

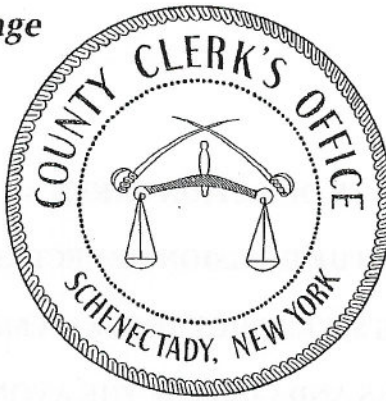
Schenectady County Endorsement Page

JOHN J. WOODWARD

Schenectady County Clerk

620 State Street

Schenectady, NY 12305



Document Type Declaration

From Party Avon Crest Section 3 Homeowners
Association, Inc

To Party _____

RETURN TO Englert, Coffey + McHugh, LLP

224 State St

Schenectady NY 12305

RECORDED
02/10/2012 10:43:18 AM
County Clerk
JOHN J. WOODWARD
SCHENECTADY COUNTY, NY

Book/Page: DEED/1850/835
Total Pages: 43

Receipt No: 661803
Doc No: 2012-402
Inst Num: 201205771

NY LAND SUR	\$4.75
NY LAND COMP SUR	\$14.25
CO GENERAL REVENUE	\$235.00
CO LAND SUR	\$0.25
CO LAND COMP SUR	\$0.75
TOTAL PAID	\$255.00
INV: 661803 USER: ENG	

NOTICE: This endorsement page constitutes the Clerk's endorsement in accordance with Local Law #7 of 1996--DO NOT DETACH--This page becomes part of the document. Upon recording, this document becomes a public record--Please refrain from using personal identifying information that should not be disclosed to the public.

Please be advised that General Business Law Section 399-dd(6) states as follows:

No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule.

It further states that under General Business Law Section 399-dd(7) that the NYS Attorney General's Office may take action against you for any violation of General Business Law Section 399-dd.

**CERTIFICATE OF ACTION TAKEN BY THE ASSOCIATION
PERTAINING TO THE REVISION OF DECLARATION OF PROTECTIVE
COVENANTS, RESTRICTIONS, EASEMENTS, CONDITIONS,
CHARGES AND LIENS OF THE AVON CREST NORTH –
SECTION 3 SUBDIVISION**

The undersigned, Rosanne Groff, Secretary of Avon Crest North – Section 3 Homeowner's Association, Inc., a New York not-for-profit corporation, does hereby certify as follows:

1. That the Board of Directors on its own initiative did undertake to propose a complete revision of the Declaration of Protective Covenants, Restrictions, Easements, Conditions, Charges and Liens and for the purpose of proposing such action held a regular meeting on June 14, 2011, for such purpose at which the Board of Directors elected to hold a combined hearing.

2. According to §4.04 of the Declaration of Protective Covenants, a hearing was scheduled to be held not less than thirty (30) days nor more than sixty (60) days after the action taken on June 14, 2011, to wit, July 19, 2011. Thereafter, notice was sent on July 1, 2011.

3. Thereafter on July 1, 2011, Notice of a Special Combined Meeting, to be held as a result of the proceedings of the meeting held on June 14, 2011, was mailed to each and every holder of a membership interest in the Association for a meeting to be

held on July 19, 2011 (not less than 10 days nor more than 30 days of the Special Meeting). Enclosed in this Notice was a complete copy of the entire revised Declarations of Protective Covenants, Restrictions, Conditions, Charges and Liens of the Avon Crest North – Section 3 Subdivision.

4. The purpose of that meeting as noticed was to present the revised Declaration of Protective Covenants, Restrictions, etc:

5. Thereafter, on August 9, 2011, at a regular meeting of the Association the Board considered some changes proposed by members at the Special Meeting and approved the final draft of the complete revisions of the Declaration.

6. Thereafter, on August 18, 2011, ballots and voting information regarding the revised Declaration was mailed to each and every member of the Association with the requirement that ballots be returned on or before September 30, 2011.

7. That there are 45 members of the Association.

8. That the Board of Directors received ballots from 37 members. The vote was thirty-one (31) in favor, six (6) against and one (1) abstention. That the 31 affirmative votes constitutes two-thirds of the total number of membership.

7. That accordingly, the complete revision of the Declaration of Protective Covenants, Restrictions, Easements, Conditions, Charges and Liens of Avon Crest North – Section 3 Subdivision was validly approved according to the provisions of the By-Laws.

8. That the Declaration is accordingly revised as follows:

**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS, CONDITIONS,
CHARGES AND LIENS OF THE
AVON CREST NORTH - SECTION 3 SUBDIVISION**

This page left intentionally blank.

TABLE OF CONTENTS

ARTICLE I - <u>DEFINITIONS</u>	I-1
ARTICLE II - <u>PROPERTY SUBJECT TO THIS DECLARATION</u>	II-1
Section 2.01. <u>Property Subject to Declaration</u>	II-1
Section 2.02. <u>Additional Property</u>	II-1
ARTICLE III - <u>AVON CREST NORTH – SECTION 3 HOMEOWNERS' ASSOCIATION – STRUCTURE: MEMBERSHIP, VOTING RIGHTS AND DIRECTORS</u>	III-1
Section 3.01 <u>Formation of Avon Crest North – Section 3 Homeowners Association, Inc.</u>	III-1
Section 3.02. <u>Membership</u>	III-1
Section 3.03. <u>Voting Rights of Members</u>	III-1
Section 3.04. <u>Assigning Right To Vote</u>	III-1
Section 3.05. <u>Voting Regulations</u>	III-1
Section 3.06. <u>Directors: Selection and Term</u>	III-2
Section 3.07. <u>Vacancies</u>	III-2
Section 3.08. <u>Removal of Directors</u>	III-2
Section 3.09. <u>Quorum</u>	III-2
Section 3.10. <u>Directors: Powers and Duties</u>	III-2
Section 3.11. <u>Annual Meetings</u>	III-3
Section 3.12. <u>Liability of the Board of Directors</u>	III-3
ARTICLE IV - <u>ASSOCIATION RIGHTS AND POWERS</u>	IV-1
Section 4.01. <u>Dedication of Association Facilities</u>	IV-1
Section 4.02. <u>Right and Basement of Enjoyment in Association Facilities</u>	IV-1
Section 4.03. <u>Right to Contract</u>	IV-1
Section 4.04. <u>Hearing Procedure</u>	IV-1
Section 4.05. <u>Acquisition, Conveyance, Improvements and Changes in Use of Association Facilities</u>	IV-2
Section 4.06. <u>Use and Maintenance of Certain Shared Areas</u>	IV-3
Section 4.07. <u>Rights to Borrow and Mortgage</u>	IV-3
Section 4.08. <u>Non-Discrimination by Association</u>	IV-4

Section 4.09.	<u>Common Utility and Conduit Easements</u>	IV-4
ARTICLE V - <u>ASSOCIATION – DUES</u>		V-1
Section 5.01.	<u>Imposition, Personal Obligations Lien</u>	V-1
Section 5.02.	<u>Association Dues</u>	V-1
Section 5.03.	<u>Establishment of Annual Association Dues and Notice</u>	V-1
Section 5.04.	<u>Commencement of Obligation to Pay Association Dues on Specific Unit</u>	V-1
Section 5.05.	<u>Special Assessments for Capital Improvements</u>	V-2
Section 5.06.	<u>Effect of Non-Payment of Association Dues</u>	V-2
Section 5.07.	<u>Use of Funds</u>	V-2
Section 5.08.	<u>Right to Maintain Surplus and Reserves</u>	V-2
Section 5.09.	<u>Association Dues Certificate</u>	V-2
Section 5.10.	<u>Subordination of Association Dues Lien to Mortgages</u>	V-3
Section 5.11.	<u>Association Funds and Assets - No Right to Assign, Encumber, Hypothecate or Pledge</u>	V-3
Section 5.12.	<u>Responsibility of Unit Owner to Promptly Repair Damage</u>	V-3
ARTICLE VI - <u>CONTROL</u>		VI-1
Section 6.01.	<u>Control by Association</u>	VI-1
Section 6.02.	<u>Composition and Function of Architectural Standards Committee</u>	VI-1
Section 6.03.	<u>Submission of Plans to Architectural Committee</u>	VI-1
Section 6.04.	<u>Basis for Disapproval of Plans by Architectural Committee</u>	VI-1
Section 6.05.	<u>Approval of Architectural Committee</u>	VI-2
Section 6.06.	<u>Written Notification of Disapproval</u>	VI-2
Section 6.07.	<u>Failure of Committee to Act</u>	VI-3
Section 6.08.	<u>Committee's Right to Promulgate Rules and Regulations</u>	VI-3
Section 6.09.	<u>Delegation of Functions</u>	VI-3
Section 6.10.	<u>Records of Meetings and Regulations</u>	VI-4
Section 6.11.	<u>Liability of Architectural Committee</u>	VI-4
Section 6.12.	<u>Architectural Committee Certificate</u>	VI-4
Section 6.13.	<u>Environmental Consideration</u>	VI-4
		TOC-2

