



# Ontario County Clerk Recording Page

**Return To**

MICHELLE ALVARO  
KENRICK CORP  
3495 WINTON PLACE BLDG D-4  
ROCHESTER, NY 14623

**Matthew J. Hoose, County Clerk**  
Ontario County Clerk  
20 Ontario Street  
Canandaigua, New York 14424  
(585) 396-4200

Document Type: **DECLARATION**

Receipt Number: 396783

**Grantor (Party 1)**

TOWNE HARBOUR ASSN INC

**Grantee (Party 2)****Fees**

Recording Fee	\$20.00
Pages Fee	\$240.00
State Surcharge	\$20.00
<b>Total Fees Paid:</b>	<b>\$280.00</b>

Control #: 201811060154

Property located in **City of Canandaigua**

**Refers To**

D 01352 0442  
D 01392 0943  
D 01413 0766  
D 00804 0012

State of New York  
County of Ontario

Recorded on November 6th, 2018 at 11:41:50 AM  
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with a total page count of **48**.

Ontario County Clerk

*This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York*

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**SECOND  
RESTATED  
DECLARATION  
OF**

**PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS - TOWNE HARBOUR  
(THE TOWNE HARBOUR DECLARATION)**

**DATED:** October 16, 2018

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Michelle Alvaro  
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3495 Winton Place  
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**NOTE: THIS DOCUMENT STAYS WITH THE HOME.**

**SECOND RESTATED DECLARATION OF PROTECTIVE COVENANTS,  
 CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND  
 LIENS - TOWNE HARBOUR  
 (TOWNE HARBOUR DECLARATION)**

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**SECOND RESTATED DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND  
LIENS - TOWNE HARBOUR  
(THE TOWNE HARBOUR)**

THIS SECOND RESTATED DECLARATION, made this 16 day of OCTOBER, 2018, by the Towne Harbour Association, Inc., City of Canandaigua, New York, being referred to herein as the "Association."

**WITNESSETH**

WHEREAS, a Declaration of Protective Covenants, Conditions and Restrictions ("The Towne Harbour Declaration") was recorded in the Ontario County Clerk's Office in Liber 804 of Deeds at page 12; and

WHEREAS, the Declaration of Protective Covenants, Conditions and Restrictions was Restated ("Restated Declaration") and recorded in the Ontario County Clerk's Office in Liber 1352 of Deeds at page <sup>491</sup>491 on December 17, 2015; and

WHEREAS, the Restated Declaration was amended twice, first by Amendment recorded in the Ontario County Clerk's Office in Liber 1392 of Deeds at page 943, on October 3, 2017 and then again by Amendment filed in the Ontario County Clerk's Office in Liber 1413 of Deeds at page 766 on September 4, 2018; and

WHEREAS, the Towne Harbour Association, Inc. wishes to integrate both Amendments into the Second Restated Declaration; and

NOW THEREFORE, the Towne Harbour Association, Inc., for itself, its members and their respective successors and assigns and its successors and assigns, declare that the real property described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions. The following words, phrases or terms when used in this document shall have the following meanings:

- (a) "Association" shall mean and refer to the Towne Harbour Association, Inc.
- (b) "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.

- (c) “Declaration” shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Towne Harbour (The Towne Harbour Declaration) as it may from time to time be supplemented, extended, amended or restated in the manner provided for herein.
- (d) “Institutional First Mortgage Lender” shall mean and refer to a bank, savings and loan association, life insurance company, pension trust, trust company, the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or any lender approved by Fannie Mae or Freddie Mac which holds a first mortgage on a Unit.
- (e) “Lot” shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Canandaigua; and (ii) shown as a separate lot upon any recorded or filed subdivision map, upon which a Unit has been constructed.
- (f) “Member” shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- (g) “Owner” shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- (h) “Property” shall mean and refer to all properties as are subject to this Declaration, as defined in Section 2.01 following.
- (i) “Recording Office” shall mean and refer to the official office for the recording of land documents in the County in which the “Property” is located.
- (j) “Unit” shall mean and refer to a completed dwelling unit (as evidenced by the issuance of a Certificate of Occupancy by the City of Canandaigua), situated on the Property.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Canandaigua, County of Ontario and State of New York, all of which property shall be hereinafter referred to as the “Property”. The real property subject to this Declaration is known and described in Schedule A attached hereto.



## ARTICLE III

### THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Association was formed to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership.

Section 3.03. Voting; Mortgagee's Control of Votes. Each Owner, shall be entitled to only one (1) vote, no matter how many Lots or Units are owned. If an institutional first mortgage lender whose name appears on the records of the Association: (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee; and (ii) notifies the Association prior to the date or initial date of the canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Assigning Right to Vote. Any Owner shall be entitled to assign such Owner's right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association.

Section 3.05. Selection, Powers and Duties of Directors. The nomination, election, powers and duties of the Board of Directors and the filling of vacancies on the Board of Directors shall be governed as set forth in the By-Laws of the Association.

Section 3.06. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that: (i) the acts of the director or officer were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated; or (ii) such director or officer (or a member of such director's or officer's family)

personally gained a financial profit or other advantage to which such beneficiary was not legally entitled; provided, that in the event of a settlement or other nonadjudicated disposition, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. Funds to cover the above expenses, including fees of counsel, may be advanced by the Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that: (i) the recipient is not entitled to indemnification; or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

## ARTICLE IV

### PROPERTY RIGHTS AND EASEMENTS

#### Section 4.01. Right and Easement of Enjoyment in Association Property.

Every Member and such Member's guests, licensees, tenants and invitees shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association. Such easements shall be appurtenant to and shall pass with the interests of an Owner.

#### EASEMENTS FOR ACCESS OVER HOLIDAY HARBOUR CONDOMINIUM PROPERTY

Pursuant to an easement agreement recorded in the Ontario County Clerk's Office in Liber 746 of Deeds at page 131, the owners of property comprising Towne Harbour have easement rights through the Holiday Harbour Condominium property for ingress and egress. Pursuant to the easement agreement the owners to the Towne Harbour property are responsible to pay a pro rata share of the costs of cleaning, maintaining, repairing and replacing the streets covered by the easement. Purchasers and mortgagees and prospective purchasers and mortgagees of Units may obtain a copy of this recorded easement agreement and all amendments thereto from the Ontario County Clerk's Office. The cost of such obligation will be funded by the Association and included in the Association maintenance assessments charged to each Unit Owner.

Every Member shall also have an easement for ingress and egress by vehicle or on foot and the common utility and conduit easements described in Section 4.04 hereof.

Section 4.02. Rights of Association. With respect to the Association Property owned, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

- (a) To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

- (b) To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;
- (c) To dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Members who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 51% or more of the Units advise the Association in writing, prior to the date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to date set for voting on the proposed conveyance;
- (d) To charge reasonable admission and other fees for the use of Association Property;
- (e) To enter into agreements, reciprocal or otherwise, with other Owners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than 10 days nor more than 60 days in advance of the canvas thereof.

