



GOVERNORS SQUARE EAST HOMEOWNERS' ASSOCIATION, INC.

DECLARATION

**PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES, LIENS AND BYLAWS**

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DECLARATION
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EASEMENTS, CHARGES AND LIENS
Of
GOVERNORS SQUARE EAST HOMEOWNERS' ASSOCIATION, INC

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ARTICLE I – DEFINITIONS

Section 1.01. Definitions. The following words, when capitalized and used in this Declaration, the By-Laws, the Rules and Regulations, the Offering Plan or in any instrument supplemental to this Declaration, the By-Laws, the Rules and Regulations or the Offering Plan, shall, unless the context otherwise prohibits, have the following meanings:

- a. Architectural Committee: The Architectural Committee, a permanent committee of the Association, established pursuant to Article VI of this Declaration.
- b. Assessments: Charges for the maintenance and operation of Association Property as described in Article VII of this Declaration and includes Special Assessments for capital improvements, maintenance assessments and any other charges deemed to be Assessments pursuant to the Declaration and By-Laws.
- c. Association: The Governors Square East Homeowners Association, Inc.
- d. Association Property: All land, improvements and other properties, personal or mixed, heretofore and hereafter owned by the Governors Square East Homeowners Association, Inc.
- e. Authorized Votes: There shall be only one vote for each Voting Owner regardless of the number of Homes owned by such Owner.
- f. Board of Directors: The Board of Directors elected by the Members and/or appointed by the Sponsor to administer the affairs of the Association, and sometimes referred to as “the Board.”
- g. By-Laws: The By-Laws of the Association set forth in the Offering Plan, as the same may be supplemented, extended or amended from time to time.
- h. Covenants and Restrictions: The protective covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, as the same may be supplemented, extended or amended from time to time.
- i. Declaration: This documents of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of the Governor’s Square East Homeowner’s Association, Inc. as the same may be supplemented, extended or amended from time to time.
- j. First Mortgagee: The original first mortgagee, its representatives, assigns or other holder of a first mortgage on a Home.
- k. Home:
Each completed townhouse situated upon the Property (as evidence by issuance of a Certificate of Occupancy issued by the Town of East Greenbush) including garage. Unless the context clearly indicates otherwise, the term "Home" shall be deemed to include the term "Lot".

l. Lot: Any portion of the Property (with the exception of the Association Property, if any) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of East Greenbush; or (ii) shown as a separate Lot upon any recorded or filed subdivision map in the Rensselaer County Clerk's Office. Unless the context clearly indicates otherwise, the term "Lot" is included in the term "Home".

m. Member: Each holder of a membership interest in the Association, as such interest is set forth in Article III of this Declaration.

n. Mortgagee: Any mortgagee, its representatives, assigns or other holder of a mortgage on a Home and to an Owner.

o. Offering Plan: The Offering Plan filed with the New York State Department of Law relating to the Governors Square East Homeowners Association, Inc.

p. Owner: The holder of record title, whether one or more persons or entities, of (1) fee simple title to any Home, whether or not such a holder actually resides in such Home; or (2) the fee interest in any Lot or Home subject to this Declaration; and shall include the Sponsor with respect to any unsold Lot or Home.

r. Rules and Regulations: The Rules and Regulations of the Association governing the use and care of the Property as may be set forth in this Declaration, the By-Laws or promulgated from time to time by the Board of Directors.

s. Site Plan: The Site Plan or Plans as filed in the Rensselaer County Clerk's Office.

t. Sponsor: The Michaels Group, Inc., its successors and assigns.

u. Transfer of Control Date: The date on which (1) the Sponsor has transferred title to all Homes; or (2) five (5) years from transfer of title to the first Home, whichever first occurs.

v. Voting Owner or Member. The Owner of a Home. In the event a Home is owned by more than one person, the Voting Owner shall be the person named in a certificate signed by all owners of such Home and filed with the Secretary of the Association Board of Directors. If such certificate is not on file, the person first named on the deed by which title is obtained shall be the person considered the Voting Owner.

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of East Greenbush, County of Rensselaer, State of New York, and is more particularly described in Schedule A hereto.

Section 2.02. Merger. Upon a merger or consolidation of the Association with another association as provided in the Association's Certificate of Incorporation, this Declaration, the By-Laws or New York State Law, 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 with the Property, together with the Covenants and Restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants and Restrictions established by this Declaration within the Property, except as hereinafter provided.

ARTICLE III - THE ASSOCIATION

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of the State of New York, Governors Square East Homeowners' Association, Inc. was formed to own, operate and maintain Association, including recreational facilities, parking areas and other green areas for common use, enforce the Covenants and Restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration, the Certificate of Incorporation as amended and the By-Laws of the Association, as each may be supplemented, extended or amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the 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 Owners of Homes within the Governors Square East Homeowners' Association, Inc. All Owners shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership, notwithstanding the provisions of Section 4.04 of this Declaration. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definition of the word "Owner" as found in Article I of this Declaration. Ownership of such Home shall be the sole qualification for membership.

Section 3.03. Holder of Security Interest. Any person or entity which holds an interest in a Lot or Home merely as security for the performance of an obligation shall not be a Member and shall have no voting rights.

ARTICLE IV - PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Sponsor will convey to the Association subsequent to the recordation of this Declaration and at or prior to the conveyance of the first Home, the Property for the use and enjoyment of the Members, their guests, lessees, licensees and invitees.

The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration. The conveyance of such lands to the Association shall state that such land has been designated as Association Property for the purpose of this

Section 4.01. No portion of the Property shall be subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the same shall have been so designated and the above described conveyance recorded in accordance with the procedures provided herein.

Section 4.02. Right and Easement of Enjoyment in Association Property.

a. Every Member, and such Member's guests, lessees, licensees and invitees, shall have a right and easement of enjoyment in and to all Association Property. Such easements shall be appurtenant to and shall pass with interests of a Member. All such rights, easements and privileges, shall be subject, however, to the rights of the Association as set forth in Section 4.03.

b. Every Member shall also have an easement for ingress and egress by vehicle or otherwise over and to all Association Property and further shall have common utility and conduit easements as described in Section 4.05 of this Declaration. These easements will be subject to the rights of the Association as set forth in Section 4.03 of this Declaration, provided, however, that a conveyance or encumbrance referred to in Section 4.03(c) hereof shall be subject to said easement of each Member for ingress and egress.

