereto and have been filed with the Board of Directors;
- (2) The Owners consenting thereto exceeded the minimum number required to amend pursuant to Section 11.07 of the Yacht Club Cove Homeowners Association, Inc. Declaration;
- (3) All Lot Owners have been given or waived the proper notice as required by Section 11.07 of the Yacht Club Cove Homeowners Association, Inc. Declaration.

WOODBIDGE GROUP


By: Thomas E. Carozza

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

On the 15 day of October, in the year 2020, before me, the undersigned, personally appeared **THOMAS E. CAROZZA**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

DALE BOWERS
Notary Public, State of New York
No. 01BO6352666
Qualified in Monroe County
Commission Expires January 3, 2021

EXHIBIT C

BY-LAWS

of

YACHT CLUB COVE HOMEOWNERS' ASSOCIATION, INC.

NAME: Yacht Club Cove Homeowners' Association, Inc.

DEVELOPER: Yacht Club Cove, Inc.
502 South Main Street
Canandaigua, NY 14424

DATED: _____

BROCKLEBANK AND BLAZAK
Attorneys at Law

Robert S. Blazak, of Counsel
Counsel to the Developer

51 North Main Street
Canandaigua, NY 14424

BY-LAWS

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BY-LAWS
of
YACHT CLUB COVE HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

Section 1.01. Name and Location. The name of the corporation is the Yacht Club Cove Homeowners' Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located in the City of Canandaigua, County of Ontario and State of New York.

ARTICLE II
DEFINITIONS

As used in these By-Laws, the following terms shall be defined as:

Section 2.01. Declaration. The document entitled "Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Yacht Club Cove" imposed by the Declarant of the Property, as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.02. Declarant. Yacht Club Cove, Inc., its successors and assigns.

Section 2.03. Lot. Any portion of the Property identified as a separate parcel on the tax records of the City of Canandaigua as shown as a separate Lot upon any recorded or filed subdivision map, with the exception of Association Property as defined in the Declaration.

Section 2.04. Member. The Owner of a Unit or Lot subject to the Declaration whether the holder of record title of the fee interest in the Unit or the record holder of any leasehold estate, whether or not such holder actually resides on the part of the property.

Section 2.05. Property. All property subject to the Declaration.

Section 2.06. Unit. Any completed dwelling Unit (as evidenced by issuance of a Certificate of Occupancy issued by the City of Canandaigua) including garage, situated upon the Property or any dwelling Unit on the Property which has been occupied as a residence.

ARTICLE III

MEMBERS

Section 3.01. Membership in the Association. The Members of the Association shall be the Owners of all Lots and Units on the Property, provided that any person or entity holding such interest merely as security for the performance of any obligation shall not be a member.

Section 3.02. Right of Declarant to Assign. The Declarant may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 3.03. Voting Rights. Each member, including the Developer, shall have one vote notwithstanding the amount of Units or Lots owned. The Declarant/Developer, however, shall have the sole and exclusive right to appoint the Board of Directors of the Association up until four (4) years from the date of recording this Declaration or upon the sale of forty-two (42) Units, whichever event first occurs. Any member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues. Any member who fails to pay any dues, maintenance assessment or special assessment established by the Association, shall not be entitled to vote during any period in which any such assessments are due and unpaid.

Section 3.04. Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-For-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of 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 3.05. Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

Section 3.06. Joint or Common Ownership. Any one joint or common owner of a Lot or Unit shall be entitled to cast one vote with respect to the Lot or Unit so owned.

Section 3.07. Absentee Ballots. On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and that the Member votes for or against the same. Members unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy, which shall be in writing and shall be filed with the secretary of the Association.

ARTICEL IV

MEETINGS OF MEMBERS

Section 4.01. Annual Meeting. There shall be an Annual Meeting of the Members on the 1st day of August at 7:00 p.m. or at such other date and time and at such place convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the date fixed for the Annual Meeting shall be a legal holiday, the meeting shall be held on the first day following, which is not a legal holiday. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 4.02. Special Meetings. Special Meetings of the Members may be called at any time by the President or the Board of Directors, or at the request in writing of Members of the Association holding not less than the lesser of one-third (1/3) or thirty (30) of the votes entitled to be cast at the meeting.