Section 4.03. Rights of Association. With respect to Association Property and in addition to the rights set forth herein, the association shall have the following rights:

- (a) To grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone and sewer to service any of its property;
- (b) To connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property.
- (c) To use the Association Property for ingress and egress to its Property.

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association.

Section 4.04. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each lot or within any Unit shall be owned by the

Owner of the Unit. Every Unit Owner shall have an easement in common with the Unit Owners of other Units to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on or within other Units or on Association Property and servicing such Owner's Unit. Each Unit shall be subject to an easement in favor of the Owners of other Units to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Unit and located on each other Unit. The Association shall have the right of access to each Unit for Maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on or within any Unit and servicing any other Unit. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Unit Owner or Owners, it shall rather be considered a special expenses allocable to the Unit Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Unit Owner or Owners and, as part of that Assessment, shall constitute a lien on the Unit or Units to secure the payment thereof.

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

Section 4.05. Common Access Easement. Unit Owners, their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways, driveways and roadways located on the Units and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, the maintenance of which is the responsibility of the Association. The cost of any such maintenance, repair or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Unit Owner or Owners, it shall rather be considered a special expense allocable to the Unit Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Unit Owner or Owners and, as part of that Assessment, shall constitute a lien on the Unit or Units to secure the payment thereof.

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

Section 4.07. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives, both within and without the Property.

Section 4.08. Hearing Procedures. Where the Board of Directors is required, in accordance with the provisions of this Declaration, to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 nor more than 60 days after the Board of Directors has

initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Owners in accordance with the provisions of this Declaration relating to the giving of notice. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The Hearing will be held at a reasonably convenient time and location for the Owners. All Owners 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 this 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.

## ARTICLE V

### ASSESSMENTS

Section 5.01. Imposition, Personal Obligations, Lien. Each Unit Owner by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments") and facilities not located on Association Property, (such as roadways and utility lines) servicing two or more Units; and
- (b) Special assessments for capital improvements ("Special Assessments"); together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Unit against which the Assessment is made and shall also be the personal obligation of the Owner of such Unit at the time the assessment falls due. Upon transfer of title to a Lot, assessments shall be adjusted as provided in Section 5.12 below.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and any property which the Association or Unit Owners are required to maintain to provide all or a portion of the funds for maintenance (including any roadways used in common with the adjacent Holiday Harbour Condominium) pursuant to agreement recorded in the Ontario County Clerk's Office in Liber 746 of Deeds at page 131 and all amendments, revisions and replacements of such agreement as may be made from time to time, and the promotion of the recreation, safety and welfare of the Members of the

Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association Property for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots as defined in Article VI of this Declaration.

Section 5.03. Date of Commencement and Notice of Assessments. The Board of Directors of the Association shall fix the amount of the Assessment against each Unit at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least 30 days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Units. The Owner of each Unit shall be liable for the payment of the established Maintenance Assessment, and Special Assessments.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Unit fully assessed shall be the same for all Units. If any Unit elects to pay the entire years maintenance assessment during the first month of that fiscal year, such Unit shall be entitled to a 2% discount of/from the annual maintenance assessment. The number of Units shall be divided into the total amount, which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained shall determine the annual Maintenance Assessment for each fully assessed Unit.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the consent of not less than two-thirds (2/3) of the total votes of all Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Ontario.

Section 5.07. Special Assessments. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of (i) any repair, construction, reconstruction or replacement of the Association Property or to any improvements or landscaping on the Lots (including the Units) which the Association has the responsibility to maintain, and (ii) any unbudgeted, unanticipated or extraordinary expense, claim against or liability of the Association. Before levying such a Special Assessment the Board of Directors shall hold a Meeting of the Members on said proposed Special Assessment. Not less than 10 nor more than 45 days after such Meeting, the Board of Directors shall (i) for any Special Assessment for the construction of any improvement, (rather than reconstruction or repair) obtain the consent, two-thirds (2/3) of the Members who are voting in person or in proxy at a meeting duly called for this purpose, written notification of which shall be sent to all voting Members at least 30 days in advance, setting forth the purpose of the meeting, and (ii) for any

Special Assessment, obtain the approval of not less than three-fourths (3/4) of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each member thereof in writing at least 30 days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments; if any, late charges and interest.

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

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Unit which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Unit, the Association shall, within a

reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Unit as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration. A charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Unit subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, or from the lien of any such subsequent Assessment.

Section 5.12. Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Lot, Maintenance Assessments and any Special Assessments which: (1) may be payable in installments; or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in the adoption of the Special Assessment: (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installation due dates; and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the Lot on the date which such Assessment is initially due.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors of the Association, upon the consent of not less than 67% of the Owners.

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



- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
  - i. assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.05 hereunder, to assess the same at a particular rate or rates;
  - ii. establish sinking funds and/or other security deposits;
  - iii. apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
  - iv. establish such collection, payment and lien enforcement procedures as may be required by the note holders;
  - v. provide for the custody and safeguarding of all funds received by it.

## **ARTICLE VI**

### **MAINTENANCE BY THE ASSOCIATION**

#### **Section 6.01. Maintenance and Repair by the Association**

- (1) The Association shall repair and maintain all Association property as defined in Article I of this Declaration. The Association shall also repair and maintain landscaping, driveways and walkways on the Lots, including snow removal on the driveways, and shoveling an access path from the driveway to the front door. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing more than one Unit and for which utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments. The maintenance obligation by the Association is modified and limited in the following respects:
  - (a) Repair and or replacement of doors including but not limited to, sliding doors, French doors, garage doors, etc., will be the responsibility of the Unit Owner; that is, the door will be considered an assembly which includes the door (or doors), the

frame and the threshold, and this assembly will be the responsibility of the Unit Owner.

- (b) Replacement of a window with its sash will be the responsibility of the Unit Owner; however, the Association will contribute to the cost of replacing the frame and sill.
  - (c) The Association will continue to paint and fill voids in the windows and doors provided by the developer until they are replaced by clad units (where applicable).
- (2) With respect to the Units, including garages, the Association shall repair and replace the exterior siding, gutters and roofs. The Association shall paint the trim, windows and doors and caulk the windows but shall not repair or replace window panes or maintain, repair or replace doors. With respect to the other improvements on the Unit, the Association shall paint, repair and replace fences, railings or decks initially installed by the Developer, maintain, repair and replace all walkways but shall not repair or replace patio floors, stoops or stairs.

The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Units to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Units.

### **Windows**

Living Room (see High Rise) -vertical pair of windows at \$200 and total for a Unit \$400.00.  
Living Room (see Low Rise) - each window at \$250 and total for a Unit \$500.00.  
Hall Foyer (all Units) - one per Unit at \$45.  
Bedroom, Double Hung (all Units) - on pair of windows per Unit at \$125.00.  
Bath, Halls, Garage (all Units) - each window \$30.00.