ARTICLE VII - GENERAL COVENANTS AND RESTRICTIONS VII-1

Section 7.01.	<u>Maintenance</u>	VII-1
Section 7.02.	<u>Animals, Birds and Insects</u>	VII-1
Section 7.03.	<u>Protective Screening and Fences</u>	VII-1
Section 7.04.	<u>Garbage and Refuse Disposal</u>	VII-1
Section 7.05.	<u>Utility Easements</u>	VII-1
Section 7.06.	<u>Drainage Easements</u>	VII-2
Section 7.07.	<u>Noxious or Offensive Activities</u>	VII-2
Section 7.08.	<u>Oil and Mining Operations</u>	VII-2
Section 7.09.	<u>Dwelling in Other Than Residential Units</u>	VII-2
Section 7.10.	<u>Use and Maintenance of Slope Control Areas</u>	VII-2
Section 7.11.	<u>Non-Discrimination in Sale or Rental</u>	VII-3
Section 7.12.	<u>Insurance Coverage and Insurance Assessments</u>	VII-3
Section 7.13.	<u>Depositing Ashes, Snow, Ice, Stones, Sticks, Etcetera Upon the Roads</u>	VII-3
Section 7.14.	<u>Residential Use Only</u>	VII-3
Section 7.15.	<u>No Division of Parcels or Change in Form of Ownership without Approval</u>	VII-3
Section 7.16.	<u>Outdoor Repair Work</u>	VII-3
Section 7.17.	<u>Interior Lot Owner Easement</u>	VII-4
Section 7.18.	<u>Party Wall; Encroachments</u>	VII-5
Section 7.19.	<u>Television and Radio Antennas</u>	VII-5
Section 7.20.	<u>Trees and Other Natural Features</u>	VII-5
Section 7.21.	<u>Snowmobiles</u>	VII-5
Section 7.22.	<u>Outside Storage</u>	VII-5
Section 7.23.	<u>Rental</u>	VII-6

ARTICLE VIII - ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION VIII-1

Section 8.01.	<u>Declaration Runs With the Land</u>	VIII-1
Section 8.02.	<u>Enforceability</u>	VIII-1
Section 8.03.	<u>No Waiver by Failure to Enforce</u>	VIII-1

Section 8.04.	<u>Obligation and Lien for cost of Enforcement by Association</u>	VIII-1
Section 8.05.	<u>Inspection and Entry Rights</u>	VIII-1
Section 8.06.	<u>Amending</u>	VIII-2
Section 8.07.	<u>Duration</u>	VIII-3
Section 8.08.	<u>Construction and Interpretation</u>	VIII-3
Section 8.09.	<u>Conflict with Municipal Laws</u>	VIII-4
Section 8.10.	<u>Invalidity of Declaration</u>	VIII-4
ARTICLE IX - GENERAL		IX-1
Section 9.01.	<u>Heading and Caption</u>	IX-1
Section 9.02.	<u>Notice</u>	IX-1
Section 9.03.	<u>Right of Association to Transfer</u>	IX-1
SCHEDULE A		A-1

ARTICLE I - DEFINITIONS

The following words, phrases or terms when used in this Declaration or any Supplemental Declaration unless otherwise defined therein, shall have the meanings set forth below:

(a) "Association" shall mean and refer to Avon Crest North - Section 3 Homeowners Association, Inc., a New York Not-For-Profit Corporation, incorporated on the 19th day of October, 1990.

(b) "Association Facilities" shall mean and refer to the lands, improvements and other properties owned by or in the possession of the Avon Crest North - Section 3 Homeowners Association, Inc.

(c) "Avon Crest: North - Section 3" shall mean and refer to the planned community being developed in the Town of Niskayuna, New York and which may or may not include lands other than the Property.

(d) "Declaration" shall mean and refer to this document of Protective covenants, Restrictions, Easements, Conditions, Charges and Liens as it may from time to time be supplemented, extended or amended.

(e) "Home" shall mean and refer to all townhouse units situated upon The Properties.

(f) "Improvements" shall mean and refer to any thing or device (other than trees and shrubbery less than 2 feet high), the placement of which upon the homeowner's property may affect the appearance of other homeowner's property including, by way of illustration and not of limitation, any building, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, fence, curbing, paving, wall, trees and shrubbery more than two feet in height, signboard, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent improvement to the homeowner's property. "Improvement" shall also mean:

(1) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of surface waters to, from, upon or across the *Property* or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon or across the *Property*; and

(2) any change in the grade of any portion of the *Property* of more than six inches.

(g) "Member" shall mean and refer to each holder of a membership interest in the *Association*; as such interest is set forth in Article III.

(h) "Owner" shall mean and refer to the record owner of fee simple title to any *Home*. Every Homeowner shall be treated for all purposes as a single owner for each *Home* held, irrespective of whether such ownership is joint, in common, or tenancy by the entirety.

(i) "Property" shall mean and refer to all land described in Schedule A attached to the *Declaration* and incorporated by reference, and the improvements thereon covered by this *Declaration* and such additions as may be made thereto from time to time, pursuant to Section 2.02.

(j) "Shared Area" shall mean and refer to certain areas consisting of a portion of the "Property", including but not limited to walls between units, main trunk driveway lines, roofing, privacy hedges, sidewalks, and brick wall extension adjacent to garages, intended for the common use and enjoyment of the *Owners* of the *Property*.

(k) "Unit" shall mean and refer to a *Home* or vacant unimproved Lot situated upon the *Property*.

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property Subject to Declaration.

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this *Declaration* and is located in the Town of Niskayuna, County of Schenectady, State of New York, and is more particularly described in Schedule A attached hereto and made a part hereof.

Section 2.02. Additional Property.

The *Association* by the affirmative vote of not less than eighty percent (80%) of the membership, shall have the right to bring Additional Property within, the scheme of this *Declaration*.

The additions shall be made by recording a supplemental declaration which shall extend the scheme of covenants, conditions and restrictions of this *Declaration* to such Additional Property and thereby subject such Additional Property to assessment for its fair share of the expenses of the *Association*. Said extending declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this *Declaration* as may be necessary to reflect the different character, if any, of the Additional Property that is not inconsistent with the provisions of this *Declaration*.

Nothing contained in this *Declaration*, however, or in any recorded or unrecorded plot, map, picture, drawing, brochure or other representation of a scheme of development shall be construed as requiring the *Association* to subject any other land now or hereafter owned by it to the provisions of this *Declaration*, regardless of whether such other land is governed by agreement similar or identical to the provisions of this *Declaration*.

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK
ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) is a multilateral development bank that provides financial assistance to its member states in the form of loans, grants, and technical assistance. The bank was established in 1964 and has since then grown significantly in terms of its capital and the number of countries it serves. Its primary focus is on promoting economic growth and sustainable development in Africa, with a particular emphasis on infrastructure development, agricultural modernization, and social services improvement. The AfDB's operations are guided by its mandate to support the economic and social development of its member states, which are primarily located in Africa. The bank's resources are derived from its capital, which is contributed by its member states, and from various international financial institutions. The AfDB's lending is based on the principle of self-reliance, meaning that the recipient countries are expected to have a viable development strategy and the capacity to manage the borrowed funds effectively. The bank's activities are carried out through its regional offices and its country offices, which work closely with the governments of the member states to identify and implement development projects. The AfDB's commitment to transparency and accountability is reflected in its regular reporting to its member states and the public. The bank's success in promoting economic growth and sustainable development in Africa is a testament to its commitment to its mandate and the support of its member states.

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) is a multilateral development bank that provides financial assistance to its member states in the form of loans, grants, and technical assistance. The bank was established in 1964 and has since then grown significantly in terms of its capital and the number of countries it serves. Its primary focus is on promoting economic growth and sustainable development in Africa, with a particular emphasis on infrastructure development, agricultural modernization, and social services improvement. The AfDB's operations are guided by its mandate to support the economic and social development of its member states, which are primarily located in Africa. The bank's resources are derived from its capital, which is contributed by its member states, and from various international financial institutions. The AfDB's lending is based on the principle of self-reliance, meaning that the recipient countries are expected to have a viable development strategy and the capacity to manage the borrowed funds effectively. The bank's activities are carried out through its regional offices and its country offices, which work closely with the governments of the member states to identify and implement development projects. The AfDB's commitment to transparency and accountability is reflected in its regular reporting to its member states and the public. The bank's success in promoting economic growth and sustainable development in Africa is a testament to its commitment to its mandate and the support of its member states.

This page left intentionally blank.

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) is a multilateral development bank that provides financial assistance to its member states in the form of loans, grants, and technical assistance. The bank was established in 1964 and has since then grown significantly in terms of its capital and the number of countries it serves. Its primary focus is on promoting economic growth and sustainable development in Africa, with a particular emphasis on infrastructure development, agricultural modernization, and social services improvement. The AfDB's operations are guided by its mandate to support the economic and social development of its member states, which are primarily located in Africa. The bank's resources are derived from its capital, which is contributed by its member states, and from various international financial institutions. The AfDB's lending is based on the principle of self-reliance, meaning that the recipient countries are expected to have a viable development strategy and the capacity to manage the borrowed funds effectively. The bank's activities are carried out through its regional offices and its country offices, which work closely with the governments of the member states to identify and implement development projects. The AfDB's commitment to transparency and accountability is reflected in its regular reporting to its member states and the public. The bank's success in promoting economic growth and sustainable development in Africa is a testament to its commitment to its mandate and the support of its member states.

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) is a multilateral development bank that provides financial assistance to its member states in the form of loans, grants, and technical assistance. The bank was established in 1964 and has since then grown significantly in terms of its capital and the number of countries it serves. Its primary focus is on promoting economic growth and sustainable development in Africa, with a particular emphasis on infrastructure development, agricultural modernization, and social services improvement. The AfDB's operations are guided by its mandate to support the economic and social development of its member states, which are primarily located in Africa. The bank's resources are derived from its capital, which is contributed by its member states, and from various international financial institutions. The AfDB's lending is based on the principle of self-reliance, meaning that the recipient countries are expected to have a viable development strategy and the capacity to manage the borrowed funds effectively. The bank's activities are carried out through its regional offices and its country offices, which work closely with the governments of the member states to identify and implement development projects. The AfDB's commitment to transparency and accountability is reflected in its regular reporting to its member states and the public. The bank's success in promoting economic growth and sustainable development in Africa is a testament to its commitment to its mandate and the support of its member states.