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

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

a. To grant easements or rights-of-way to any public utility corporation, governmental agency or political subdivision or cable television company or franchisee with or without consideration.

b. To dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee, subject to the following:

(1) such a conveyance shall require the consent of sixty seven percent (67%) of all Authorized Votes,

(2) no such conveyance shall be made if first mortgagees of thirty three percent (33%) or more of the Homes advise the Association in writing prior to the date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable. Written notice of any proposed conveyance shall be sent to all first mortgagees not less than thirty (30) days nor more than ninety (90) days prior to the date set for voting on the proposed conveyance.

c. To enter into agreements, reciprocal or otherwise, with other homeowners' associations, condominiums and/or cooperatives for the use of, or sharing of, Association Property. Such agreements shall require the consent of sixty seven percent (67%) of the Authorized Votes.

d. To borrow funds from any recognized lending institution, and in conjunction therewith, mortgage its properties. No such mortgage, however, shall encumber or otherwise interfere with the easement of ingress and egress of Members as described in this Article IV. The amount, terms, rate or rates of all borrowing and provisions of all agreements with note holders shall be subject to the approval of at least sixty seven percent (67%) of the Authorized Votes.

e. To contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives and other homeowners' associations both within and without the Property. Such agreements shall require the consent of sixty seven percent (67%) of the entire Board of Directors.

f. To promulgate rules and regulations relating to the operation and maintenance of Association Property and the Lots.

g. For the purpose of maintaining, improving or repairing Association Property, the Association shall have an easement of ingress and egress over all Lots and Homes and shall have the right to use water or electricity from outdoor taps or electrical outlets located anywhere on the Property or Lots. Promptly after each such usage, the Association, in writing, shall so notify the Owner or occupant of the Lot or Home upon which the tap or outlet was located, setting forth the date of such usage, as well as any other pertinent information. The Association shall reimburse the owner or occupant of the Home for that portion of utility charges attributable to such use by the Association, such proportionate allocation to be as reasonably determined by the Association.

Section 4.04. Rights of Owners and/or Occupants.

a. Each owner and/or occupant shall have a ten (10) foot easement on the side of the exterior Lots and along the rear of all Lots for movement of lawn care equipment, maintenance equipment and/or maintenance contractors and fire protection. For the purposes of this Section, "exterior Lot" shall mean the side line which is the exterior of a separate Building containing the Home and Lot.

b. Each Owner and/or occupant shall have an easement over the Lots and the exterior walls and roofs of Homes for inspection and cleaning of fireplace flues and chimneys, if any, servicing such Owner's Home.

Section 4.05. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, the Association and the Architectural Committee (as defined in Article VI of this Declaration), the Board of Directors shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof, including the Lots, and may, in its discretion, establish standards or guidelines aimed at

reducing or eliminating impact or take affirmative action to improve the quality of the environment, and shall comply with all applicable laws, rules and regulations.

Section 4.06. Common Utility and Conduit Easements. All pipes, wires, conduits and public utility lines and cable television lines located on each Lot, or within a Home and serving only such Home shall be owned, maintained, repaired and replaced by the Owner of such Home. Every other Owner shall have an easement in common with the Owners of other Lots or Homes to maintain and use all pipes, wires, conduits, drainage areas, public utility lines and cable television lines located on other Lots or on the Association Property and servicing such Owner's Home. Each Lot and Home shall be subject to an easement in favor of the Owners owning other Lots and Homes to maintain and use the pipes, wires, conduits, drainage areas and public utility lines and cable television lines servicing, but not located on or in such other Home or Lot.

Section 4.07. Maintenance of Association Facilities. In order to preserve and enhance the values and amenities of the Property, the Association shall at all times maintain the Association Property and facilities in good repair and condition. The Association shall have an easement of ingress, egress, and access, by motor vehicles and otherwise, to and from the Association Property and on, over, across, under and above the Lots.

Section 4.08. Compliance and Arbitration. Should any Owner, members of such Owner's family, its employees, guests, lessees, licensees or other invitees fail to comply with any of the provisions of this Declaration, the By-Laws or Rules and Regulations, or as such may be amended from time to time, the following procedures shall be implemented to obtain compliance:

- a. A committee of three (3) shall be appointed by the Board of Directors and designated the Compliance Committee to serve at the pleasure of the Board of Directors.
- b. The Compliance Committee shall first undertake to obtain compliance with the Rules and Regulations informally, by discussing violations of the same with the person or persons violating them, and seeking to obtain future compliance, or correction of the on-going violations.
- c. Should this informal procedure prove unsatisfactory or not secure future compliance, the Compliance Committee shall then send a written notice to the person violating a Rule or Regulation, and if such person is not an Owner, to the Owner responsible for the violator, notifying him of the claimed violation, and requesting, as the case may require, either a correction of the violation, or an assurance that similar violations will not occur in the future. Such notice shall establish a date for compliance.
- d. Should such notice obtain the requested compliance, that will dispose of the matter, unless the same or a similar violation of the Rules and Regulations thereafter reoccurs.
- e. Should such notice not obtain the requested compliance within the time requested, the Compliance Committee shall then be authorized, at its discretion, to establish a monetary and/or non-monetary penalty, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar violations in the future by the same or any other

person. Such fine shall become a binding personal obligation of the violator, if an Owner, or of the Owner responsible for such violator. Failure to correct the condition or situation which leads to the first fine, for a period of twenty (20) days after the initial fine becomes due and payable, shall constitute a second offense. Notice of the imposition of such fine or fines shall be mailed to the violator and/or the owner responsible for such violator, and shall be paid to the Association within ten (10) days unless the violator requests the right to arbitrate the matter within the ten (10) days before the Arbitration Committee, as hereinafter set forth. Should the fine not be paid within the ten (10) days, or if a request to arbitrate is not received within the said ten (10) days, the amount of the fine shall be added to the Owner's Assessments on the first of the month following the termination of the ten (10) day period above set forth, and shall be a lien upon the Owner's Home.

f. The Arbitration Committee shall consist of the President of the Board of Directors, as Chairman of the Committee, and two (2) other members of the Board of Directors who shall be appointed by the Board of Directors to serve at the pleasure of the Board of Directors.

g. Should the violator, or the Owner responsible for the violator, request the right to arbitrate the imposition or extent of a fine, as above set forth, he shall do so in writing, directed to the Board of Directors, within ten (10) days of his receipt of notice of the imposition of said fine. The Board of Directors shall promptly forward the same to the Arbitration Committee, which shall meet within twenty (20) days thereafter, on notice to the alleged violator, to hear and dispose of the matter. At such hearing, the alleged violator and/or the owner responsible for such violator, and one (1) or more members of the Compliance Committee may be present and be heard. A decision on the matter shall be made by the Arbitration Committee, by a majority vote, within ten (10) days following said hearing, and shall be promptly communicated to the alleged violator and/or the owner responsible for such violator. If the decision of the Arbitration Committee is to uphold the determination of the Compliance Committee, the provision relating to the payment and enforcement thereof set forth in Subparagraph e., above shall apply. If their decision is in favor of the alleged violator, no fine will be imposed. The decision of the Arbitration Committee shall, to the extent permitted by law, be final and binding upon all parties.

h. In the event the violator is a person other than an owner or a member of such owner's immediate family, copies of all notices required to be given to the violator under this Declaration, the By-Laws or the Certificate of Incorporation shall also be given to the Owner of the Home responsible for such violator.