The Association has established a policy, whereby Owners who replace 'original' windows that do not have 'cladding', will be reimbursed according to the following schedule. Said reimbursement(s) shall be limited to the first time replacement of each window.

### **Doors**

Doors or Door Assemblies (balcony) - no contribution from Association

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above the Association shall not be

responsible for the maintenance, repair or replacement of any buildings or any sewer lines, water lines or other utility lines not located on Association Property.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Unit Owner, (including members of such Unit Owner's family, guests or invitees) or the Declarant shall be made at the cost and expense of such Unit Owner or the Declarant, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Unit Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit as the case may be, to secure the payment thereof. In the event of any question as to what is or what is not the responsibility of the Association, the decision of the Board of Directors of the Association shall be final and binding on all Unit owners and not subject to judicial review.

The Association shall not have the responsibility to maintain, repair or replace exterior modifications made by or at the direction of any Owner or Unit occupants unless the Association agrees to maintain specific items installed by or at the direction of the Owner or Unit occupants.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s), have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

## ARTICLE VII

### ARCHITECTURAL CONTROLS

Section 7.01. Architectural Committee. The Board of Directors shall appoint at least three members to the Architectural Committee each to serve for a term of from one to three years as may be determined by the Board of Directors, in order to assure that the Property shall continue to be maintained in a manner: (i) providing for visual harmony and soundness of repair; (ii) avoiding activities deleterious to the aesthetic or property values of Property; and (iii) promoting the general welfare and safety of the Owners, such Owners'

tenants and such Owners' (or tenants) households, guests, employees, agents and invitees. If the Board of Directors fails to appoint members to the Architectural Committee, then the Board of Directors shall perform the duties of the Architectural Committee. Members of the Architectural Committee shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.02. Powers.

- (a) The Architectural Committee shall regulate the external design, signage, appearance, use and maintenance of the Property in accordance with the provisions of the Declaration.
- (b) The Architectural Committee may, from time to time, establish requirements regarding the form and content of plans and specifications to be submitted for approval.
- (c) The Board of Directors shall have the power to impose reasonable charges upon, and issue a cease and desist request to, an Owner, such Owners' tenant and such Owners' (or tenant's) household or guests, employees, agents, and invitees whose actions are inconsistent with the provisions of the Declaration and By-Laws or the Rules and Regulations ("Association Documents").
- (d) Subject to the review of the Board of Directors, the Architectural Committee shall, from time to time, provide interpretations of the Association Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by an Owner, or the Board of Directors. The Architectural Committee may publish and record such interpretations in order to establish precedents for application of the Association Documents or the Design Guidelines or other matters relative to architectural control and protection of the aesthetic or property values of the Property.
- (e) The Architectural Committee shall propose Design Guidelines for approval by the Board of Directors. Such Design Guidelines approved by the Board of Directors are hereby incorporated by this reference and shall be enforceable as if set forth herein in full.
- (f) A Majority Vote of the Architectural Committee shall be required in order to take any action. The Management Company shall keep written records of all its actions. Any action, ruling or decision of the Architectural Committee may be appealed to the Board of Directors by any party deemed by the Board to have standing as an aggrieved party and the Board may modify or reverse any such action, ruling or decision. An appeal from a ruling or decision of the Architectural Committee must be filed with any member of the Board of Directors

within 10 days from the date that the ruling or decision was rendered by the Architectural Committee.

- (g) All recommendations for architectural changes are to be submitted to and reviewed by the Board of Directors for final approval.

Section 7.03. Authority. The Architectural Committee shall have such additional duties, powers and authority as the Board of Directors may from time to time provide by resolution. The Board of Directors may relieve the Architectural Committee of any of its duties, powers and authority either generally or on a case-by-case basis. The Architectural Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations adopted by the Board of Directors or by resolution of the Board of Directors.

Section 7.04. Time for Response; Variances. The Architectural Committee shall act on all matters properly before it within 45 days after submission of a complete application in the form prescribed by the Architectural Committee; failure to do so within the stipulated time shall constitute an automatic referral to the Board of Directors. Except when a request is being handled by the Architectural Committee, the Board of Directors shall be obligated to answer any written request for approval of a proposed structural addition, alteration or improvement within 15 days after the first Board of Directors meeting held following such referral to the Board, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed structural addition, alteration or improvement. Directors or Architectural Committee have the right or power, by action or failure to act to waive enforcement or grant variances from written Design Guidelines without a specific finding that enforcement or such guidelines would impose an unfair burden on such Owner and stating the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirement of the Design Guidelines, all development conforming to such variance or exception shall be deemed to comply.

Section 7.05. Submission of Plans to Architectural Committee. No exterior addition, modification or alteration shall be made on any portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee.

- (a) Variance forms are available from the Management Company and are required to be submitted to the Architecture Committee for their review and approval. Completed variance forms should be sent to the Management Company at least three (3) weeks prior to the Towne Harbour Board meeting. The Management Company will forward the Architectural Committee's recommendation to the Board at least three (3) days prior to the following Board meeting.

- (b) Any Unit Owner having work completed without applying for a variance will be fined \$250. The Unit Owner will then have to go through the variance procedures as required by regulation, and if the variance is not approved can be fined at an amount to be determined by the Board, until compliance is obtained.

Section 7.06. Basis for Disapproval of Plans by Architectural Committee.

The Architectural Committee may disapprove any plans submitted pursuant to Section 7.05 above for any of the following reasons:

- (a) failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the 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, colors or color scheme, finish, proportion, style of architecture, propose parking;
- (d) incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- (e) failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations;
- (f) any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or position thereof or with improvements or uses in the vicinity.

Section 7.07. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.05 above, the Management Company on behalf of the Board of Directors shall notify the applicant in writing of such approval qualified approval, or disapproval, or which notification shall set forth any qualification or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval qualified approval, or disapproval. Approval of any such plans relating to any Lot 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 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 code or ordinance. Approval of any plans for use in connection

with any portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or Unit, or portion of the Property.

Section 7.08. Written Notification of Disapproval. In a case where the Architectural Committee disapproves any plans submitted hereunder, the Management Company, on behalf of the Architectural Committee, shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.06. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.09. 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 Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.10. Delegation of Functions. The Architectural Committee may authorize individual members of the Architectural Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee. 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 Committee.

Section 7.11. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any 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 7.12. Architectural Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title

insurer) of a portion of the Property, the Management Company, acting on behalf of 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 portion of the Property, or any Improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

## ARTICLE VIII

### PARTY WALLS

Section 8.01. Party Walls. Each wall on the dividing line between two Units shall be considered a party wall.