ANNEX 1 - AFRICAN DEVELOPMENT BANK - AFRICAN DEVELOPMENT BANK

The African Development Bank (AfDB) is a multilateral development bank that provides financial assistance to its member states in the form of loans, grants, and technical assistance. The bank was established in 1964 and has since then grown significantly in terms of its capital and the number of countries it serves. Its primary focus is on promoting economic growth and sustainable development in Africa, with a particular emphasis on infrastructure development, agricultural modernization, and social services improvement. The AfDB's operations are guided by its mandate to support the economic and social development of its member states, which are primarily located in Africa. The bank's resources are derived from its capital, which is contributed by its member states, and from various international financial institutions. The AfDB's lending is based on the principle of self-reliance, meaning that the recipient countries are expected to have a viable development strategy and the capacity to manage the borrowed funds effectively. The bank's activities are carried out through its regional offices and its country offices, which work closely with the governments of the member states to identify and implement development projects. The AfDB's commitment to transparency and accountability is reflected in its regular reporting to its member states and the public. The bank's success in promoting economic growth and sustainable development in Africa is a testament to its commitment to its mandate and the support of its member states.

ARTICLE III - AVON CREST NORTH - SECTION 3 HOMEOWNERS' ASSOCIATION -
STRUCTURE: MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01 Formation of Avon Crest North - Section 3 Homeowners Association, Inc.

Pursuant to the Not-For-Profit Corporation Law of New York, the *Developer* formed the Avon Crest North - Section 3 Homeowners Association, Inc. to own, operate and maintain the *Association Facilities*, to enforce the covenants, conditions, and restrictions set forth in the *Declaration* and to have such other specific rights, obligations, duties and functions as are set forth in the *Declaration* and in the Certificate of Incorporation and By-Laws of the *Association*, attached, hereto and made a part hereof, as the same may be amended from time to time. The provisions of the Certificate of Incorporation or By-Laws of the *Association* may not conflict or be inconsistent with the provisions of the *Declaration*, and may not be amended in any way which would so conflict without also amending the *Declaration*. Subject to the additional limitations provided in the *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 one class of members. Only *Home* or *Lot* owners shall be members. Each *Home* or *Lot* owner upon the date that title to the *Home* or *Lot* is transferred to said *Home* or *Lot* owner shall be deemed automatically to be a member and there shall be no other qualification for membership. Membership as a *Home* or *Lot* owner shall terminate when such owner transfers title to the *Home* or *Lot*.

Section 3.03. Voting Rights of Members.

Each *Member* 18 years of age or older shall have one vote in the *Association* ("Members"). Directors shall be elected by a plurality of the votes cast at a meeting of members or by mail ballot by the members entitled to vote in the election. In addition, whenever any corporate action, other than the election of directors, is to be taken under this *Declaration* by vote of the members, it shall, except as otherwise required by the certificate of incorporation, this *Declaration* or the by-laws, be authorized by a majority of the votes cast at a meeting of members or by mail ballot by the members entitled to vote thereon. Except as provided in the preceding sentence, any reference to corporate action at a meeting of members by "majority vote" or "two-thirds vote" shall require the action to be taken by such proportion of the votes, cast at such meeting or by mail ballot, provided that the affirmative votes cast in favor of any such action shall be at least equal to the quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

Section 3.04. Assigning Right To Vote.

Any *Member* of the *Association* shall be entitled to assign his or her right to vote, by power of attorney, by proxy or otherwise, to any other *Member*, provided that such assignment is made pursuant to the By-Laws of the *Association*.

Section 3.05. Voting Regulations.

The Board of Directors of the *Association* may make such regulations, consistent with the terms

of the *Declaration*, the Certificate of Incorporation and By-Laws of the *Association* and applicable law, as it deems advisable, in regard to proof of age, proof of membership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting, voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.06. Directors: Selection and Term.

The business and affairs of the *Association* shall be managed by a Board of Directors. There shall be no less than three nor more than seven directors. Directors shall be selected as follows:

(a) Directors shall be elected in accordance with the procedures set forth in the By-Laws of the *Association*.

(b) Elected directors shall serve for two year terms and shall be voting members of the *Association*.

Section 3.07. Vacancies.

Any vacancy of an Elected Director shall be filled at the next meeting of the Board of Directors by the affirmative vote of a majority of the remaining Elected Directors, or, if not previously so filled, shall be filled at the next succeeding annual meeting of the members. Any Director appointed or elected to fill a vacancy shall serve as such until the expiration of the term of the vacated position.

Section 3.08. Removal of Directors.

At any duly called meeting of Members, the Members may, by the affirmative vote of two-thirds of all Members, remove any Elected director (or Director appointed to fill the vacancy of an elected Director) from office. The Members may thereafter elect the successor to fill the unexpired term of the Elected Director so removed.

Section 3.09. Quorum.

At all meetings of the Board of Directors, a simple majority of all Directors shall constitute a quorum for the transaction of business. Except in cases in which it is by statute, the *Declaration*, the Certificate of Incorporation, or the By-Laws of the *Association* otherwise provided, a vote of the majority of those in attendance at a duly constituted meeting shall be sufficient to elect and pass any measure.

Section 3.10. Directors: Powers and Duties.

The Board of Directors may exercise all the powers of the *Association*, except such as are by statute, the *Declaration*, the certificate of Incorporation or the By-Laws of the *Association* conferred upon or reserved to Members.

Among the duties of the Board of Directors shall be the following:

(a) To adopt an annual operating and capital budget for the *Association* and collect dues as provided therein.

(b) To adopt reasonable rules and regulations for the maintenance and operation of the *Association* and the property contained in the development.

(c) To protect the rights of the *Association* and its Members by enforcing and carrying out the provisions of the *Declaration*, Articles of Incorporation, By-Laws, and any rules and regulations adopted by the Board.

(d) To otherwise enforce and carry out the provisions of the *Declaration*.

Section 3.11. Annual Meetings.

The annual meeting shall be held yearly in accordance with the By-Laws.

Section 3.12. Liability of the Board of Directors.

The members of the Board of Directors shall not be liable to the unit owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The unit owners shall indemnify and hold harmless each of the members of the Board of Directors against all liability to others arising from their acts as, or by reason of the fact that such person was, a member of the Board of Directors. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the *Association* within the scope of their authority. It is also intended that the liability of any unit owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all the unit owners in the common elements. Every agreement made by the Board of Directors or by the managing agent on behalf of the *Association* shall provide that the members of the Board of Directors, or the managing agent, as the case may be, are acting only as agents for the unit owners and shall have no personal liability thereunder (except as unit owners), and that any liability of a unit owner thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all unit owners in the common elements.

This page left intentionally blank.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

ARTICLE IV - ASSOCIATION RIGHTS AND POWERS

Section 4.01. Dedication of Association Facilities.

It is the intent of this Section 4.01 that the *Association* will maintain the driveways for all units to be built in Avon Crest North -Section 3 in accordance with the *Declaration* and not to own the same as previously intended. The *Association* is hereby granted the right of ingress and egress to enter upon the driveways of the town houses located in Section 3 Avon Crest North for the purpose of repairing and maintaining the said driveways located thereon. The use by unit owners of the said driveway will be provided for by restrictions and easements for ingress and egress over the same in the *Declaration* and by restrictions and permanent easements filed by the *Developer* in the Schenectady County Clerk's office, prior to the sale of any lots to home buyers and concurrently with the *Declaration* and further by Section 4.06 of the *Declaration* entitled "Use and Maintenance of Certain Shared Areas". The *Association* may, from time to time, acquire or lease certain portions of the *Property* or other properties for the use and enjoyment of its Members. Properties, with *Improvements*, if any, conveyed to, acquired by, or in possession of the *Association* shall hereinafter be referred to as "*Association Facilities*".

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

Every *Member* shall have a right and easement of enjoyment in and to all *Association Facilities*, except if restricted pursuant to Section 4.06 hereof. All such rights, easements and privileges shall be subject; however, to the right of the *Association*, through its Board of Directors, to:

(a) Adopt and promulgate reasonable rules and regulations pertaining to the use of the *Association Facilities*.

(b) Promulgate rules and regulations relating to the operation and maintenance of the *Association Facilities*.

(c) Establish reasonable admission, and other fees for such use. In connection therewith, the Board of Directors, may establish reasonable classifications of *Members* and non-Members.

(d) Enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations or with other not-for-profit or institutional entities, for the use of or sharing of facilities.

Section 4.03. Right to Contract.

The *Association* may contract with any person, corporation, firm 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 Local Associations or Trusts, condominiums, cooperatives and other homeowners' or residents' associations, both within and without the *Property*.

Section 4.04. Hearing Procedure.

Where the Board of Directors is required in accordance with the provisions of the *Declaration* to hold a public hearing prior to taking a certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.04 (the "Hearing Procedure") shall be followed. The Hearing on

the proposed action (the "Proposal") shall be held not less than 30 nor more than 60 days after the Board of Directors has initiated the proposal. A notice of the hearing shall be mailed or delivered to each *Owner*. The Notice shall describe in detail the Proposal, the Hearing Procedure set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of the *Declaration*, and shall specify the date, time and place of the Hearing. The Hearing will be held on the *Property* or in a place reasonably accessible to the *Property*. All Members and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a Proposal, a Hearing is required pursuant to more than one section of the *Declaration*, the Board of Directors may elect to hold one combined Hearing on such proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

Section 4.05. Acquisition, Conveyance, Improvements and Changes in Use of Association Facilities.