Section 4.09. Distribution of Condemnation Awards. In the event all or part of the Association Property, if any, is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors 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, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds in accordance with Article VIII of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceedings to all Mortgagees whose names appear on the books and 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.

Section 4.10. Non-Discrimination by Association. Neither the Association, nor any officer, director, agent, committee, Member or committee member or employee thereof, shall make unavailable or deny the occupancy or use the Association Property to any person or persons, or take any other action which discriminates on the basis of race, religion, color, sex, sexual orientation or national origin. This covenant shall run with the land and shall remain in effect without limitation in time.

ARTICLE V - PARTY WALLS

Section 5.01 Party Walls. Each wall which is built as part of the original construction of the Homes, whether or not such wall is on the dividing line between two adjacent Homes or Lots, and which serves as the exterior limits of such Homes, shall be considered a Party Wall. The general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 5.02. Maintenance of Party Walls. Each Owner of a Home containing a Party Wall shall have an easement to enter upon the Home with which the Party Wall is shared to effect necessary repairs or maintenance of such Party Wall. Subject to Section 5.03 and 5.05 hereof, if it shall become necessary to make substantial repairs to, or rebuild, a Party Wall, such right shall be exercised upon reasonable notice to the adjoining Owner and/or occupant, shall be limited to reasonable times and shall be exercised so as not to unreasonably impair the right of the adjacent Owner and/or occupant to the use and quiet enjoyment of said adjacent Home.

Section 5.03. Exposure of 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 such elements, and the necessary repair resulting because of such act.

Section 5.04. 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 material as the original wall.

Section 5.05. Destruction of the 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 either Home sharing such wall, may restore it. The Owner who undertakes such rebuilding shall be entitled to a contribution (equaling one half (1/2) the cost of such restoration) from the Owner owning the adjacent Home sharing 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 or omissions.

Section 5.06. Party Wall Rights Run with the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of same, which are described in this Article, shall run with the land and shall bind heirs, successors and assigns of each owner.

Section 5.07. Arbitration. In the event of any dispute arising under the provisions of this Article V, procedures as set forth in Article IV of this Declaration shall be used to arbitrate such dispute.

ARTICLE VI - ARCHITECTURAL CONTROL

Section 6.01. Control by Association. Enforcement of those provisions of this Declaration pertaining the exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvements on said Home or Lot or any portion of the Association Property shall be the responsibility of the Association, acting through the Architectural Committee as provided in Section 6.02 below.

Section 6.02. Composition and Function of Architectural Committee.

- a. The Architectural Committee shall be a permanent committee of the Association. It shall serve in an advisory capacity to the Board of Directors, with final approvals and/or enforcement resting solely with the Board of Directors.
- b. The Committee shall be composed of three (3) or more persons (as determined by the Board of Directors), who shall be appointed for terms of two (2) years, subject to removal, with or without cause, by the affirmative vote of seventy-five percent (75%) of the entire Board of Directors.
- c. The Committee shall advise the Board of Directors on the following:
 - (1) All proposed additions, modifications or alterations to Association Property;
 - (2) All proposed additions, modifications or alterations of the exterior of any Home, including exterior doors, garage doors and windows; and
 - (3) Perform such other functions as may be assigned by the Board of Directors from time to time.

Section 6.03. Submission of Plans to Architectural Committee. No exterior addition, modification or alteration shall be made on or to such Home or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, shall have been submitted to and reviewed by the 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 review, including any fees and reasonable expenses which may be charged by architects, engineers or attorneys retained by the Board of Directors in connection with the review of such plans.

Section 6.04. Basis for Recommendation of Disapproval of Plans by Architectural Committee.

The Architectural Committee may recommend disapproval of any plans submitted for any of the following reasons:

- a. Failure of such plans to comply with Covenants and Restrictions contained in the Declaration;
- b. Failure to include information in such plans as reasonably requested by the Architectural Committee;
- c. Objection to the plan, exterior design, appearance of materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion and style of architecture;
- d. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses within the Property;
- e. Failure of the applicant to furnish to the Architectural Committee proof that insurance in the form and amount satisfactory to the Architectural Committee has been obtained and will be maintained for the appropriate period of time by the applicant;
- f. Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations; or
- g. Any other matter which, in the reasonable judgment of the Architectural Committee, would render the proposed improvement use or uses inconsistent or incompatible with the general plan of improvement of the Property, including any possible adverse impact on the use and enjoyment of the Property by any other Owner or occupant.

Section 6.05. Recommendation of Architectural Committee.

- a. Upon recommendation to the Board of Directors for approval or qualified approval by the Architectural Committee of any plans submitted pursuant to this Article, the Board of Directors shall vote upon such recommendations and notify the applicant, in writing, of its decision.

Upon a vote by the Board for approval, or qualified approval, the notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved in the Association's permanent records (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 shall not be deemed a waiver of the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are submitted for approval by other owners.

- b. Once plans have been approved they may not be revoked unless the Board of Directors determines that (i) the work currently being performed is not in substantial conformity with the approved plans; (ii) adequate insurance is not being maintained by the applicant; (iii) appropriate

permits have not been obtained, maintained and/or complied with; or (iv) a period of six (6) months has passed from date of approval of the plans and the alterations, modifications or improvements have not been commenced.

Section 6.06. Written Notification of Disapproval. In any case where the Architectural Committee recommends disapproval of any plans submitted, and the Board of Directors votes in agreement of such disapproval, the Board of Directors shall so notify the applicant in writing, together with statement of the grounds upon which such action was based as set forth in Section 6.04 hereof. In any such case, the Architectural Committee shall, if requested and if practicable, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 6.07. Failure of Board of Directors to Act. If any applicant has not received notice from the Board of Directors approving (including qualified approval) or disapproving any plans within sixty (60) days after submission thereof, said applicant may notify the Board of Directors of that fact in writing. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board of Directors twenty (20) days after the date of receipt of such notice, if no decision is rendered by the Board of Directors within said twenty (20) day period.

Section 6.08. Liability. No action taken by the Architectural Committee or any member of a subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Building or other portion of the Property. Neither the 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 or any other person, in connection with a submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, to defend, indemnify and hold harmless the Association, the Board of Directors and the Architectural Committee (or any officer, member of a subcommittee, employee or agent thereof) from any action, proceeding, suit or claim arising out of, or in connection with such submission.