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

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

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

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

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit, which used the wall, may restore it. The Unit Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half the cost of such restoration) from the Owner of the other Unit, which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of a



Unit Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Encroachments. If any Unit encroaches upon any other Unit or Lot or upon any portion of the Association Property as a result of the construction of such Unit, or is any such encroachment shall occur as a result of settling or shifting of such Unit or portion thereof, there shall be an easement for such encroachment and for the maintenance of same so long as such encroaching Unit or portion thereof shall stand. In the event one or more Units or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or proceedings of similar import and effect, and such Unit(s) or portions thereof are thereafter built, inadvertent encroachments by such Unit(s) or portions thereof upon any other Unit or Lot, or upon any portion of the Association Property due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any such encroachment shall not be greater than two feet.

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

## ARTICLE IX

### INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (1) fire and casualty insurance, (2) liability insurance, (3) directors' and officers' liability insurance, and (4) fidelity bond.

The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

To the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant coverages shall be as follows:

1. Fire and Casualty. Coverage shall be for the full replacement value of the Units and other improvements under the "single entity" concept, i.e. covering the Units as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings, and all machinery servicing the Units and common facilities, (excluding the land, foundations, the personal property of Unit Owners and occupants), and any improvements or alterations ("betterments and improvements") (including, but not limited to: upgrading of appliances, kitchen cabinets, carpeting or other flooring surfaces, lighting fixtures, built-ins and wall-coverings) made by present or prior Unit Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, vandalism and malicious mischief, (ii) inflation guard, (iii) coverage for loss of maintenance assessments from Unit Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of the right of subrogation with respect to individual Unit Owners, their family members, and the officers and directors of the Association, (v) a provision that the policy shall in no event be brought into "contribution" by individual Unit Owners or mortgagees; (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (vii) cross-liability giving the Unit Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be cancelled or substantially modified without at least ten days prior written notice to all of the insured, including all mortgagees of Units reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two years to assure the sufficiency of coverage and (x) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or otherwise of the full replacement value of the Units for the purpose of determining the amount of fire insurance to be effected pursuant to this section.

The proceeds of all policies of physical damage insurance shall be payable to the Association or to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Unit Owners as hereinafter set forth.

The policy shall contain the standard mortgagee clause in favor of such mortgagee of a Unit which shall provide that any loss shall be payable to the mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Board of Directors and the Insurance Trustee as set forth below. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

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

Duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of Units.

If the Board of Directors decides not to insure the dwelling Units or decides to insure the dwelling Units in an amount less than that necessary to provide for the full replacement or reconstruction of the damaged improvements taking into account coinsurance provisions, each Unit Owner shall, at the Unit Owner's sole cost and expense, purchase and maintain fire and extended coverage insurance in such amounts as from time

to time may be required by the Board of Directors, from a company licensed to do business in the State of New York. Such insurance shall be in the standard New York State form and shall cover loss and damage to the Lot, Unit, and all other improvements on the Lot. All insurance policies shall cover the interest of the Unit Owner, the Association, and mortgagees, if any, as their interests may appear.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Unit Owners, but not the liability of Unit Owners arising from occurrences within such Owner's Unit or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

This public liability insurance shall be in a combined single minimum limit of \$1,000,000, covering all claims for bodily injury and property damage.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage provides for insurance to be available to defend suits against officers and directors of the Association and to pay any claims, which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.

5. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

6. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

7. Deductible. With respect to property insurance, the deductible shall apply to each occurrence, not each item of damage. The Association may pay the portion for which an individual Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration. (See Section 9.02 regarding responsibility for payment of deductible.)

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Units in a Building are destroyed or substantially damaged and the Owners of 75% or more of all Lots and of all Lots in the Building decide within 90 days after such damage or destruction not to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage (including demolition) to all the insured property, provided, however, that no payment shall be made to an Owner until there has first been paid off out of such Owner's share of such funds all liens of such Owner's Lot.

In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against the Owners of the damaged property, which special assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property Units. If the Board of Directors cannot reasonably determine the allocation of damage among Units and Association Property, the insufficiency of funds can be deemed a common expense.

In the event of damage or destruction of any Unit or other improvements on the Property as a result of fire or other casualty covered by insurance obtained by or through the Association, the **deductible amount** of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

- i. If the property damaged is from improvements which the Association has the responsibility to maintain, (i.e. the roof) the Association shall be responsible for the deductible amount, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount.
- ii. If the property damaged is from or within a Unit or from any utility line or conduit, which services such Unit or other Units, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount.

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

Section 9.03. Insurance Carried by Unit Owners. Unit Owners shall not be prohibited from carrying other insurance for insuring all elements of his/her Unit and its contents and or 'betterments and improvements', to the full value thereof, against property damage from all causes (i.e. H0-6 Insurance Policy). All such policies shall contain waivers of subrogation and a waiver of reduction of liability as a result of any insurance carried by any other person, and a waiver of invalidity arising from acts of the insured, the Board of Directors or other Unit Owners. Such policy shall provide that it may not be cancelled or substantially modified without at least 30 days prior written notice to the Board, which may, at its option, pay any premium necessary to continue the required coverage and may add it to the common charges next assessed against the Unit Owner. Upon demand by the Board or its designee a Unit Owner shall promptly furnish such proof of insurance as the Board may require.

All Unit Owners shall indemnify the Board of Directors, the Association and the other Unit owners against any damage to the Common Elements caused by such Owner's negligence, but only to the extent that such damage is not covered by available insurance.

## ARTICLE X

### GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. No sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property (including temporary signs advertising property for sale or rent) except with the consent of the Architectural Committee.

Section 10.02. Animals, Birds and Insects. Except for one dog or one cat per Unit, (of any weight) no animals, birds or insects shall be kept or maintained within Towne complex. A dog or cat residing in a Unit for seven (7) consecutive days shall be deemed a resident of the Unit.

1. No resident or guest may have a dog or cat on the premises that constitutes a nuisance to other residents, behaves in any way injurious to the Association Property, or is threatening to the residents. This specifically includes dogs that bark excessively, defecate outside the Unit (without cleaning up), and dogs or cats unleashed outside the Unit.

a.) The Board will enforce the provisions of this section as follows:

1 <sup>st</sup> Reported Offense	-	\$ 50.00 fine
2 <sup>nd</sup> Reported Offense	-	\$ 75.00 fine
3 <sup>rd</sup> Reported Offense	-	\$ 200.00 fine
4 <sup>th</sup> Reported Offense	-	\$ 500.00 fine
5 <sup>th</sup> Reported Offense	-	immediate removal of applicable animal

Any fine levied against an Owner is an assessment owed by the Owner against whom the fine is levied, which fine if remaining unpaid shall constitute a lien against his/her Unit.

Board of Directors reserves its rights to have any animal removed from the property at their discretion if such animal acts in a manner in violation of this Article X.

b.) A resident who feels that a provision of this section is being violated, should address the Board in writing, using the Complaint Form, specifying which portion of the section is being violated and by whom. The complainant must sign the correspondence, but their identity will not be revealed to the alleged violator.