Subject to the limitations set forth in Subparagraphs A through C below, the Board of Directors of the *Association*, on such terms and conditions as it deems appropriate, may authorize:

- (a) the acquisition, through purchase, gift lease or any combination thereof, of land or *Improvements* or any combination thereof, for the use as an *Association Facility*;
- (b) the transfer, conveyance, donation, lease or other disposition of an *Association Facility* or portion thereof;
- (a) the construction of *Improvements* or the making of additions, modifications or alterations to, or the demolition of, an *Association Facility*; or
- (b) the change in the use of any *Association Facility*.

A. Upon the affirmative vote of the Board of Directors proposing:

- (a) a transfer, conveyance, donation, lease or other disposition of an *Association Facility* (a "Transfer"); and/or
- (b) a change in use of an *Association Facility* (including, without limitation, construction of *Improvements* such as to convert passive recreational or open space to active recreational use), which change in use will be a material alteration or abridgment to the use of such *Association Facility* (hereinafter referred to as "Material Change in Use");

the Board of Directors shall hold a hearing on the Proposal in accordance with the Hearing Procedure set forth in Section 4.04 hereof. In addition to such Hearing procedure, the Board of Directors shall cause a copy of the Notice to be mailed or delivered to all Owners. Not less than 30 nor more than 60 days after the Hearing the Board of Directors and the Owners shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three fourths of the entire Board of Directors and not less than two-thirds (2/3) of the Owners shall be required for approval; provided, however, that any Material Change in Use shall be in accord with Section 8.09 of this *Declaration*. If ingress or egress to any Lot is through the *Association Facility* to be conveyed or encumbered, such Transfer or encumbrance shall be

subject to the easement of the *Owner* of any such Lot.

B. If a proposed acquisition of land or *Improvements* of the construction of *Improvements* or the making of an addition, modification or alteration to, or the demolition of an *Association Facility*, will result in a change in the Association Dues as provided in Section 5.03 hereof or the imposition of a special assessment as provided in Section 5.03, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedure set forth in Section 4.04, prior to finally authorizing such action.

C. Prior to:

(a) the making of an addition, modification or alteration to an *Association Facility*, or

(b) the demolition of an *Association Facility*, or

(c) the authorizing of a Material Change in Use of an *Association Facility*, the Board of Directors shall obtain the approval of the *Association*.

Section 4.06. Use and Maintenance of Certain Shared Areas.

Notwithstanding any other provision herein to the contrary, the provisions of this Section 4.06 shall apply with respect to the driveways of each *Unit* located in Avon Crest North Section 3. The *Association* hereby determines that those portions of the driveways of the development benefit one or more Owner(s) because of proximity to and principal use thereof. Accordingly, the *Association* hereby restricts and limits the use of the driveways as follows:

(a) The Main Trunk Driveway Line shall be used only by the occupants of those units; and the guests and invitees of such occupants, which are directly serviced by such driveway. Such use shall be limited to ingress and egress by foot or motor vehicle to the units serviced by such driveway. Accordingly, homeowners are responsible for mutually determining the use of the shared Main Trunk Driveway Line, including parking, in a way that is acceptable to all parties using the Main Trunk Driveway Line. For purposes of this Section 4.06 (a), the Main Trunk Driveway Line shall mean that portion of each driveway leading from the road to the point where such driveway branches off to *Units* serviced thereby; and

(b) The Lateral Driveway Lines, i.e., such portion of the driveway leading from the garage of a particular *Unit* to the Main Trunk Driveway Line, shall be used only by the occupants of such *Unit*, and the guests and invitees of such occupants. Parking or standing on such Lateral Driveway Line shall be permitted.

Section 4.07. Rights to Borrow and Mortgage.

The *Association* may borrow funds and in conjunction therewith may mortgage its properties, provided, however, that the *Association* properties cannot be mortgaged without the consent of two-thirds (2/3) of the Owner(s). The amount, terms, rate or rates of all borrowing and the provisions of all agreements with lenders shall be determined by the Board of Directors acting in its absolute discretion, subject only to the ability of the *Association* to repay such borrowed funds from Association Dues. If ingress or egress to any Lot is through the properties to be mortgaged, any such mortgage shall be subject to the easement of the *Owner* of such Lot.

Section 4.08. 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 of any *Association Facility* to any person or person or take any other actions which discriminate 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 any limitation in time.

Section 4.09. Common Utility and Conduit Easements.

(a) All pipes, wires, conduits and public utility lines and cable television lines located on each Lot or within a Unit and serving only such Unit shall be owned, maintained, repaired and replaced by the Owner of such Unit. Every other Owner shall have an easement in common with the Owners of other Lots or Units to maintain and use all pipes, wires, conduits, drainage areas, public utility lines and cable television lines located on other Lots or on the Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners owning other Lots and Units 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 Unit or Lot.

(b) The Association shall have the right of access to each Unit and Lot for maintenance, repair or replacement wires, conduits, drainage areas, public utility lines or cable television lines and seepage pits and piping located on any Lot or within any Unit and servicing any other Lot or Unit. Such right shall be exercised at a reasonable time upon reasonable notice to the Owner and/or occupant, provided, however, that in an emergency such right may be exercised at any time and without notice. The maintenance or replacement shall be funded from the Association Dues, except that, if such repair, maintenance or replacement is occasioned by a negligent or willful act or omission of an Owner and/or occupant, it shall rather be considered a special expense allocable to the Owner of the Unit responsible and such cost shall be added to the Association Dues of such Owner, and, as part of those Association Dues, shall constitute a lien on the Unit of such Owner to secure the payment thereof.

(c) The Association shall have an easement over the Lots and the exterior walls of Units for the placement, maintenance, repair and replacement of utility banks and telephone pedestals.

ARTICLE V - ASSOCIATION - DUES

Section 5.01. Imposition, Personal Obligations Lien.

Each *Owner* of a *Unit* on becoming the *Owner* by the acceptance of a deed or otherwise, whether or not the deed or any other instrument pursuant to which title is obtained so provides, shall be deemed to covenant and agree to pay to the *Association* annual assessments or charges, including any special assessments for capital improvements hereinafter referred to as Association Dues.

The annual Association Dues shall be fixed, established and collected from their Due Date(s) as described in Section 5.02 below. Association Dues (or installment payment thereof), together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the *Unit* or underlying portion of the *Property* against which the Association Dues are made and shall also be the personal obligation of the *Owner* of such *Unit* on such Due Date.

Section 5.02. Association Dues.

The annual Association Dues for each *Unit* shall be the Annual Rate for the entire *Association* as fixed by the Board of Directors divided by forty five (45) members (the total number of members of the *Association*).

The annual Rate or Rates shall be determined each year by the Board of Directors.

Section 5.03. Establishment of Annual Association Dues and Notice.

For each fiscal year, prior to commencement thereof, based on the *Association's* budget for such year and in accordance with Section 5.02 above, the Board of Directors of the *Association* shall,

(a) fix the annual homeowner Association Dues, including any assessment for capital improvements, for the fiscal year;

(b) establish the due date or dates ("Due Date") for payment of the Association Dues or installments thereof; and

(c) so notify the *Owner* of each *Unit* in writing (the "Dues Notice").

Section 5.04. Commencement of Obligation to Pay Association Dues on Specific Unit.

With respect to each *Unit*, the current *Owner* thereof shall become initially liable for the payment of Association Dues commencing on the first day of the month following the earlier of:

(a) the date the unit is occupied, or

(b) the date title to said *Unit* is initially transferred to the *Owner*.

If such obligation with respect to a *Unit* commences at a time other than the beginning of the *Association's* fiscal year, the annual Association Dues owed for the balance of such fiscal year shall be pro-rated accordingly.

Section 5.05. Special Assessments for Capital Improvements.

As part of the annual budget process, the Board of Directors may include the cost of any capital improvements in the annual Association Dues.

Section 5.06. Effect of Non-Payment of Association Dues.

If the Association Dues or installment payment thereof with respect to a *Unit*, is not paid by the Due Date established pursuant to Section 5.03 hereof for the payment of such Dues, or installment payment, then such payment shall be deemed delinquent and shall (together with interest, at a rate of 12% per annum from the Due Date, penalties or cost of collection including attorney's fees as may be fixed from time to time by the Board of Directors) be a lien on the Parcel on which the *Unit* is situated. Such failure to pay shall not be deemed to constitute a default under an insured mortgage under this *Declaration*. In addition to such lien, the then *Owner* of the *Unit* may be held personally liable for the payment thereof (including interest, penalties and costs of collection). Such personal liability with respect to a delinquent payment shall remain the personal liability of the then *Owner* until paid and shall be required to be assumed by any successors in interest to the *Unit*. The *Association* may bring legal action for payment against the *Owner(s)* personally liable or may foreclose on the lien as it deems advisable. The interest rate for late payments may be reviewed at the discretion of the Board of Directors and may be changed by their action.

Section 5.07. Use of Funds.

The Association Dues shall be used exclusively for the benefit of the *Members* of the *Association* and the *Owners* of the *Property*, to promote the recreation, health, safety and welfare of said *Members* and *Owners*, to preserve, protect and enhance the value of the *Association*, and to insure the enjoyment of rights, privileges and easements with respect to the *Association*.

Section 5.08. Right to Maintain Surplus and Reserves.

The *Association* shall not be obligated in any calendar year to spend all sums collected in such year by way of dues, or otherwise, and may allocate such funds to any reserves for maintenance of the *Association Facilities* and driveways (which the *Association*, through its Board of Directors, may establish and maintain) or carry such sums forward as surplus. The *Association* shall not be obligated to apply any such surpluses to the reduction of the Association Dues 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 purpose of the *Association*.

Section 5.09. Association Dues Certificate.