Section 6.09. Architectural Standards Compliance Certificate. Upon written request of any owner, Mortgagee, lessee, licensee or title insurer (or any prospective owner, Mortgagee, lessee, licensee or title insurer) of a Home or other portion of the Property, the Board of Directors shall, within fifteen (15) days, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Standards Compliance Certificate"), signed by a member of the Board of Directors stating, as of the date of such Certificate, whether or not the Home or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to the exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, determined by the Board of Directors, may be imposed for issuance of such Architectural Standards Compliance Certificate. Any such Architectural Standards Compliance Certificate, when duly issued as herein provided, shall be conclusive, and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 6.10. Completion of Work by the Board of Directors. In the event the Board of Directors deems it necessary to complete work previously commenced by an Owner, or to otherwise protect the appearance, value or structural integrity of the Property, such amounts shall become a binding personal obligation of the Owner and an additional Assessment payable by such Owner shall become a lien against his Home, subject to the provisions of Article VII herein.

ARTICLE VII - ASSOCIATION ASSESSMENTS

Section 7.01. Creation of the Lien. Each Owner of a Home, upon acceptance of a deed therefore whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- a. Annual Assessments of charges for maintenance and operation of the Association Property;
- b. Special Assessments for capital improvements ("Special Assessments"); and
- c. Property taxes on Association Property, if any, if such taxes are not included in the Assessments.

The Maintenance Assessments and the Special Assessments together hereinafter are referred to as "Assessments". The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Except to the extent prohibited by law, the Board of Directors, on behalf of all owners, shall have a lien on each Home for unpaid Assessments, with interest thereon, assessed against such Home, subject to foreclosure.

Section 7.02. Basis for Assessment. The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Owner at least thirty (30) days prior to assessing the Owners thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual requirements and any supplemental requirements shall be allocated among, assessed to and paid by the Owners as follows:

Each Owner shall pay a portion of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Homes subject to this Declaration. The sum due the Association from each Owner shall constitute an Assessment of the Board of Directors.

Section 7.03. Purpose of Assessment. The purpose of the Maintenance Assessments shall be to fund the maintenance, repair, replacement and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Owners, including, but not limited to:

- a. The payment of taxes on the Association Property, if any
- b. Any utility services to the Property which may be commonly metered or billed;
- c. All casualty, liability and other insurance obtained pursuant to Article VIII of this Declaration;
- d. The facilities included in Section 7.01 hereof (except those excluded by such Section or any other Section hereof);
- e. The cost of labor, equipment, materials, management and supervision thereof;
- f. Accounting and record keeping of all Association financial transactions;
- g. Legal, architect, engineering and other professional fees and disbursements; and
- h. Such other needs as may arise and which the Board of Directors deems appropriate or desirable.

Section 7.04. Change in the Basis of Assessments.

- a. The Association may change the basis of determining the Maintenance Assessments by obtaining the written consent of Owners by not less than sixty seven percent (67%) of the Authorized Votes, and no such change shall be made if Mortgagees, whose names appear on the records of the Association, of thirty three percent (33%) or more of the Homes 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. Written notice shall be sent at least thirty (30) days in advance of the date or initial date set for voting thereon to all Owners and Mortgagees whose names appear on the records of the Association. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Rensselaer County Clerk.
- b. Any change in the basis of Assessments shall be equitable and nondiscriminatory.

7.05. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction, replacement or repair of a capital nature to the Property, including the necessary fixtures and personal property related thereto. Any Special Assessment for the construction (rather than reconstruction or replacement) of any capital improvement, or for any Special Assessment amounting to more than twenty-five percent (25%) of the then current amount of annual Maintenance Assessments, the consent of Owners by sixty-seven percent (67%) of the Authorized Votes cast in person, by mail or by proxy at a meeting duly called for this purpose, must be obtained. Written notice of such meeting shall be sent to all Owners at least thirty (30) days in advance setting forth the purpose of the meeting. The Association shall

establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date.

Section 7.06. Assessments: Personal Obligation of the Owner and Lien on Home. The Assessments shall be paid when due. All sums assessed by the Board of Directors, but unpaid, together with any accelerated installments, late charges (not exceeding ten percent of the amount of the overdue Assessment or portion thereto) and fees for violations of the Rules and Regulations and interest thereon 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), shall be the personal obligation of an Owner and shall constitute a lien upon the owner's Home prior to all other liens except: (1) tax or assessment liens on the Home by the taxing subdivision of any governmental authority, including but not limited to, state, county, city, town and school district taxing agencies; and (2) all sums unpaid on any First Mortgage of record encumbering such Home. Assessments shall be levied on an annual basis, due and payable within ten days of receipt of the Assessment statement, unless the Board of Directors establishes other periods of payment. All costs and expenses incurred in collection of past due Assessments, including reasonable attorneys' fees, shall be added to, and constitute an Assessment payable by such Owner.

Section 7.07. Foreclosure of Lien for Assessments. The lien for past due Assessments may be foreclosed by the Association in accordance with the laws of the State of New York, in like manner as a mortgage on real property, and the Association shall also have the right to recover all costs incurred by it in pursuing such right, including reasonable attorneys' fees. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments, the unpaid balance shall be charged equally to all Owners. However, where the holder of a First Mortgage of record, or other Purchaser of a Home at a foreclosure sale of a First Mortgage, obtains title to the Home as a result of foreclosure, or the First Mortgage holder obtains title by conveyance in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be liable for and the Home shall not be subject to a lien for the payment of Assessments chargeable to such Home which were assessed and became due prior to the acquisition of title to such Home by such acquirer. In such event, the unpaid balance of Assessments shall be charged equally to all other Owners.

Section 7.08. Notice of Default. The Board of Directors, when giving notice to an Owner of a default in paying Assessments, may, at its option, or shall, at the request of a Mortgagee, send a copy of such notice to such Owner's Mortgagee whose name and address appears on the records of the Association. The Mortgagee shall have the right to cure the owner's default with respect to the payment of said Assessments at any time prior to the time title is conveyed pursuant to Section 7.08 above.

Section 7.09. No Exemption or Waiver of Assessments. Every Owner shall pay the Assessments assessed against him when due and no Owner may exempt himself from liability for the payment of Assessments so assessed against him by waiver of the use or enjoyment of any of the Property or by the abandonment of his Home. However, no Owner shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him of such Home

made in accordance with Section 339-x of the Real Property Law or in accordance with the provisions of this Declaration and the By-Laws.

Section 7.10. Grantee to be Liable with Grantor for Unpaid Assessments. In any conveyance of a Home either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Home shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to receive from the Grantor the amounts paid by the Grantee therefore. However, any such Grantee shall be entitled to a statement from the Board of Directors setting forth the unpaid Assessments against the Grantor and the Grantee shall not be liable for, nor shall the Home conveyed be subject to, a lien for any unpaid Assessments against the Grantor in excess of the amount therein set forth. "Grantee" as used herein shall not include either the First Mortgagee of record or a purchaser of a Home at a foreclosure sale of a First Mortgage.