2. Renters and or Tenants are not allowed to harbor, house cats and or dogs on the Property.

3. All dogs residing within the Property shall have:

- A current state or US Dept. of Agriculture rabies certificate
- A valid dog license
- Copies of the above documents must be provided to the Association annually.

4. There shall be no more than one dog or cat permitted in each unit.

5. A dog or cat residing in a unit in excess of seven (7) consecutive days shall be deemed to be residing in such unit.

6. Dogs or cats shall be under resident's control at all times and shall be leashed when outside Owner's Unit.

7. Residents and guests shall be responsible for picking up and disposing of their dog or cat's waste deposits. A bag for this purpose shall be carried by the person walking the dog or cat.

8. Tethering of dogs or cats beyond the resident's property lines is prohibited.

9. Dogs or cats may not be housed, caged or fenced beyond the property lines of the Resident's Lot.

10. Upon demise of a dog or cat, the dog or cat may be replaced, within the confines of Article X.

11. Feeding of waterfowl within the Property or on its shoreline is prohibited.

Section 10.03. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, build 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, at such place on the Lot or other portion of the Property designated by the Association so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

Section 10.04. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Architectural Committee.

Section 10.05. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Architectural Committee.

Section 10.06. Television, Satellite Dish and Radio Antennas. No television, satellite dish measuring more than one (1) meter, radio, CB or other communication antennas shall be erected on any Lot or other portion of the property, except antennas that do not exceed the current standards set by the FCC. Owners should apply for a variance by submitting a request to the Board of Directors, and decisions will be made on a case by case basis regarding size, type and location.

- (a) An Owner may apply to the Board of Directors for a variance to have the antenna installed on the roof above such Unit. The Towne Harbour Architectural Committee shall determine on a case by case basis the acceptability of size and type of antenna and shall report its findings to the Board of Directors for their approval. Owners shall submit the variance request on behalf of tenants.
- (b) Antennas installed shall not encroach upon any Association Property.

Installation on Roof:

- (a) Owners shall supply the following information to the Board when applying for a variance to have an antenna installed on a roof.

- Name of contractor (with proper insurance coverage listed below).
  - An insurance certificate showing that the contractor has general liability coverage with a minimum limit of \$1,000,000 and showing that Towne Harbour Association, Inc. is listed as a named insured.
  - A certificate showing that the contractor has met all statutory requirements and is carrying all statutory limits of workers' compensation.
  - Starting and completion dates
  - Size and type of antenna
- (b) Only insured contractors are permitted to install antennas to any roof. No Owner may install any antenna to any roof or to any other Association Property.
- (c) After installation is complete, a final inspection will be performed by a representative of the Management Company. If the Management Company finds that the installation does not meet the minimum roof bracket standards (contact Management Company for installation diagram), the Owner is responsible for having the contractor complete the installation so that the minimum roof bracket standards are fully met or for having the contractor remove the antenna and restore the roof to its original condition.
- (d) All installations shall be completed so they do no materially damage the Units, or void any warranties of the Unit or other Owners, or in any way to impair the integrity of the building.

Safety:

- (a) Antennas must be secured so they do not jeopardize the soundness or safety of any structure or the safety of any person at or near the antennas, including damage from a wind velocity, and shall comply with all applicable city, state and federal laws and regulations, and manufacturer's instructions. Owners, prior to installation, shall obtain any applicable and necessary governmental permit, if required, for safety or other reasons.
- (b) Antennas shall not obstruct access to or exit from any Unit, walkway, ingress or egress from an area, electrical service equipment, or any other areas necessary for the safe operation of the Unit.
- (c) Antennas must be permanently grounded.



Maintenance:

- (a) Owners who install or cause to have installed antennas are responsible for all associated costs, including, but not limited to, costs to:
  - i. Place, replace, repair, maintain, move or remove antennas. The cost of maintenance includes, but is not limited to, the cost of any maintenance found to be needed by an annual inspection of roof-mounted satellite dishes.
  - ii. Repair damage to any property caused by antenna installation, maintenance use or removal.
  - iii. Pay medical expenses incurred by persons injured by antenna installation, maintenance or use or removal.
  - iv. Reimburse residents or the Association for damage caused by antenna installation, maintenance use or removal.
  - v. Restore antenna installation sites to their original condition.
- (b) Owners shall not permit their antennas to fall into disrepair or to become a safety hazard. Owners shall be responsible for antenna maintenance, repair and replacement, and the correction of any safety hazard immediately upon discovering such safety hazard or upon being informed of the same.
- (c) If antennas become detached, Owners shall remove or repair such detachment within 72 hours of the detachment. If the detachment threatens safety, the Association may remove antennas at the expense of the Owner.
- (d) Owners shall be responsible for antenna repainting or replacement if the exterior surface of antennas deteriorates.

Antenna Removal:

Antenna removal requires restoration of the installation to its original condition. Owners shall be responsible for all costs relating to restoration of this location.

Association Maintenance of Locations Upon Which Antennas are Installed:

- (a) If antennas are installed on property that is maintained by the Association, the Owners retain responsibility for antenna maintenance. Antennas must not be installed in a manner that will result in increased maintenance costs for the Association or other residents. If increased maintenance or damage occurs, the Owners are responsible for all

such costs. Notification forms are available from the Management Company.

- (b) If maintenance requires the temporary removal of antennas, the Association shall provide Owners with 10 days written notice. Owners shall be responsible for removing or relocating antennas before maintenance begins and replacing antennas afterward. If they are not removed in the required time, then the Association may do so at the Owner's expense. The Association is not liable for any damage to antennas caused by the Association's removal.

Notification Process:

- (a) Any Owner desiring to install an antenna must submit a variance request describing the type and size of antenna to be installed and the location in which antenna is to be installed. The variance request shall be submitted to the Towne Harbour Architectural Committee and forwarded to the Management Company.

Installation by Tenants:

- (a) These Rules shall apply in all respect to tenants. If a tenant desires to install an antenna, the Unit Owner shall submit the variance request.

Section 10.07. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Board of Directors.

Section 10.08. Residential Use Only. The Property shall be used only for residential purposes and purposes incidental and accessory thereto.

Section 10.09. Commercial and Professional Activity on Property. No business, profession or home industry shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except such business as may be conducted on the Property electronically.

Section 10.10. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except as may be permitted by the Board of Directors, (unless prohibited altogether by the applicable zoning requirements).

Section 10.11. Outdoor Repair Work. No extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Board of Directors.

Section 10.12. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with maintenance of the Property, the following shall not be permitted to remain overnight on the Property:

- a. any vehicle which cannot fit into a garage;
- b. commercial vehicles as determined by the Board of Directors, in its' sole discretion, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 10.13. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Board of Directors of the Association.

## ARTICLE XI

### ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

Section 11.02. Enforceability.