Upon the written request of an *Owner*, lessee, mortgagee or, occupant or any prospective *Owner*, lessee, mortgagee or title insurer of a *Unit*, the *Association* shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Association Dues Certificate") signed by an officer or designee of the *Association* setting forth with respect to such *Unit* or *Units*, as of the date of said Certificate,

- (i) whether the Association Dues, if any, have been paid,

(ii) the amount of such Association Dues, including interest, penalties and costs, if any, due and payable as if such date and

(iii) any other amounts owing to the *Association*.

When the request for the Certificate is made, by a person or entity other than the *Owner*, a copy of the Certificate shall also be sent to the *Owner*. A reasonable charge as determined by the Board of Directors may be made for the issuance of such Certificate. Any such Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the *Association* and any bona fide purchaser or new lessee of, or lender on, or title insurer of, the *Unit* or Units in question.

Section 5.10. Subordination of Association Dues Lien to Mortgages.

The lien of the Association Dues provided for herein shall be subordinate to the lien of any mortgages or mortgage now or hereafter placed upon any *Unit* or other portion of the *Property* subject to said Association Dues; provided, however, that such subordination shall apply only to the Association Dues which have become due and payable prior to a sale or transfer of such *Unit* or other portion of the *Property* pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such *Unit* or other portion of the *Property* from any Association Dues thereafter becoming due, nor from the lien of any such subsequent Association Dues.

Section 5.11. Association Funds and Assets - No Right to Assign, Encumber, Hypothecate or Pledge.

Although all funds and other assets of the *Association*, and any profits derived therefrom, shall be held for the benefit of the members of the *Association*, no member of the *Association* shall have the right to assign, encumber, hypothecate, pledge or in any manner transfer his membership or interest in or to said funds or assets, except as an appurtenance to his unit or Lot. When an owner of a unit or Lot shall cease to be a member of the *Association* by reason of divestment of ownership of said unit or Lot, by whatever means, the *Association* shall not be required to account to such owner for any share of the funds or assets of the *Association*.

Section 5.12. Responsibility of Unit Owner to Promptly Repair Damage.

Unit owners have a responsibility to have their units repaired and/or reconstructed in the event of physical damage. The Board of Directors reserves the right to cause a unit to be repaired and/or reconstructed if the Board determines, in the Board's discretion, that the unit owner has not "promptly repaired" the unit. The cost of any such repair and/or reconstruction incurred by the *Association* shall constitute an assessment against the unit owner as defined herein.

Each unit owner shall provide the *Association* with a copy of the declaration page of their homeowner's insurance policy. The purpose for same is to provide notice to the *Association* of the name of the insurer, in the event of physical damage, and the nature and extent of insurance coverage. A copy of the declaration page from said policy must be filed annually with the *Association* by all unit owners.

It shall be the responsibility of each unit owner to "promptly repair" any physical damage caused to a particular unit. The term "promptly repair" as used in this Section shall mean that repairs are to

commence, weather permitting, not more than six (6) months days following the date of such physical damage. If the unit owner has not commenced the repair process within said time period, and the *Association* determines, in its discretion, that the nature of the damage is such that the failure to commence this repair is an unreasonable delay, the *Association* may undertake such actions as are necessary to cause the repairs to be made in prompt fashion.

The *Association* shall have the requisite authority to employ such contractors as necessary to cause the repairs to be made. Additionally, the *Association* shall have the authority to process a claim through the insurance carrier for the unit *Owner* and to cause the proceeds therefrom to be disbursed to pay contractors engaged in the repair and restoration process in appropriate installment payments.

Any repair or restoration as hereinabove described shall be in substantial accordance and conformity with the plans and specifications of the damaged units as originally built.

Any costs, disbursements or expenses which are incurred by the *Association* in connection with the repair process, for which there is no insurance coverage or reimbursement, shall be an expense and cost of the unit owner and shall constitute a lien on the property.

ARTICLE VI - CONTROL

Section 6.01. Control by Association.

Enforcement of the *Declaration* with respect to control over any change in use or any additions, modifications, or alterations to any *Improvement* on said Parcel or portion of the *Property* shall be the responsibility of the *Association*, acting through the Architectural Standards Committee, as provided in Section 6.02 below.

Section 6.02. Composition and Function of Architectural Standards Committee.

The Architectural Standards Committee (the "Architectural Committee") shall be a Standing Committee of the *Association* and shall approve all proposed additions, exterior modifications or alterations to the *Property* or any *Improvements* or any proposed change in the use of a Parcel or any other portion of the *Property* (including *Association Facilities*). 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 five or more persons (as determined by the Board of Directors from time to time). The Architectural Committee members shall be designated 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 of the members of the Board of Directors. All Architectural Committee members shall be *Members* of the *Association*.

Section 6.03. Submission of Plans to Architectural Committee.

No addition, modification or alteration shall be made on or to a Parcel or other portion of the *Property* or the *Improvements* located thereon, nor shall the use thereof be changed, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requests, have been submitted to, and reviewed and approved by the Architectural Committee or the Board of Directors if no Architectural Committee exists.

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

The Architectural committee may disapprove any plans submitted pursuant to Section 6.03 above for any of the following reasons;

- (a) failure of such plan to comply with any protective covenants, conditions and restrictions contained in the *Declaration* and which benefit or encumber the Parcel or other portion of the *Property*;
- (b) failure to include information in such plans as requested;
- (c) objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, color or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness of any proposed improvements;
- (d) incompatibility of proposed *Improvements* or use of proposed *Improvements* with

existing *Improvements* or uses in the vicinity;

(e) the failure of proposed *Improvements* to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules or regulations;

(f) any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed *Improvements*, use or uses inharmonious or incompatible with the general plan of improvement, of the *Property* or portion thereof or with *Improvements* or uses in the vicinity.

Section 6.05. Approval of Architectural Committee.

A majority vote of the Architectural Committee shall be required for the approval or qualified approval of any plans submitted pursuant to Section 6.03 above. Upon approval or qualified approval by the Architectural committee of any plans submitted pursuant to Section 6.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualification 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 Parcel or portion of the *Property* shall be final as to such Parcel or portion of the *Property*, and such approval may not be revoked or rescinded thereafter provided:

(i) that the *Improvements* or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the *Declaration* which benefit or encumber the Parcel or portion of the *Property*, and

(ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance.

Approval of any plans for use in connection with any Parcel 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 Parcel or portion of, the *Property*.

Section 6.06. Written Notification of Disapproval.

In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 6.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

A unit owner, who is aggrieved by a decision of the Architectural Committee, may appeal to the Board of Directors for a review of same, by filing a written application on a form provided by the Board, requesting such appeal. Such application must be filed with the Secretary of the Board of Directors no later than thirty (30) days following the unit owner's receipt of the notice of disapproval.

The Board, at its next regularly scheduled meeting following its receipt of the Notice of Appeal must review the record of proceedings thereon taken before the Architectural Committee and issue a decision either affirming or reversing the decision. The Board may reverse a decision of the Architectural Committee if the Board determines:

- (a) that the provisions of Section 6.04 were not violated and the decision of the Architectural Committee was therefore arbitrary and capricious; or
- (b) the decision is in conflict with the Board's interpretation of any provision of Section 6.04; or
- (c) the Architectural Committee's decision is not in the best interest of the community.

A reversal shall be authorized upon a two-thirds (2/3) vote of the Board members present at the meeting.

Section 5.11 of the By-Laws, dealing with the issue of quorums, shall be applicable to this vote.

Section 6.07. Failure of Committee to Act.

If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 60 days after submission thereof, said applicant may notify the Architectural Committee in writing of that fact. The plans shall be deemed approved by the Architectural Committee unless notice to the contrary is given by the Architectural Committee not later than the later of:

- (a) 30 days after the date of such notice, if such notice is given; and
- (b) 100 days after the date the plans were originally submitted.

Section 6.08. Committee's Right to Promulgate Rules and Regulations.

The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to 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 approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee's decision as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the *Declaration* or any applicable governmental law, code, ordinance, rule or regulation.

Section 6.09. Delegation of Functions.

The Architectural Committee may authorize its staff, subcommittees or any individual member of the Architectural Committee to perform any or all of the functions of the Architectural Committee as long as the number and identity of such staff, subcommittee or member, and the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be

established by the Architectural Committee.

Section 6.10. Records of Meetings and Regulations.

The Architectural Committee shall keep minutes of meetings and maintain records of all votes taken at meetings. The Architectural Committee shall make such records and current copies of its rules and regulations available at reasonable places and times for inspection by any person.

Section 6.11. Liability of Architectural Committee.

No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Parcel or other portion of the *Property*. Neither the *Association* nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any *Owner*, *Member* or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the *Association* or the Architectural Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

Section 6.12. Architectural Committee Certificate.

Upon written request of any *Owner*, lessee or occupant (or any prospective *Owner*, lessee, mortgagee, or title insurer) of a Parcel 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 certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Parcel or other portion of the *Property*, or any *Improvements* thereon, violates any of the provisions of the *Declaration* respecting the exterior appearance, design or maintenance and describing such violations, if any. Any such Architectural Committee certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated between the *Association* and any bona fide purchaser of, new lessee of, lender on, or title insurer of, the Parcel or other portion of the *Property* in question.

Section 6.13. Environmental Consideration.

In carrying out its responsibilities to enforce the provisions of the *Declaration*, and in particular the provisions of Section 7.07 herein, 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.

ARTICLE VII - GENERAL COVENANTS AND RESTRICTIONS

Section 7.01. Maintenance.

The *Association* will not provide any care and maintenance upon the member's property except for the driveway located thereon.