Section 7.11. 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 Assessments or otherwise, and may carry forward, as surplus, any balances remaining, nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors, in its absolute discretion, may determine to be desirable for the greater financial security and the more efficient effectuation of the purposes of the Association.

Section 7.12. Assessment Certificates. Upon written demand of an Owner, Mortgagee, lessee or title insurer of a Home (or any prospective purchaser, lessee, Mortgagee or title insurer of such Home), the Association shall, within fifteen (15) days of receipt of such written demand, issue and furnish a certificate in writing, signed by an Officer or designee of the Association, setting forth with respect to such Home, as of the date of such certificate; (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration, the By-Laws and/or Rules or Regulations.

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, Mortgagee, lessee of, or title insurer of, the Home with respect to which such certificate has been issued.

ARTICLE VIII - INSURANCE TO BE CARRIED

Section 8.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain: (1) liability insurance; (2) Directors' and Officers' liability insurance; (3) fidelity bond; and (4) workers' compensation insurance, with coverages to be as follows:

1. Liability. The liability insurance shall cover the Directors and Officers of the Association and all Owners, but not the liability of the Owners arising from occurrences within such Owner's Home. The policy shall include the following endorsements:

- (a) comprehensive general liability (including libel, slander, false arrest and invasion of privacy;
- (b) personal injury;
- (c) medical payments;
- (d) 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;
- (e) "severability of interest" precluding the insurer from denying coverage to an Owner because of negligent acts of the Association or any other Owner;
- (f) contractual liability;
- (g) water damage liability;
- (h) hired and non-owned vehicle coverage;
- (i) liability for the property of others;
- (j) host liquor liability coverage with respect to events sponsored by the Association; and
- (k) deletion of the normal products exclusion with respect to events sponsored by the Association.

2. Until the first meeting of the Board of Directors elected by the Owners, the Directors' and officers' liability coverage shall be in the amount of \$1,000,000.

3. Fidelity Bond. The fidelity bond shall cover all Directors, Officers and employees of the Association, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association at any given time, but in no event less than a sum equal to six months' aggregate assessments on all Homes, plus the reserves and other funds on hand. In the event a professional property manager is employed or retained by the Association, such professional property manager, serving the Association under a contract (not as an employee of the Association) shall maintain a fidelity bond in the same amounts as the Association, naming the Association as Obligee, and provide the Board of Directors with a copy of such bond. The professional property manager, if named as an employee of the Association, shall then be added to the Association's bond. Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$50,000 for dishonest acts and \$50,000 for forgery.

4. Workers' Compensation. Workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person working on behalf of the Association, including the Directors and Officers of the Board of Directors.

5. 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 his Article VIII 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.

Section 8.02. Insurance Carried by Owners. Each Owner shall, at such Owner's expense, maintain coverage for full replacement value of his Home, and personal liability arising from occurrences within such Home or upon such Owner's Lot. A copy of such insurance and evidence of its effectiveness shall be provided, at least annually, if so requested in writing, to the Board of Directors.

In the event of damage to, or destruction of a Home, the Owner of such Home shall arrange for prompt repair and restoration of the Home in accordance with the original plans and specifications, as built by the Sponsor. Any deviations from such plans and specifications shall be submitted to the Architectural Committee in accordance with Article VI of this Declaration.

The term "prompt repair and restoration" shall mean repairs and/or restoration are to begin, weather permitting, not more than sixty (60) days from the date from the date of receipt of the insurance settlement by the Owner. In the event such work is not commenced within said sixty (60) days, or the Board of Directors and/or the Architectural Committee have not been notified of the reason for the delay, upon thirty (30) days written notice to the Owner and Mortgagee, if there be one, the Board of Directors may, if it deems it necessary for the protection of the appearance, value or structural integrity of the Property, proceed to have such work performed and the cost thereof shall become a binding personal obligation of the Owner of the Home and an additional Assessment, payable by such Owner, shall become a lien against his Home, subject to the provisions of Article VII of this Declaration.

ARTICLE IX - MAINTENANCE, REPLACEMENT AND REPAIR OF PROPERTY

Section 9.01 Repairs and Maintenance by the Association.

a. Except as specifically otherwise provided in this Section 9.01, all maintenance, repair and replacement of the Association Property shall be the responsibility of, and an expense of, the Association.

b. The Board of Directors may, upon the affirmative vote of not less than sixty-seven percent (67%) of the Authorized Voting Members, provide for additional maintenance with respect to the Property or other improvements, such as extending landscaping and/or snow plowing or shoveling services to the Homes and the cost of such shall be funded from Maintenance Assessments to be determined for such added maintenance.

c. Subject to the Provisions of Section 9.02 herein, the cost of all maintenance, repair or replacement performed by the Association shall be funded from Maintenance Assessments.

Section 9.02. Repairs and Maintenance Which Are The Responsibility of the owners.

- a. Except as provided in Section 9.01 herein, each owner shall be responsible for the maintenance, repair and/or replacement of both the interior and exterior of his Home, together with the maintenance, repair and/or replacement of his driveway, sidewalk, lawn care and shrubs and trees within his Lot.
- b. The Owner of a Home with a fireplace shall be responsible, at his sole cost and expense, for maintaining the flue and chimney for such fireplace in a clean and safe condition. Such cleaning shall be done as required, but at least annually. Such Owner shall provide the Board of Directors with evidence, on an annual basis, or such other time period as the Board reasonably deems necessary, upon written request from the Board, that such service has been performed by a qualified chimney cleaning service. If an Owner fails to so provide for this service, the Board of Directors may, upon due written notice to the Owner, contract to have such service performed, and the cost thereof shall be added to that Owner's Assessment, and as a part of such Assessment constitute a lien on the Home to secure payment thereof.
- c. In the event an Owner fails to make necessary maintenance, replacement or repair to his Home which is considered necessary to protect any of the Property or any other Home, or maintain the value of the Property, the Board of Directors shall have the right to make such maintenance, replacement or repair upon ten (10) days' written notice to the owner, or oral or written notice of shorter duration in the event of an emergency, and to charge the Owner for the cost of all such maintenance, replacement or repair, which shall constitute a lien on the Home to secure payment thereof. In the event the Owner fails to make prompt payment, the Board of Directors shall be entitled to bring suit thereon, and in such event, the Owner shall also be liable for reasonable attorneys' fees and costs of such suit or proceeding, together with interest on all sums due.
- d. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 9.01 herein, but which is occasioned by a negligent or willful act or omission of an Owner, his guests, lessees, licensees or invitees, shall be made at the cost and expense of such Owner. If such maintenance, repair or replacement is performed by the Association, it shall be regarded as a special expense allocable to the Owner's Home and such cost shall be added to the Owner's Assessment and, as part of such Assessment, shall constitute a lien on the Home, to secure payment thereof.