- (a) Actions at Law or Suits in Equity. 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 (being hereby deemed the agent for all of the Owners), and by any 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.
- (b) Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or of the rules and regulations of the Association or any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against an Owner shall be deemed a Special Assessment against the Lot of such

Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

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

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, 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 Lot, Unit or other portion of the Property owned by such violator, if any.

Any actions brought by an Owner against the Association must be brought in Ontario County.

Section 11.05. Inspection and Entry Rights. Any committee member and/or agent of the Association (or the Architectural Committee) may at any reasonable time or times, enter upon a 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 hereto. Entry into a Unit will require 24 hours' notice to the Owner unless an emergency exists. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason such entry or inspection.

In addition to the above, if the Landscaping Committee 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 unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Unit. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent of the Owners of not less than two-thirds (2/3) of all Units or Lots which are subject to this Declaration.

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

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

Section 11.08. When Amendment or Rescission Becomes Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Ontario. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09. Duration and Termination. This Declaration shall continue with full force and effect perpetually unless terminated or its duration shortened by the affirmative vote of not less than 90% of the total number of Owners after a Hearing is held in accordance with Section 4.08 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 or more than 45 days after the Hearing. Notice of such vote, containing the date, duration, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Section 11.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Section 11.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing

prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.12. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.13. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII

### GENERAL

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

Section 12.02. Notice. Any notice required to be sent to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Owner or mortgagee on the records of the Association at the time of such mailing.

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

Section 12.04. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other Owner's or residents' association or similar entity.

### ARTICLE XIII

#### LEASING HOMES (UNITS)

Any Unit may be leased by its Owner free of any restrictions except those referenced in this Article XIII. No Owner shall lease his Unit unless and until all unpaid assessments against his/her Unit shall have been paid to the Association.

##### Section 13.01.

- (a) Owners may lease their Units for any term of not less than six (6) months or more, pursuant to a form of lease agreement approved by the Board of Directors.
- (b) Owners are responsible for their tenants (including guests and invitees) compliance with the Towne Harbour Declaration, By-Laws and Rules and Regulations.
- (c) For the approval of the Board of Directors, the form of a lease agreement shall:
  - i. Be consistent with the Declaration, By-Laws of the Association as the same may be amended from time to time, and provide that the tenant shall comply therewith. Said lease must further provide that if the tenant fails to comply with the provisions of the aforementioned Declaration, By-Laws, Rules and Regulations, as amended, such failure will be substantial violation of the lease and that the Board of Directors shall be authorized to terminate said lease and bring summary proceedings to evict the tenant in the name of the Owner/Landlord.
  - ii. Provide that the Board of Directors shall be reimbursed by the Owner/Landlord for costs and expenses incurred in connection with summary proceedings to evict the tenant.
  - iii. Provide that if the Owner/Landlord becomes delinquent in the payment of assessments the Board of Directors can evict the tenant.
  - iv. Specifically incorporate the Unit occupancy limitation by tenant.

- v. Provide that tenant shall not sublet the Unit or part thereof without prior written consent of the Owner/Landlord, which written consent must be filed with the Board of Directors.
  - vi. Provide for written approval, as to the form of the lease agreement, by the Board of Directors, with this Section 13.02 subparagraphs 1 through 7 provided.
  - vii. Provide that paragraphs of the lease agreement relating to this Section subparagraphs 1 through 6 above may not be modified or amended without prior approval and written consent of the Board of Directors.
- (d) A fully executed copy of each approved lease; exclusive of financial details, shall be delivered to the Board of Directors or its Managing Agent, to be kept in the permanent records of the Association.
  - (e) Leases entered into by Owners in violation of the provisions of this Section shall be voidable at the election of the Board of Directors. The Board may terminate a lease and bring summary proceedings to evict the tenant, only after due notice and an opportunity to be heard is given to the Owner/Landlord and the tenant.
  - (f) Any Owner, after due notice and an opportunity to be heard, found by the Board of Directors to be permitting his home to be occupied by a tenant in violation of any provisions of subparagraphs (a) through (d) of this section, may be fined by the Board.
  - (g) Any Owner whose tenant, after due notice and an opportunity to be heard, has been found by the Board of Directors to have violated any provision of the Declaration or By-Laws, or any Rule or Regulation of the Association may be fined by the Board.
  - (h) Any Owner, after due notice and an opportunity to be heard, who fails to secure his tenants', guests', invitees' compliance with the determination and direction made by the Board of Directors to ensure his tenants', guests', invitees' compliance with the Declaration, By-Laws and Rules and Regulations of the Towne Harbour Association, Inc. may be fined by the Board of Directors.
  - (i) No fines may be levied in an amount in excess of \$25.00 for any one violation, but for each day a violation continues after written notice, it may be considered a separate violation. Any fine levied against an Owner is an assessment charge owed by the Owner against whom the fine was levied and shall constitute a lien against his/her home.

It is suggested that upon submission and subsequent approval of the lease, the tenant be furnished with a copy of the Declaration, By Laws



and Rules and Regulations of Towne Harbour Association, Inc. A receipt should be secured upon delivery of these papers. The cost of printing to be borne by the Association.

- (j) Under the terms of the lease, no tenant is allowed any pet of any kind, including but not limited to dogs, cats, etc.

## **ARTICLE XIV**

### **DOCKS**

These General Covenants and Restrictions regarding the 'Boating' Docks at Towne Harbour referenced in this Article XIV are promulgated for the safety and convenience of the users thereof and are also adopted to enhance the preservation of such 'Docks' and to serve to promote the best interests of the Members.

#### Section 14.01.

- (a) All docks are the property of and are to be maintained by the Towne Harbour Association, Inc.
- (b) No boats in excess of twenty-three feet (23'), as designated by the boat registration, shall be allowed to dock at Towne Harbour Island. An Owner requesting an exception from this rule shall submit a variance to the Board of Directors. Owners as of November 17, 2015 in violation of this rule will be allowed to keep their boat(s) until such boat(s) are changed/replaced, after which time they must be in compliance with the above referenced rule (i.e. less than twenty-three feet (23') or approval of a submitted variance).
- (c) Each Owner shall be entitled to a single dock space for their use. This right of dock use will transfer with ownership of the property.
- (d) A current New York State boat registration and valid insurance certificate for each boat must be on file with the Association.
- (e) An Owner's unused assigned, primary dock space may only be loaned or rented to another Owner or resident. The loan or rental agreement of the assigned, primary dock space shall be submitted to the Board of Directors for their approval and will include the names of the parties involved, addresses, and boat registration and valid insurance certificate. No individual Owner shall sell user rights to another Owner. All user transfers will be the sole responsibility of the Board of Directors.
- (f) Any modification to any dock space, including boat lifts, must be submitted to the Board of Directors by a variance and approved by the Board prior to the dock modification.