The *Owner* of a parcel or other portion of property shall keep the Parcel and all *Improvements* thereon in good order and repair, including but not limited to seeding, watering, pruning and cutting all trees and shrubbery, and painting or other appropriate external care of the buildings and other *Improvements* thereon, all in a manner and with such frequency as is consistent with good property management.

Section 7.02. Animals, Birds and Insects.

No animals, birds or insects shall be kept or maintained on such Parcel or other portion of the *Property* other than for domestic purposes, except with the consent of the *Association* which may, from time to time, impose reasonable rules and regulations setting forth the type and number of animals, birds and insects that may be kept on any portion of the *Property* and may prohibit certain types of animals, birds or insects entirely.

Section 7.03. Protective Screening and Fences.

Any screen planting, fence enclosures or walls initially developed on a Parcel or other portion of the *Property* shall be maintained by the *Owner* of said Parcel or other portion of the *Property*.

Section 7.04. 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 24 hours of a scheduled pick-up. The *Association*, with respect to Parcels or other portions of the property may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the *Property*. All facilities for the storage or disposal of Trash shall be kept in a clean and sanitary condition.

Section 7.05. Utility Easements.

There is hereby created a blanket easement upon, across, over, through and under the property subject to this *Declaration* for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including but not limited to sewers, water, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the *Owner* or providing utility or service company to maintain facilities and equipment on said property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under roofs, floors, slabs and exterior walls of the residences provided the owner or utility or service company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utility lines may be installed or relocated on the said property except as programmed and approved by the *Developer* prior to the conveyance of the first *Home* or Lot to an *Owner* or by the *Association* thereafter. This easement shall in no way affect any other recorded easements on said property. This easement shall be limited to improvements as originally constructed.

Section 7.06. Drainage Easements.

Each *Owner* shall maintain and repair any drainage facilities on such *Owner's* Parcel. Each and every other *Owner* shall have the right to enter upon the drainage easement areas of any other Parcel or for the purpose of installing, maintaining and repairing the drainage facilities on such other Parcel which in any way interfere with the drainage or drainage facilities of such *Owner's* Parcel. Unless required by law, the Town of Niskayuna shall not be responsible for the maintenance and repair of the drainage facilities and such maintenance and repair shall be the responsibility of the owners.

Section 7.07. 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 to the area or to the residents or *Owners* thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code. In addition, the sound pressure level as measured at the edge of any Parcel or other portion of the *Property*; and which is produced by mechanical, electrical or vehicular operation on such Parcel or other portion of the *Property*, where said Parcel or other portion is proximate to a residential area; shall not exceed the average intensity of the street traffic noise in said residential area except with the consent of the *Association*.

Section 7.08. 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 designed 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 the consent of the *Association*.

Section 7.09. 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 Parcel or other portion of the *Property* except with the consent of the *Association*.

Section 7.10. 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, change the

direction of flow or drainage channels, or obstruct or retard the flow of water through drainage channels. The slope control areas of any Parcel shall be maintained continuously by the *Owner* of said Parcel or portion of the *Property*, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 7.11. Non-Discrimination in Sale or Rental.

No *Owner* shall refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale of rental of, or otherwise make unavailable to or deny the occupancy or use of any portion of the *Property* to any person or persons because of race, color, religion, sex, sexual orientation or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time.

Section 7.12. Insurance Coverage and Insurance Assessments.

The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for *Association Facilities* against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard.

The *Association* shall also obtain a broad form public liability policy covering all damage or injury caused by the negligence of the *Association* or any of its agents, officers or employees in an amount of not less than one million dollars for each occurrence and such policies shall contain a waiver of the right of subrogation against members of the Avon Crest North Section 3 Homeowners Association, Inc., its officers, agents and employees.

Premiums for all insurance obtained by the Board of Directors shall be a Common expense.

The Board of Directors, or its duly authorized agent, shall have authority to and shall obtain officers' and directors' liability insurance.

Section 7.13. Depositing Ashes, Snow, Ice, Stones, Sticks, Etcetera Upon the Roads.

No owner or resident shall deposit or throw loose stones in the gutter or grass adjoining a road, or shall deposit or throw upon a road, ashes, papers, snow, ice, stones, sticks or other rubbish.

Section 7.14. Residential Use Only.

Parcels or portions of the *Property* shall be used only for residential purposes.

Section 7.15. No Division of Parcels or Change in Form of Ownership without Approval.

No Parcel or portion of the *Property* designated for residential use shall be split, divided, or subdivided for sale, resale, gift, lease, transfer or otherwise (including, but not necessarily limited to, conversion to a condominium, cooperative or townhouse form of ownership) without the consent of the *Association*.

Section 7.16. Outdoor Repair Work.

No extensive work on any motor vehicles, boats or machines or any kind shall be permitted

outdoors on such Parcel or portion thereof, except with the consent of the *Association*.

Section 7.17. Interior Lot Owner Easement.

Permanent easements, as described below, of ingress and egress for maintenance purposes are granted in and over those lots upon which an end or exterior townhouse unit has been constructed (for the purposes of this paragraph, the "Exterior Lots") and in and over the Interior Lots, (as hereinafter defined) for the benefit of those lots upon which an inner or interior townhouse unit has been constructed, (for the purposes of this paragraph, the "Interior Lots"), provided, however, that all easements granted by this Section 7.17 may be utilized only on the condition that the *Owner* of the Lot which benefits from such easement (the "Dominant Lot") agrees to promptly repair any and all damage to the Lot over which such easement is exercised (the "Servient Lot"), caused by the Dominant Lot *Owner's* use of the easement granted over the Servient Lot.

(a) A 10-foot wide easement along the said yard lotline and the rear lotline of each Exterior Lot for the benefit of the Interior Lot contiguous to such Exterior Lot and any Interior Lots contiguous to such Interior Lot;

(b) A 10-foot wide easement along the rear yard lotline of each Interior Lot for the benefit of any Interior Lot contiguous thereto (for purposes of this subparagraph (b), the "Beneficiary Interior Lot") and any Interior Lot contiguous to the beneficiary Interior Lot;

(c) An easement in and over the side yard and rear yard of each Exterior Lot for the benefit of the Interior Lot contiguous to such Exterior Lot and any Interior Lots contiguous to such Exterior Lot, and any Interior Lots contiguous to such Interior Lot, provided, however, that said easement may only be utilized on the following additional conditions:

(i) the owner of the interior lot and grounds maintenance vendors may utilize the easement at any time. Reasonable notice will be given to the exterior lot owner when an outside vendor needs to utilize the easement for maintenance/repair/construction on the townhouse unit itself.

(ii) the easement granted pursuant to subparagraph (a) of this Section 7.17 is not sufficient for the ingress and egress of the equipment needed to maintain the Interior Lot or the townhouse unit located thereon.

(d) An easement in and over the rear of each Interior Lot for the Benefit of any Interior Lot contiguous thereto (for the purposes of this subparagraph (d), the "Beneficiary Interior Lot") and any Interior Lot contiguous to the Beneficiary Interior Lot, provided, however, that said easement may only be utilized on the following additional conditions:

(i) reasonable notice is given to the *Owner* of the Interior Lot over which said easement is to be utilized; and

(ii) the easement granted pursuant to subparagraph (b) of this Section 7.17 is not sufficient for the ingress and egress of the equipment necessary to maintain the Interior Lot or the dwelling located thereon.

Section 7.18. Party Wall; Encroachments.

A wall (interior or exterior), intended to be constructed on the dividing line between two or more adjacent Parcels (whether or not such wall is on a dividing line between adjacent Parcel) shall constitute a party wall.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the adjoining Parcels in proportion to their use of the wall. If a party wall is destroyed or damaged by fire or other casualty, to the extent that the cost of repair is not recovered by insurance, any *Owner* who shares the wall may restore it and the other Owner(s) who share the wall shall contribute to the cost of restoration proportionately. Notwithstanding any other provision of this paragraph an *Owner* who, by his negligent or willful act or omission, damages or causes the party wall to be damaged shall bear the entire cost of repair.

If a structure located primarily on one Parcel inadvertently encroaches not more than three feet upon another Parcel as a result of the original construction of such structure, or the later reconstruction of such structure or a portion thereof after partial or total destruction by fire or other casualty or through eminent domain proceedings, or as a result of settling or shifting of such structure or a portion thereof, there shall be implied an easement for such encroachments and for the maintenance of same so long as such encroaching *Improvement* or portion thereof shall stand.

Section 7.19. Television and Radio Antennas.

No outside television or radio antenna shall be erected on any Parcel or other portion of the *Property* except with the consent of the Architectural Committee.

Section 7.20. Trees and Other Natural Features.

Except as provided below, and except in the event of an emergency, no trees having a diameter of four (4) inches or more, as measured from a point two feet above ground level, nor any other tree or shrub planted by *Developer*, shall be removed from such parcel or portion of the *Property* without the permission of the Architectural Committee. The Architectural Committee in its discretion may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the *Property*. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization.

Section 7.21. Snowmobiles.

No snowmobile or similar motor vehicle shall be operated on any portion of the *Property* except with the consent of the *Association*.

Section 7.22. Outside Storage.

There shall be no outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers except as may be permitted by the Architectural Committee, (unless prohibited altogether by the applicable zoning requirements).

Section 7.23. Rental.

Owners wishing to rent their units shall provide Tenants with a copy of the *Association By-Laws*, *Declaration of Protective Covenants, Restrictions, Easements, Conditions, Charges and Liens of the Avon Crest North – Section 3 Subdivision*, (the "*Association*") and the *Rule Enforcement Policy*. The Tenant shall comply with the foregoing. When an *Association* rule or policy is not followed, or an annual property inspection finding not corrected by the Tenant, the Landlord will be subject to provisions of the *Association's Rule Enforcement Policy*.