Section 9.03. Quality and Frequency of Maintenance, Replacement and Repairs. All exterior repairs, replacements and maintenance shall be carried out in such manner as to conform as nearly as practicable to the materials, style and color initially provided by the Sponsor, taking into account the fact that, because of the passage of time or other reasons, it may not be possible or economically feasible to obtain the materials or quality of workmanship necessary to duplicate the materials and style of the structure as it was originally constructed.

Section 9.04. Access for Emergency Repairs. In an emergency, such as broken pipes, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Home to make necessary repairs or to prevent damage to any other Home or any portion of the Property.

Section 9.05. Abatement and Enjoining of Violations. The violation of any Rule or Regulation adopted by the Board of Directors, or the breach of the By-Laws or the breach of any provision of this Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in this Declaration or the By-Laws: (i) to enter the Home in which, or as to which, such violation or breach exists, subject to terms contained herein in this Section 9.05, and to summarily abate and/or remove the condition causing the violation at the expense of the defaulting Owner, and the Board of Directors (and its employees, contractors and agents) shall not thereby be deemed guilty in any manner of trespass; (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; and (iii) to establish a penalty in accordance with Section 9.07 herein. Notwithstanding anything to the contrary herein, the Board of Directors shall not alter or demolish any item of construction unless it shall have first instituted appropriate judicial proceedings. If, thirty (30) days after written notice of any such violation or breach has been given to the Board of Directors by any one or more owners, and the Board of Directors has failed to take any action to remedy such violation or breach, then one or more aggrieved Owners shall have the right to enjoin, abate or remedy the continuance of any such violation or breach by appropriate legal proceedings at law or in equity. Prior to exercising such right, the Board of Directors, or the aggrieved Owner or Owners, as the case may be, shall, if reasonably possible, notify the Owner and the Mortgagee (if known) of the Home or Homes involved and provide a reasonable amount of time for the cure of such violation or breach by the Owner or the Mortgagee.

Section 9.06. Obligation and Lien for Cost of Enforcement. If an action is successfully brought to extinguish a violation or breach of the Rules and Regulations, or to successfully enforce the provisions of this Declaration or the By-Laws, the cost of such action, including legal fees, shall become a binding personal obligation of the violator, if an Owner, or the Owner responsible for such violator and such cost shall also be a lien upon the Home or Homes of such Owner.

Section 9.07. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors may, with respect to any violation of this Declaration, the By-Laws or the Rules and Regulations, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against an Owner or occupant shall be deemed an Assessment against the Home of such Owner and, as such, shall be a charge and continuing lien upon such Home, shall constitute a personal obligation of the owner and shall be collectible in the same manner as Assessments and Special Assessments under the By-Laws and this Declaration.

ARTICLE X - GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Use of Homes.

a. Residential Purposes Only. Except as otherwise provided in this Declaration and the By-Laws, the Association Property and all Homes shall be used for residential purposes only and such

purposes incidental and accessory thereof. This shall not preclude an Owner or occupant from maintaining an office within his Home providing no extraordinary traffic or parking results from such an office and no signs indicating the existence of such office are placed in any window of such Home or anywhere on the exterior of the Home or on the Lot or the Association Property.

b. Garage and Garage Doors. Garages may be used for vehicular parking and storage of personal property only and may not be modified for any other use. Occupants of Homes shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in their garage and shall cause the garage door to be kept in a closed position, except for ingress and egress, whenever possible. When garage door replacement is necessary the new garage door color must be white and must not contain windows unless the prior garage door also contained windows. Current garage doors must match the color of the home or be painted white.

c. Awnings, Shutters and Window Guards. No awnings, shutters, window guards or other exterior window and/or door coverings, decorative or protective, may be installed without the prior written consent of the Board of Directors. Shades, blinds and/or drapery linings should be of a neutral color and in good condition.

d. Television and Radio Antennas. No outside television or radio satellite dish or antenna for any transmission or receiving purposes, shall be erected upon any Home or Lot or other portion of the Property without the prior written consent of the Board of Directors. A small satellite dish must be installed in a discreet location and not be readily visible from the street.

e. Home and Occupant Identification. Owners and/or occupants shall not be allowed to put their names or Home numbers in any area except in such area as so designated by the Board of Directors.

f. Mechanical Installations. No machinery, refrigeration or heating devices, other than those originally provided with the Home, or similar replacements of same, or lighting fixtures other than standard electric lights shall be installed or operated in or about any Home without prior written permission of the Board of Directors.

g. Roofs. Roof shingles must be replaced with Timberline Shingles in the Weathered Wood color or the closest possible matching shingle.

Section 10.02. Pets. The Board of Directors may prohibit certain types of pets entirely. The Board of Directors shall have the right to require any owner (or any lessee or family member or invitee of any Owner or lessee) to pay a fine or remove a pet from the Home and/or the Property, if in the opinion of the Board of Directors, acting in its sole discretion, such pet is creating a nuisance because, e.g., the owner of the pet does not clean up after the animal, the animal is noisy or the animal is not properly controlled. Dogs must be kept leashed and not allowed to roam or run freely about the Property.

Section 10.03. Parking.

a. Recreational Vehicles. No recreational vehicles, including, but not limited to, all terrain vehicles, motor bikes, mini-bikes, snowmobiles, boat trailers, campers or other such vehicles shall be permitted on the premises at any time for any reason, except with the prior written consent of the Board of Directors. If such permission is granted, such vehicle or vehicles shall be parked or stored only in such areas as may be designated by the Board of Directors from time to time.

b. Common Lot Policy.

1. All vehicles must be licensed, registered and insured by a Governor's Square East resident.
2. All vehicles must be placed at the far end of the common lots in winter months for easier snow removal.
3. The owner of the vehicle is responsible for any pavement repair expense if any damage is caused by the weight of the vehicle/trailer.
4. The owner must provide vehicle information (make, model, color & plate number) to the Board for long term parking. Any vehicle not licensed or registered to a resident will be towed at the owner's expense. This does not apply to temporary guests or short term parking.
 - a. Proof of title also must be available upon request.
 - b. The Board reserves the right to fine any homeowner if that homeowner is found guilty of long term parking any vehicle in the common lots if the vehicle is not owned by a resident of Governors Square East without prior permission of the Board.

c. Oversized, Commercial and/or Unlicensed Vehicles. The following shall not be permitted to remain overnight on the Property:

- (1) trucks, over 3/4 ton;
- (2) commercial vehicles, unless garaged; or
- (3) unlicensed motor vehicles of any type, unless garaged.

d. Unauthorized Parking. Vehicles parked in unauthorized areas or in any manner impeding or preventing ready access to the Property or a driveway, shall be towed from the premises at the expense of the respective owner of such parked vehicle. The Board of Directors, managing agent or authorized employee of either the Board of Directors or the managing agent, if any, may order such removal on behalf of the Board of Directors after giving reasonable notice to the owner of the vehicle, if known, to remove such unauthorized parked vehicle and shall not be liable for any costs, loss or damage of any nature whatsoever, directly or indirectly, resulting therefrom or in connection therewith. Notice is not required prior to removing a vehicle blocking the roadway or driveway or impeding access by emergency vehicles.

e. Guest Parking. Any additional vehicles belonging to guests of occupants, will be parked in such occupant's driveway or in such other area as designated by the Board of Directors.