- (g) Towne Harbour residents who have visitors with boats who wish to use the Towne Harbour docks must first contact the dock master for approval on behalf of the Board. Approved guests are limited to a one week period per calendar year for usage of such dock; unless written approval has been granted by the Board in the form of a variance request. Visitor's boats may not exceed twenty- three feet (23') in length.
- (h) If Owners are unable to use their assigned primary dock due to low water levels, they may send a written request to the dock master for temporary assignment of another primary dock, which request will be forwarded to the Board for consideration. If approved, they will be given priority on the second dock list and no second dock fee will be collected.
- (i) **Second Docks**
  - i. The Association will initiate a first come first served waiting list for those Owners interested in having a second dock for their use. The list shall be maintained by the dock master and those on the list shall be notified as soon as a dock becomes available. Second docks are only available for use by residents. The dock master shall determine the location of the second dock and determine which of the Owners' water crafts will be assigned to it.
  - ii. Upon award of use of a second dock, the Owner shall pay to the Association an annual fee of \$500 by June 1, beginning June 1, 2019. If the Owner paid a deposit of \$1000 to the Association prior to 2019 under the secondary dock fee requirement then in effect, they will be credited that amount and will not pay a second dock fee until June 1, 2021 or be reimbursed that deposit, pro rata, if the second dock is no longer needed.

## **ARTICLE XV**

### **LANDSCAPING**

The Towne Harbour Association provides only the landscaping services enumerated below. It is the Owner's responsibility along with the Association to create a positive visual appearance of the neighborhood and to maintain physical and natural landscaping assets. On behalf of the Board, the Landscaping Committee is solely responsible for directing landscape work performed by contractors for the work described below. Any additional work performed at the request of the Owner will be at the Owner's expense.

The Towne Harbour Association Board approves budgets annually with input from the Landscaping Committee. The Landscaping Committee is made up of a Chairperson and 5-6 Committee Members approved by the Board. There are no term limits for these positions.

Section 15.01. Planters and Flower Gardens. The Association will supply when available, and maintain when feasible, the concrete planters and posts currently in place in the gardens of the units until such time as the Board, upon recommendation of the Landscaping Committee, determines they are not visually attractive or financially feasible. Residents, at their own expense, are responsible for buying the plants, planting the planters before June 1, and maintaining the planters throughout the summer.. If the planters are not planted or are not maintained, the Landscaping Committee reserves the right to take recourse.

The Owner may have flower gardens and is responsible for buying, planting and maintaining their flower gardens. The Landscaping Committee has the oversight of the esthetics of all gardens and has the authority to require adjustments to the size, plant selection, and maintenance level of all gardens, and will notify the Owner of required changes at the Owner's expense.

Flower gardens must be cut down by December 1 each year to allow for effective spring cleanup and mulching. If the Owner does not meet the deadline and the mulching cannot be economically accomplished, the contractor's surcharge will be passed along to the Owner.

Section 15.02. Approved Trees, Shrubs, Evergreens, and Groundcover. The Landscaping Committee, in conjunction with the landscaper retained by the Committee, will periodically inspect, fertilize, conduct pest control, and remove inappropriate, dead, diseased or dying plants at its sole discretion. The Landscaping Chairperson or designated committee member, in conjunction with a representative of the Management Company and/or the landscaper, will determine the need for replacing the tree, shrub, evergreen or groundcover with similar plantings. The Owner will be notified of the decision prior to removal and/or replacement. If the Owner wants to plant or remove additional plants, the Owner must submit a variance to the Landscaping Committee for its review and for Board approval prior to purchase/planting.

The Landscaping Committee, in its discretion, may propose rules to the Board regarding the allowable species and sizes of trees, shrubs, evergreens and groundcover, the preservation of trees and other natural resources, and wildlife upon the Property.

Section 15.03. Mulch. Where needed, the landscaping mulch will be supplemented or replaced yearly by the Association, at the discretion of the Landscaping Committee and the Board of Directors. The depth will be determined by the landscaper to insure coverage and adequate protection for the plants, but also to deter rodents. Owners who desire more mulch than is provided by the Association may do so at their own expense but shall match the color and type of product provided by the Association after obtaining approval from the Landscaping Committee.

Section 15.04. Pruning. All trees, shrubs, evergreens and groundcover will be routinely pruned and maintained by the landscaper retained by the Association to provide a uniformly esthetic and neat appearance to the community. Pruning will be at the discretion of the landscaper, dependent on time of year, weather and or growth cycles of the plantings.

Section 15.05. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plot, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels. The slope control areas of any other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 15.06. Lawns. The Association will be responsible for mowing, fertilizing, pest control, and seeding all lawns in the Lots and Property, on a schedule established by the Landscaping Committee.

## ARTICLE XVI

### ENFORCEMENT PROVISIONS

When essential for the best interest of the community, the Towne Harbour Board of Directors and its Committees have the right to enforce the "General Covenants and associated Rules and Regulations" hereinabove stated and or attached hereto, by invoking the provisions referenced herein below (provisions are not in any specific order, nor is the Association restricted in the use of any provision referenced below):

1. Forward a courtesy letter to the Owner /Violator detailing the infraction and applicable Rule (covenant), along with an applicable timeframe and procedure to cure/rectify such infraction.

*\*(Such courtesy letter may require Owner/Violator to respond in writing to the Towne Harbour Board of Directors referencing their rectification of such infraction. All responses (if applicable) would be required in the timeframe previously allotted/referenced in such courtesy letter).*

2. Forward a demand letter, US CERTIFIED MAIL RETURN RECEIPT REQUESTED to the Owner/Violator detailing the infraction and applicable rule, along with a specific timeframe of not more than 48 hours for rectification, upon receipt of demand letter.

*\*(Demand Letter to be followed up with by Management Company personnel where applicable)\**

3. Levy a one-time fine penalty (amounts of fines and/or penalties are at the sole discretion of the Towne Harbour Board of Directors), which shall be added to the regular

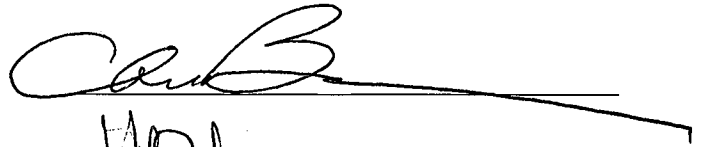
monthly assessment for the affected Unit(s). A levy of \$250 will be levied when a variance has not been filed and approved for any addition or work that requires such.

4. Levy an additional assessment of \$10.00 - \$25.00 per day for each day the violation continues and/or for each occurrence.
5. Towne Harbour Board of Directors, its Committees and/or the Management Company will enter the property where the affected Unit is located to "extinguish" a violation (i.e., mowing tall weeds, removing an illegal structure, etc.), and shall further bill all costs incurred back to the applicable Owner/Violator, which shall be added to the regular monthly assessments for the affected Unit(s).
6. Restrict the Owner/Violator (its guests, family members, etc.) the right to use and enjoy the Towne Harbour amenities, to file a variance request and/or the right to exercise their vote as an Owner of Towne Harbour.
7. File a lien on the property of anyone delinquent in paying charges or refusing to comply with a Board decision.
8. Move for foreclosure of a Unit that is delinquent in paying any charges as referenced hereinabove.