Owners shall provide an executed copy of *Association's Rental Agreement Form* to the *Property Management Agent*.

ARTICLE VIII - ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 8.01. Declaration Runs With the Land.

Except as otherwise provided in this Section 8.01 each person or entity acquiring an interest in a Parcel 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 for him, her itself, and for her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the *Declaration*, and also covenants and agrees to incorporate the *Declaration* by reference in any deed, lease or other instrument further transferring an interest in such Parcel or other portion of the *Property*.

Section 8.02. Enforceability.

The provisions of the *Declaration* shall bind the *Property* and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the *Association* (the *Association* being hereby deemed the agent for all of 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.

Section 8.03. No Waiver by Failure to Enforce.

The failure of any beneficiary hereof to enforce any provision of the *Declaration* shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the *Association* (or to 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 8.04. 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 the *Declaration*, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is an *Owner*, such cost shall also be a lien upon the Parcel or portion of the *Property* owned by such violators, if any.

Section 8.05. Inspection and Entry Rights.

Any agent of the *Association* may at any reasonable time or times enter upon such Parcel 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 rules and regulations issued pursuant thereto, or for the purpose of ascertaining whether the *Owner* of a parcel or other portion of property has kept the Parcel and all improvements thereon in good order and repair, including but not limited to seeding, watering, pruning and cutting all trees and shrubbery, and painting or other appropriate external care of the buildings and

other improvements thereon, all in a manner and with such frequency as is consistent with good property management in accordance with Section 7.01 herein. 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 and the *Association* and its agents and employees are hereby granted an easement to enter upon the *Property* and the *Unit* and Lot of any *Owner* for such purposes.

In addition to the above, if the *Association* determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of Section 7.01 hereof, the *Association* shall notify the owner of the Parcel who shall be obliged to remedy the violation. If the *Owner* fails to remedy the violation within sixty (60) days after such notice is given, then the *Association* may take such remedial action to rectify the condition, including, but not limited to hiring contractors or such other agents on behalf of the violating *Owner* to enter upon the Lot of the *Owner* to perform such work as may be required to remedy the violation. The *Association* and its agents and employees are hereby granted an easement to enter upon the *Property* and the *Unit* and Lot of any *Owner* for such purposes. The cost of such work shall be assessed against the Lot or unit upon which the services are performed and shall be added to and become part of the annual Association Dues or charge to which such Lot or unit is subject, and, as part of such annual dues or charge, it shall be a lien and obligation of the owner in all respects, except that payment for any work performed pursuant to this section, shall be due upon demand, and presentation to the *Owner*, either in person or by regular mail, or the *Association's* invoice therefor. Default in prompt and full payment within ten (10) days from the date the invoice is sent, shall entitle the *Association* to twelve (12%) percent per annum interest on the amount due from the date of the invoice, which interest shall also constitute a lien upon the Lot or unit and obligation of the owner thereof.

Section 8.06. Amending.

Except as otherwise specifically provided for herein, the Board of Directors on its own initiative, or pursuant to a written petition signed by not less than twenty five percent (25%) of the total Members of the *Association*, may propose an amendment to the *Declaration*.

The Board of Directors shall hold a Hearing in accordance with Section 4.04 herein for the purpose of considering such proposed amendment. In addition to the Notice required to be given pursuant to such Section 4.04, notice of the Hearing shall be mailed or delivered to all Members not less than 10 nor more than 30 days prior to the date set for such Hearing.

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

The affirmative vote of not less than two-thirds (2/3) of the total number of Members shall be required for approval of a proposed amendment.

Any approved amendment to the *Declaration* shall become effective only when an instrument describing such amendment has been duly recorded in the Office of the Clerk of the County of Schenectady and upon such recording shall be binding from the date of such recording on all of the *Property* unless otherwise specifically provided in such amendment. Such instrument need not contain the written consent of the required number of Members and Owners but shall contain a certification by the Board of Directors that the consents required for such amendment have been received and filed by the Board.

Any approved termination to the *Declaration* shall become effective only when an instrument describing such termination has been duly recorded in the Office of the Clerk of the county of Schenectady and upon such recording shall be binding from the date of such recording on all of the *Property* unless otherwise specifically provided in such amendment. Such instrument need not contain the written consent of the required number of Members but shall contain a certification by the Board of Directors that the consents required for such termination have been received and filed by the Board.

Section 8.07. Duration.

Except as otherwise provided for herein, the *Declaration* shall continue with full force and effect (unless terminated by an amendment to this Section 8.07 pursuant to Section 8.06 herein). Between February 15, 2020 and April 15, 2020 (and each 20 years thereafter that the *Declaration* continues in effect) the Board of Directors of the *Association* shall hold a Hearing in accordance with Section 4.04 herein for the purpose of considering the termination of the *Declaration*. In addition to the Notice required to be given pursuant to such Section 4.04, notice of the Hearing shall be mailed or delivered to all Owners, not less than 10 nor more than 30 days prior to the date set for such Hearing.

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

Not less than two-thirds (2/3) of the total number of Members voting for such termination, shall be required for termination.

Section 8.08. Construction and Interpretation.

The *Association* shall have the right to construe and interpret the provisions of the *Declaration* and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction or interpretation shall be binding as to all persons or property benefitted or bound by the provisions hereof.

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, determinations, ruling, or orders or in the issuance of permits, authorizations or approvals, the *Association* shall take into consideration the best interests of the Owners and Members and of the *Property* to the end that the value and amenities of the *Property* shall be preserved and maintained.

Section 8.09. Conflict with Municipal Laws.

The *Declaration* shall not be construed as permitting anything prohibited by the applicable zoning laws, or any other applicable laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease and no action may be taken hereunder which would so violate such applicable zoning laws, other laws, ordinance, rules, regulations or restrictions. In the event of any conflict, the more restrictive provision shall be deemed to govern and control or in the event of a direct contradiction or incompatibility, the applicable law ordinance, rule, or regulation of the governmental entity shall control.

Section 8.10. 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.

ARTICLE IX - GENERAL

Section 9.01. Heading and Caption.

The headings and captions contained in the *Declaration* are for convenience only and shall not effect the meaning or interpretation of the content thereof.

Section 9.02. Notice.

Any notice required to be sent to any *Member* or *Owner* under the provisions of the *Declaration* shall be deemed to have been properly sent when mailed, postage prepaid, sent electronically or otherwise delivered to the last known address of the person who appears as *Member* or *Owner* on the records of the *Association*.

Section 9.03. Right of Association to Transfer.

Notwithstanding any other provision herein to the contrary, the *Association*, by the affirmative vote of not less than (2/3) two-thirds of the Owners, shall at all times have the absolute right to transfer, convey and assign its right, title and interest under the *Declaration* to any successor not-for-profit corporation, trust or governmental entity and upon such assignment the successor corporation, trust or governmental entity 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, to the same extent as if the successor corporation, trust or governmental entity had been an original party to this *Declaration*, and all reference herein to Board of Directors shall refer to the Board of Directors, Trustees or governing board of such successor corporation, trust or governmental entity. Any such assignment shall be accepted by the successor corporation, trust or governmental entity under a written agreement pursuant to which the successor corporation, trust or governmental entity shall expressly assume all the duties and obligations of the *Association*, however, a failure to accept in writing shall in no way alter the obligation of the successor to be bound by all provisions of this *Declaration*. If for any reason the *Association* shall cease to exist without having first assigned its rights hereunder to a successor corporation, trust or governmental entity, the covenants, easements, charges and liens imposed hereunder, and under any supplemental declaration, trust agreement, or other agreement, shall nevertheless continue and any *Owner* or *Member* may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation, trust or governmental entity to take over the duties and responsibilities of the *Association* subject to the conditions provided for in the *Declaration*.

This page left intentionally blank.

SCHEDULE A

"Property"

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Niskayuna, Schenectady County, New York being known as 'Avon Crest North Section 3' shown on a map entitled "Avon Crest North Section 3" made by C. T. Male Associates, P.C., dated May 22, 1986, revised to August 14, 1990, filed in the Schenectady County Clerk's Office on _____, and being more particularly bounded and described as follows:

BEGINNING at the intersection of the division lines between Avon Crest North Section 3 on the Northwest and lands now or formerly of Woodcock on the southeast, with the division line between Avon Crest North Section 3 on the northeast and Avon Crest North Section 1 on the Southwest as shown on the above described map, and runs thence from said point of beginning along the division Line between Avon Crest North Section 3 and Avon Crest North Section 1 the following courses:

- 1) North 61 deg. 29 min. 20 sec. West 122.90 feet to a point;
- 2) North 70 deg. 29 min. 10 sec. West 246.49 feet to a point;
- 3) South 28 deg. 30 min. 40 sec. West 137.82 feet to a point; and
- 4) along a curve to the right having a radius of 395.76 feet, a chord of North 45 deg. 14 min. 00 sec. West 116.91 feet, an arc distance of 117.33 feet to a point of tangency;
- 5) North 36 deg. 44 min. 20 sec. West 40.00 feet to a point;
- 6) south 53 deg. 15 min. 40 sec. West a distance of 60.00 feet to a point of tangency;

thence continuing along the above last mentioned division line in part, and along the division line between Avon Crest North Section 3 on the Northeast, and Avon Crest North section 2 in part on the southwest, North 36 deg. 44 min. 20 sec. West 234.67 feet to a point; thence continuing along the division line between Avon Crest North Section 2 and Avon Crest North section 3 the following courses:

- 1) North 53 deg. 15 min. 40 East a distance of 60.00 feet to a point;
- 2) along a curve to the right having a radius of 185.83 feet, a chord of North 14 deg 36 min. 10 sec. West 140.04 feet, an arc distance , of 143.59 feet to a point of tangency;
- 3) North 07 deg. 32 min. 00 sec. East 290.46 feet to a point of curvature;
- 4) along a curve to the right having a radius of 800.40 feet, a chord of North 15 deg. 51 min. 00 sec. East 208.45 feet, an arc distance of 209.04 feet to a point of compound curvature;
- 5) along a curve to the right having a radius of 38.82 feet, a chord of North 64 deg. 54 min. 10 sec. East 52.35 feet, an arc distance of 57.46 feet to a point of tangency

6) North 17 deg. 18 min. 20 sec. East 60.00 feet to a point;

7) along a curve to the left having a radius of 25.00 feet, a chord of North 62 deg. 18 min. 20 sec. East 35.36 feet, an arc distance of 39.27 feet to a point of tangency; and

8) North 17 deg. 18 min. 20 sec. East 156.35 feet to its intersection with the common division line between Avon Crest North Section 3 on the Southwest and lands now or formerly of Selengut in part, Hawkins in part, and Auchampaugh in part on the Northeast;

thence along the above last mentioned division line, South 66 deg. 58 min. 40 sec. East 719.92 feet to its intersection with the common division line between Avon Crest North Section 3 on the West and lands now or formerly of Auchampaugh in part, Way in part, Yukawa in part, Antonelli in part, and Campbell in part, on the East thence along the above last mentioned common division line the following courses:

1) South 10 deg. 29 min. 50 sec. West 260.70 feet to a point;

2) South 00 deg. 06 min. 40 sec. East 167.94 feet to a point;

3) South 16 deg. 51 min. 30 sec. West 445.58 feet to its intersection with the above first mentioned division line; and

4) along the above first mentioned division line, South 28 deg. 30 min. 40 sec. West 68.35 feet to the point or place of beginning and containing 18.06± acres of land.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand and seal
of the Association this 16th day of December, 2011.

By Rosanne T. Groff
Rosanne Groff, Secretary

STATE OF NEW YORK)

COUNTY OF Albany)

DEED Book 1850 Page 877
Doc No 2012-402

On the 16 day of December, in the year Two Thousand Eleven, before me, the undersigned, personally appeared ROSANNE GROFF, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and the by his/her/their signature on the instrument, or the person upon behalf of which the individual(s) acted, executed the instrument.

Sarah E. Dwelley
Notary Public, State of New York
Qualified in Columbia County
No. 01DW6232036
Commission Expires Dec. 6, 2014

Sarah E. Dwelley
Notary Public

Fences / Protective Screening –

All fences and protective screening must be approved by the Architectural Standards Committee (*refer to Declaration Section 7.03*).

Fireplace Inspections –

It is suggested that wood-burning and natural gas fireplaces be maintained/cleaned regularly.

Furnace Intake / Exhaust –

For your safety, the intake/exhaust pipe for your furnace must be clear of snow during winter months for your furnace to function properly.

Garage –

Garages are to be used for vehicle parking and storage of personal property only and cannot be modified to any other use. Garage doors should remain closed whenever possible.

Holiday Lights / Decorations –

Holiday lights/decorations are to be installed only around the respective holiday and are to be removed on a timely basis.

Homeowners Insurance –

Each unit owner shall provide the Association with a copy of the declaration page of their homeowner's insurance policy. The purpose for same is to provide notice to the Association of the name of the insurer, in the event of physical damage, and the nature and extent of insurance coverage. A copy of the declaration page from said policy must be filed annually with the Association by all unit owners (*refer to Declaration Section 5.12*).

Homes / Businesses –

All units are required to be used for residential purposes only. This, however, does not preclude an owner or occupant from maintaining an office within their home, providing no extraordinary traffic or parking results, and no signs indicating the existence of a business are placed in any window or on the exterior of the unit or lot (*refer to Declaration Section 7.14*).

Hot Tubs –

Hot tubs may be constructed in such a way so as to be inconspicuous to your neighbors. The location, design and screening of any hot tub must be submitted to the Architectural Standards Committee for review and approval.

Jungle Gyms / Swing Sets / Playgrounds / Portable Sporting Equipment –

- ✓ Non-permanent sandboxes, children's toys, (large and small), etc. shall be returned to the garages each evening so as to maintain the area in a neat and orderly appearance. Such items shall not be stored or located outside;

- ✓ Jungle gyms, swing-sets, children's swim pools, and portable sporting equipment must be submitted to the Architectural Standards Committee for review and approval.

Lease Restrictions –

- ✓ All tenants are subject to the rules and regulations of the Association. All occurrences that are a direct result of the tenant's non-compliance with the Association's rules and regulations may result in fines or other penalties against the Unit's Owner; (*refer to Declaration Section 7.23 and Rental Agreement Form included in Appendix B*)
- ✓ Owners are responsible for providing a copy of this Resident Guide to their tenants;
- ✓ An executed copy of the Association's Rental Agreement Form shall be delivered to the Management Company;
- ✓ Owners must be current on all fees/assessments.

Parking – (Revised 4/2018)

- ✓ Residents should park their vehicles in their garages and keep garage doors closed whenever possible;
- ✓ Unregistered vehicles must be stored in your garage;
- ✓ Overnight street parking (November to April) is not permitted as per Town of Niskayuna regulations;
- ✓ Commercial vehicles with a LOGO or recreational vehicles (ex. camper bodies, boats, snowmobiles, trailers, dirt bikes, etc.) are not permitted in driveways unless approved in writing/email by the Association (*refer to Declaration Section 7.22*). Exempt from this are contractors hired to work on the property.
- ✓ Any inappropriately parked vehicles may be subject to fines or other penalties against the Unit's Owner, and removal at the owner's expense;
- ✓ Vehicles leaking oil or other fluids should be kept in your garage and not parked on the driveway, since oil and other fluids can lead to premature deterioration of the driveways.

Pets –

The community welcomes domestic pets provided pet owners and guests conform to the following common courtesy regulations:

- ✓ Pet owners must clean up after their pets in all instances, including on their own property;
- ✓ Pet owners, to the extent possible, should have their pets relieve themselves on their own property before walking them elsewhere in the development;
- ✓ All domestic animals must be kept leashed and under control at all times;

- ✓ Allowing pets to engage in habitual howling or barking or creating any other kind of disturbance is unlawful. If such disturbances occur, the Board of Directors will take whatever actions are required and any incurred cost will be collected from the homeowner in the same manner as other assessments;
- ✓ Invisible fences (electronic) are recommended for cases where homeowners want to control their pets. Use of training flags should be limited to a 3-4 week duration;
- ✓ All dogs must be licensed by the Town of Niskayuna and have rabies vaccinations current. (*Refer to Appendix C*)

Plants / Trees / Lawns –

- ✓ Each owner is responsible for removing any dead plantings or trees. Prior approval of the Architectural Standards Committee may be required depending on the size of the tree being removed (*refer to Declaration Section 7.20*);
- ✓ Each owner is responsible for trimming shade and ornamental trees on their property, and maintaining their lawns by cutting, re-seeding and watering (*refer to Declaration Section 7.01*);
- ✓ Maintenance of privacy hedges between Units should be shared equally between residents.

Refuse Removal / Recycling –

- ✓ Homeowners are responsible for refuse removal and recycling. Association residents receive discounted refuse and recycling removal from County Waste. To set up service, contact County Waste at 518.877.7007 and identify yourself as a Villas at Avon Crest North resident;
- ✓ House refuse and recycling must be kept in secure containers provided by County Waste, stored in the garage, placed outside for collection no earlier than 24 hours before scheduled pickup, and returned inside of your garage on the day of collection (*refer to Declaration Section 7.04*);
- ✓ Lawn and garden refuse is the responsibility of the homeowner. The Town of Niskayuna provides lawn and garden refuse pickup.

Security –

Security is everyone's responsibility. The following are suggestions to provide the safety of your home and family:

- ✓ Report any vandalism or suspicious activity to the Niskayuna Police Department at 518.386.4585;
- ✓ Keep the lampposts on the front of your property in operating order and replace burned out light bulbs immediately;
- ✓ Tell a neighbor when you will be away for an extended period;

- ✓ Keep the garage door closed when not in use.

Sheds / Outside Storage – (Revised 4/2018)

- ✓ The storage of personal property is not permitted outside the unit, on the patio, deck or elsewhere on the property with the exception of seasonal furniture and barbeque grills;
- ✓ Areas shall be kept free and clear of the placement and storage of personal property, refrigerators/freezers, building equipment, tools, lawn mowing and snow removal equipment, rubbish, debris, sporting equipment, unsightly materials and other items as may be determined by the Association;
- ✓ There shall be no outside storage or parking of commercial vehicles with a LOGO or recreational vehicles (ex. camper bodies, boats snowmobiles, trailers, dirt bikes, etc.) except as may be permitted by the Association (unless prohibited altogether by applicable zoning requirements (*refer to Declaration Section 7.22*))
- ✓ Storage sheds and dog houses are not permitted.

Snowmobiles –

No snowmobiles or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association.

Snow Removal –

The Association contracts with an independent vendor who is responsible for removing snow from driveways and walkways. There is a 2" snowfall threshold for snow removal, but the provider can wait until up to 5" has fallen before starting removal during a large snowfall event. The vendor includes ice control on your walkways and driveways. If you wish to opt out of ice control, please contact the Property Management Company directly.

It is recommended that each homeowner keep on hand, a bag of salt or calcium for problem conditions. Rock salt is usually the least expensive ice melt product, but it should be used only on asphalt surfaces because rock salt will damage concrete and lawn surfaces. Calcium chloride is usually more expensive, but it will not damage concrete surfaces.

Swimming Pools –

In-ground and above-ground swimming pools are not permitted.