Section 10.04 Use of the Property.

a. Advertising and Signs. No sign or other advertising device of any nature shall be placed for display to the public view on any Home, including the garage, in any window of any Home; on any Lot or other portion of the Property except with the prior written permission of the Board of Directors. With prior permission, one small sign may be displayed on the property to be sold or rented. The Board reserves the right to require removal of the sign if said sign is displayed for an extended period of time.

b. Protective Screening and Fences. Any screen planting, fence enclosure or walls initially planted, installed or erected on the Property or Lots shall not be removed or replaced by any Owner except with the prior written permission of the Board of Directors. When replacement is necessary, fences should be same as the original fence (6 foot stockade, stained or left natural in color). Six foot white vinyl fencing with lattice on top may possibly be permitted depending on the location of the fence and what type of fencing the adjoining properties have installed to ensure uniformity. All fencing must honor the 10(ten) foot right of way on the rear of all properties and the side of all end properties.

Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon any Lot or other portion of the Property without the prior written permission of the Board of Directors. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

c. Site Lighting. One (1) pole-type, residential lamp fixture, operated on a sensor, uniformly located, as approved on the final Site Plan or Plans on file with the Town of East Greenbush, may not be altered or otherwise moved. No municipal street lighting shall be permitted within the public right-of-way.

d. Use and Maintenance of Slope Control and/or Sewerage and Drainage Areas. Within any slope control, sewerage or drainage area, as 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 otherwise interfere with the established slope ratios, create erosion or sliding problems or change the direction of flow of drainage channels. The slope control and/or drainage areas and sewerage system shall be maintained by the Association, except in those cases where a governmental agency or other public entity or utility company is responsible for such maintenance.

e. Trees and Other Natural Fences. No trees or other shrubs shall be removed from any such transferred Lot or other portion of the Property, except for dead trees and shrubs, except with the prior written consent of the Board of Directors. All dead trees and shrubs on any Lot shall be removed by the Owner of such Lot, at the sole expense of such Owner, promptly, to prevent any damage to any other Home, Lot or other property.

f. Pedestrian Walkways. No pedestrian walkways (sidewalks) may be installed or otherwise constructed within the public right-of-way.

g. Outdoor Storage. No storage of personal property shall be permitted outside the Home, on the patio, deck or elsewhere on the Lot or Property, except for the customary seasonal outdoor furniture, grills and the like. A small amount of firewood may be stored on the homeowner's property away from the home. Small outdoor storage sheds are permitted with the prior written approval of the Board of Directors. Such sheds may not exceed 5' (five feet) in height, width and depth. Such sheds must be placed next to the homeowners fence and may not be visible from the street or the adjoining neighbors' home.

h. Outdoor Repair Work. No extensive work on any motor vehicles, boats, trailers or other equipment of any kind shall be permitted on the Property.

i. Refuse Disposal. No lumber, metals, bulk materials, refuse or other waste material shall be kept, stored or allowed to accumulate outside the Home or its garage or on any portion of the Property.

Refuse shall be placed in such containers and/or areas and at collection times as may be required by the Town of East Greenbush or private refuse removal contractors. Refuse may be placed outside of the home no earlier than 6:00p.m. the evening prior of such collection. Refuse must be properly contained to prevent scattering by wind.

j. Outdoor Swimming Pools. No outdoor swimming pools may be erected on any Lot without prior written permission of the Board of Directors. All Plans for such pools must be submitted to the Architectural Committee and/or the Board of Directors in accordance with Article VI of this Declaration.

k. Flammable Substances. No flammable substances or articles deemed hazardous to life, limb or property shall be stored or permitted to be stored anywhere on the Property, in any Home, garage or on any Lot.

l. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, or in any Home, or on any Lot, nor shall anything be done thereon or therein that may be, or may become a nuisance or annoyance to other Owners or occupants.

Section 10.05. General.

a. Lease Restrictions. An Owner shall not lease any portion of a Home (other than the entire Home), nor shall an Owner lease a Home to a lessee for an initial term of less than six (6) months. All leases must be in writing, with lessee being subject to this Declaration, the By-Laws and all Rules and Regulations. A copy of such signed lease must be promptly submitted to the Board of Directors and/or the managing agent, if there be one.

b. Obligation to Maintain Heat. Regardless of whether the Home is occupied, the Owner of such Home shall be obligated to maintain sufficient heat to prevent damage to the Home, other Home or the Property. If such heat is not maintained by the Owner or occupant, the Board of Directors shall have the right to immediately arrange for such service, upon notice to the Owner by such method as is practical under the circumstances, and without notice in emergency situations. If such service must be arranged by the Board of Directors, any costs incurred shall be collectible in the same manner as Assessments and shall constitute a lien on the Home involved and a personal obligation of the Owner.

c. Interaction with the Board of Directors, Managing Agent and/or Employees of the Association

(1) If an Owner, his family guests, lessees, licensees or invitees gives a key, whether to his Home or a motor vehicle or other item of personal property, to an employee or Director or Officer of the Association or the managing agent, if there be one, he does so at his own risk, and neither the Board of Directors nor the managing agent nor the employee of either shall be liable for injury, loss or damage indirectly resulting therefrom or connected therewith.

(2) No employee of the Association or the managing agent, if there be one, shall be asked to perform any personal services for any Owner or occupant or guest, except in an emergency, during hours such employee is employed by the Association or the managing agent on behalf of the Association.

d. Other Authority of the Board of Directors The Board of Directors may promulgate such other rules and regulations, from time to time, as may be necessary to preserve and enhance the property of Governors Square East Homeowners' Association, Inc. The Board of Directors shall also have authority to grant exceptions to the specific requirements set forth in Article X hereof, entitled "General Covenants and Restrictions," provided that in no event shall the Board permit any property to be used for any use other than those specified in section 10.01 subdivision (a), entitled 'Residential Purpose Only.' A request for any exception shall be granted only when in the Board's judgment such exception will (1) not have any adverse physical or environmental impacts upon neighboring properties or the Governor's Square East community as a whole, and will not cause any decrease in the value of such properties; (2) there is no feasible alternative by which the applicant could achieve his or her goals without the grant of such exception; and (3) granting the exception will increase the value or usability of the applicant's property. In granting any such exception, the Board may impose such conditions as are reasonably necessary to avoid negative impacts upon neighboring properties and the community as a whole.

e. Exterior Change Request Form A completed exterior request form must be submitted to the Board of Directors This form is required to be completed and submitted to the Board of Directors for approval prior to all scheduled repairs, replacements, exterior additions, modifications and improvements. Homeowner's must submit their plans in this format and receive approval to ensure the homeowner does not make repairs or replacements repairs, replacements, exteriors additions, modifications or improvements that will then have to be corrected to meet compliance standards. Homeowners must obtain any government permits needed for any improvement or replacement.