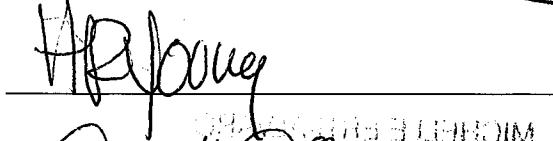
Other factors and/or circumstances may be taken into consideration by the Towne Harbour Board of Directors and its Committees; such as, the severity of the non-compliance infraction(s), how often the Owner/Violator is in non-compliance with the "General Covenants and or Rules and Regulations", what means and/or procedures were/have been taken to rectify the infraction in the past (if applicable), etc.

The Board of Directors of Towne Harbor Association, Inc., hereby certifies this Second Restated Declaration is an integration of the two (2) amendments to the Restated Declaration, which were previously duly approved by the Association members

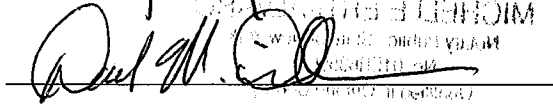
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Dated: 10/16/18



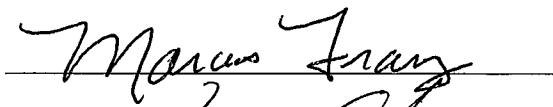
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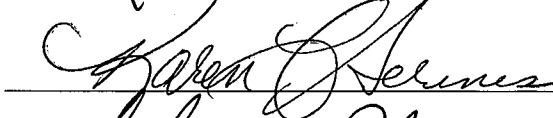
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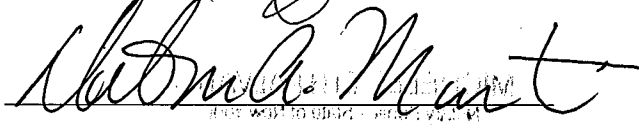
Dated: 10/16/18



Dated: 10/16/18



Dated: 10/16/18



STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONTARIO         )

On the 16th day of October in the year 2018, before me, the undersigned, personally appeared Marcus Franz, Karen Serinis, Debra A. Martin, Chris Burgasser, Russ Young, David Dillon and Brian R. Miller, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Sworn to me this  
16th day of October, 2018

**MICHELLE ERTI-ALVARO**  
Notary Public - State of New York  
No. 01ER6359020  
Qualified in Ontario County  
My Commission Expires 9/22/2021

**SCHEDULE A**

**LANDS COVERED BY THE DECLARATION**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Canandaigua, County of Ontario and State of New York being bounded and described as follows:

BEGINNING at the northeasterly corner of lands conveyed to the Mader Corporation by deed recorded in Liber 745 of Deeds at Page 157; said Point being the southeasterly corner of Holiday Harbour, Phase I;

RUNNING THENCE: S-15 -26'-35"-E, along the easterly line of said Mader Lands, a distance of 549.64 feet to a point;

RUNNING THENCE: S-67 -49'-00"-W, along a southerly line of said Mader Lands, a distance of 339.86 feet to a point;

RUNNING THENCE: N-04 -32'-20"-E, along an easterly line of said Mader Lands, a distance of 90.0 feet to a point;

RUNNING THENCE: S-82 -50'-40"-W, along a southerly line of said Mader Lands, a distance of 400.0 feet to a point on the easterly line of a 40.0 foot wide permanent channel easement;

RUNNING THENCE: N-28 -28'-10"-W, along the easterly line of said easement, a distance of 559.29 feet to a point on the northerly line of said Mader Lands being on the southerly line of Holiday Harbour, Phase I;

RUNNING THENCE: N-77 -01'-50"-E, along said line, a distance of 824.04 feet to a point or PLACE OF BEGINNING containing 10.375 Acres be the same, more or less.

BEING AND INTENDED to be a portion of lands conveyed to the Mader Corporation by deed recorded in Liber 745 of Deeds at page 157.



The Board of Directors of Towne Harbour Association, Inc., hereby certifies the revision of the SECOND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS, Article XIV, Docks, Section 14.01, which was previously duly approved by the Association members:


(b) No boats in excess of twenty-four feet (24') for boats with outboard motors and twenty-five feet (25') for all others, as designated by the boat registration, shall be allowed to dock at Towne Harbour Island. An Owner requesting an exception from this rule shall submit a variance to the Board of Directors. Owners as of November 17, 2015, in violation of this rule will be allowed to keep their boat(s) until such boat(s) are changed/replaced, after which time they must be in compliance with the above referenced rule or approval of a submitted variance.

(g) Towne Harbour residents who have visitors with boats who wish to use the Towne Harbour docks must first contact the dock master for approval on behalf of the Board. Approved guests are limited to a one-week period per calendar year for usage of such dock unless written approval has been granted by the Board in the form of a variance request. Visitor's boats may not exceed twenty-four feet (24') in length for boats with outboard motors and twenty-five feet (25') for all others. Any deviation from this must have prior authorization from Dockmaster.

Dated: 07/16/2024

  
Marilyn Cushman

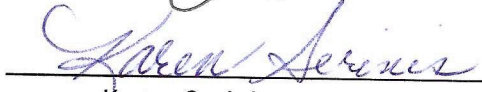
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Michael Feldmeyer

Dated: 07/16/24

  
Graham Gorst

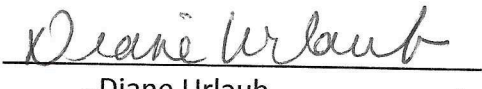
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Karen Serinis

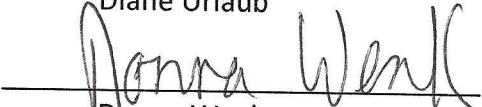
Dated: 7/16/24

  
Bill Shaheen

Dated: 7/16/2024

  
Diane Urlaub

Dated: 7/16/24

  
Donna Wenk

STATE OF NEW YORK        )  
  ) SS.:  
COUNTRY OF ONTARIO        )

On the 16th day of July in the year 2024, before me, the undersigned, personally appeared Marilyn Cushman, Michael Feldmeyer, Graham Gorst, Karen Serinis, Bill Shaheen, Diane Urlaub, and Donna Wenk, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signature on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

Alyssa M. Corbett  
Notary Public

Sworn to me this  
16<sup>th</sup> day of July, 2024

*Corbett*  
~~ALYSSA M. SERINIS~~  
Notary Public, State of New York  
Monroe County Reg. #01SE6370097  
Commission Expires 01/29/ 26