Section 4.03. Notice of Meetings. Not less than ten (10) days or more than thirty (30) days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of Speical Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records

of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum. Members holding not less than the lesser of one-fourth ($1/4$) or twenty (20) of the total votes of the membership shall constitute a quorum at any meeting. If a quorum is not present at any meeting of Members, a majority of the Members present at the meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours later, without notice other than announcement at the meeting, and may adjourn the meeting from time to time thereafter, until a quorum shall be present in person or by proxy, with the quorum required in each reconvened meeting being one-half ($1/2$) of the quorum required for the previous meeting. The act of two-thirds ($2/3$) of the Members present at a meeting at which a quorum shall be present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration, or these By-Laws.

Section 4.05. Waiver and Consent. Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01. Number of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be seven (7), except that an initial Board of four (4) Directors shall be designated by the Declarant to serve until the first Annual Meeting of the Association after forty-two (42) Units have been conveyed to

purchasers or until four (4) years after the date of recording of the Declaration, whichever event first occurs. After forty-two (42) Units have been conveyed or until four (4) years after the date of recording of the Declaration, whichever event first occurs, the Declarant shall have the right to designate two (2) members to sit as Directors until all eighty-five (85) Units are sold..

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

Section 5.03. Election. At the first annual meeting after forty-two (42) Units have been sold or four (4) years after the date of recording of the Declaration, whichever event first occurs, the members shall elect four (4) Directors for a two (2) year term and three (3) Directors for a term of one (1) year. At such meeting and any subsequent election, the members shall replace those Directors whose terms have expired and elect such successor Directors for a term of two (2) years. Voting shall be by secret written ballot which shall:

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

Section 5.04. Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

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

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

Section 5.07. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.08. Special Meetings. Special Meetings of the Board of Directors may be called at any time at the request of the President or any two (2) Directors after not less than two (2) days notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver or notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of, any Special Meeting, need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association, or by these By-Laws.

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

further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

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

Section 5.11. Powers and Duties. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or the By-Laws. THE POWERS, DUTIES AND AUTHORITY OF THE BOARD OF DIRECTORS SHALL SPECIFICALLY INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

1. To determine, levy and collect the assessments and common charges as provided for in the Declaration.
2. To collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association and exterior of the Units as permitted by the Declaration.
3. To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Units as it deems appropriate.
4. To repair, restore, or alter the properties of the Association and the exteriors of the Units after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
5. To adopt and publish rules and regulations governing the use of Association Property and facilities, and the personal conduct of the members and other guests thereon, and establish penalties for infractions thereof.
6. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
7. To pay all taxes owing by the Association.

8. To suspend the voting rights of a Member during any period in which such Member shall be in default for the payment of any assessment levied by the Association. Such voting rights may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days for infraction of published rules or regulations.

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

10. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of Members, or at any special meeting of Members when such a statement is requested in writing by not less than one-fourth (1/4) of the Members entitled to vote.

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

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

ARTICLE VI

OFFICERS

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

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

Section 6.03. Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be

removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.04. Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.05. President. The president shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, and if there is no Chairman of the Board, shall preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board of these By-Laws.

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

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

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

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

ARTICLE VII

COMMITTEES

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

Section 7.02. Committees of Members. The committees of the Association shall be the Architectural Standards Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration. There shall also be a Nominating Committee as provided in these By-Laws. The Nominating Committee need not include a member of the Board of Directors.

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

ARTICLE VIII

FINANCE

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

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

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

ARTICLE IX

BOOKS AND RECORDS

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

ARTICLE X

CORPORATE SEAL

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

ARTICLE XI

AMENDMENTS

Section 11.01. Alteration, Repeal or Amendments. These By-Laws may be modified, altered, repealed, amended or added to at any regular or special meeting of the members provided that:

1. A notice of the meeting containing a statement of the proposed modification, alteration, repeal, amendment or addition has been sent to all Unit Owners and Unit mortgagees as listed on the records of the Association, not less than ten (10) nor more than thirty (30) days prior to the date or initial date set for the canvass of the vote thereon;

2. A majority of a quorum of members present at the meeting in person or by proxy approve the changes, and;

3. Prior to date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from mortgagees of more than fifty percent (50%) of Units on which there are mortgages as shown on the records of the Association.

Section 3.02, 5.01, 5.03, 5.04, and 11.01 shall not be amended prior to four (4) years from the date of the recording of the Declaration without the consent of the Declarant.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Notices. All notices hereunder shall be in writing and sent by mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, if to go to the Board of Directors, at the office of the Board of Directors, and if to go to a Unit Owner or Unit mortgagee, to the address of such Unit Owner or mortgagee at such address as appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 12.02. Conflict with Certificate of Incorporation or with Declaration. In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 12.03. No Waiver for Failure to Enforce. No restrictions, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.