ARTICLE XI - DURATION, ENFORCEMENT & AMENDMENT OF DECLARATION

Section 11.01. Duration. This Declaration shall continue until: (i) terminated by casualty loss, condemnation or eminent domain, or (ii) such time as withdrawal of the Property from the provisions of this Declaration is authorized by a vote of Owners by at least eighty percent (80%) of Authorized Votes. No such vote shall be effective without a written consent of Mortgagees, if any.

Section 11.02. Declaration Runs with the Land; Enforceability.

a. The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of, and be enforceable by the Association (being hereby deemed the agent for all of the owners), and by any Owner, his 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, and monetary damages won't adequately compensate for violations of this Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

b. In addition, or as an alternative, to an action at law or suit in equity, the Board of Directors 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 an Owner or occupant shall be deemed an Assessment against the Home of such Owner or against the Owner responsible for the violator in the event the violator is not an Owner, and as such shall be a charge and continuing lien upon the Home of such Owner, shall constitute a personal obligation of the Owner and shall be collectible in the same manner as Assessments under Article VII of this Declaration.

c. Each person or entity acquiring an interest in a Home 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 and for his heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Home or other portion of the Property.

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

member or Owners) or to any other person or organization for failure to enforce the provisions of this Declaration.

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

Section 11.05. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name and address of the Mortgagee and any other information necessary to identify the mortgage and Mortgagee of any such Owner's Home, if any. Upon receipt of written request from any such Mortgagee, 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 11.06. Amending. Subject to other provisions of this Declaration, this Declaration may be modified, altered or amended at any duly called meeting of Members, provided that written notice of the meeting, containing a full statement of the proposed modification, alteration or amendment has been sent to all Members and to all holders of first mortgages on Homes who have requested notification of any such proposed action, listed on the books and records of the Association, no less than thirty (30) days prior to the date of the meeting; and provided, further, that:

a. if the proposed modification, alteration or amendment is of an immaterial nature, at least sixty seven percent (67%) of the total Voting Members approve the change and not more than one third (1/3rd) of the holders of first mortgages on the Homes, if any, advise the Association, in writing, within thirty (30) days from date of notice that they are opposed to such proposed modification, alteration or amendment, which opposition must not be unreasonable;

b. if the proposed modification, alteration or amendment is of a material nature, at least sixty seven percent (67%) of the total Voting Members approve the change, and at least fifty one percent (51%) of the holders of first mortgages on the Homes, if any, approve the change. A change to any of the following would be considered material:

- (1) Voting rights;
- (2) Assessments, assessment liens or subordination of assessment liens;
- (3) Reserves for maintenance, repair and replacement of Association Property; Responsibility for maintenance and repairs; Reallocation of interests in the general or limited common areas or rights to their use; Boundaries of any Home; Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;

- (4) Convertibility of Homes into common areas or vice versa;
- (5) Insurance or fidelity bonds; Leasing of Homes;
- (6) Imposition of any restrictions on an Owner's right to sell or transfer his Home;
- (7) A decision by the Association to establish self-management when professional management had been required previously by an eligible First Mortgagee;
- (8) Restoration or repair after a hazard damage or partial condemnation in a manner other than specified in the documents;
- (9) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (10) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

c. when Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property, the eligible First Mortgagees representing at least sixty seven percent (67%) of the mortgaged Homes must agree.

d. an instrument evidencing the change is duly recorded in the Office of the Rensselaer County Clerk. Such instrument need not contain a written consent of the required number of Members and holders of first mortgages on Homes, but shall contain a certification by the Board of Directors that the consents required by this Section for such change have been received and filed with the Board of Directors.

Section 11.07. Conflict with Municipal Laws. The Covenants 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 11.08. Attorneys' Fees. Any party to a proceeding who succeeds in enforcing the Covenants or Restrictions, or enjoining the violation of any Covenants or Restrictions against an owner (or such Owner's lessee, licensee or invitee), shall be entitled to reasonable attorney's fees against such Owner.

Section 11.09. 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 11.10. Inspection and Entry Rights. Any agent of the Association may, at any reasonable time or times, upon not less than twenty-four (24) hours notice to the Owner and/or occupant, enter upon a Home or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the construction or alteration of structures or other improvements thereon comply with this 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 11.11. Owner Responsible for Lessee. Any lease for a Home shall provide that the lessee shall comply in all respects with the terms of the Declaration, the By-Laws and Rules and Regulations of the Association. If a lessee is in violation of this Declaration, the By-Laws and/or

Rules and Regulations of the Association, the Board of Directors shall so notify the Owner of such Home which is so leased, in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced by the owner against the lessee 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 this Declaration.

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. Invalidity of 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.

Section 12.03. Gender. The use of masculine gender herein shall be deemed to include the masculine, feminine or neuter and the plural the use of singular shall be deemed to include whenever the context so requires.

Section 12.04. Notice. All notices hereunder shall be in writing and, unless otherwise expressly provided, shall be sent by mail, by depositing same in a post office or letter box, in a postpaid sealed wrapper, addressed, if to the Board of Directors, at the Office of the Board of Directors, and if to an Owner or Mortgagee, to the address of such Owner or Mortgagee, to 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 provisos of this Declaration, 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 of such notice.

Section 12.05. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation. Upon such assignment, the successor corporation shall have all the rights and be subject to all the duties of the Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, the same extent as if the successor corporation had been an original party and all references herein to the Board of Directors shall be deemed to refer to the Board of Directors of such successor corporation. Any such assignment shall be accepted by the successor corporation under a written agreement pursuant to which the successor corporation 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, the Covenants and Restrictions imposed hereunder shall, nevertheless, continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation to take over the duties and responsibilities of the Association, such corporation to exist, subject to the

conditions provided for herein, with respect to an assignment and delegation to a successor corporation.

Section 12.06. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein, or within the Certificate of Incorporation or the By-Laws of the Association, any and all functions of the Association shall be fully transferrable in whole or in part to any other homeowners' association, condominium or similar entity.

Section 12.07. Right of a First Mortgagee to Make Payment of Charges. First Mortgagees may (i) jointly or singly pay taxes or other charges that are in default and that may, or have become, charges against the Association Property; and (ii) pay overdue premiums on hazard insurance policies, or secure new hazard or liability insurance coverage, for the Association Property in the event of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Homeowners' Association, corporation or trust.