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THE SMOKE RISE CLUB, INC.

DECLARATION OF COVENANTS AND RESTRICTIONS

DATED: _____, 2005

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE SMOKE RISE CLUB, INC.

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, is made this _____ day of _____, 2005, by the owners of lots who are members of The Smoke Rise Club, Inc. (hereinafter the "Club"), a non-profit corporation of the State of New Jersey, with its principal offices at 9 Perimeter Drive, Kinnelon, Morris County, New Jersey 07405.

BACKGROUND

A. The Club is a planned community originally organized by the Smoke Rise Company, Inc., which commenced the sale of Lots (hereinafter defined) within the Smoke Rise Reservation in or about 1948.

B. Various parties have succeeded to the rights of the Smoke Rise Company, Inc. (the Smoke Rise Company, Inc. and such parties being hereinafter referred to as the "Smoke Rise Developers") and continued the sale of individual Lots and dwellings, and have subjected all such Lots to a scheme of restrictive covenants and encumbrances set forth in the initial deed of conveyance from a Smoke Rise Developer or set forth in an addendum to a deed of conveyance in connection with a subsequent sale of a Lot by a Smoke Rise Owner (hereinafter defined) (the scheme of restrictive covenants and encumbrances being hereinafter referred to as the "Smoke Rise Community Plan").

C. The Smoke Rise Community Plan provides that the covenants, conditions and restrictions as set forth therein may be modified in whole or part by a vote of the majority of the Lot Owners (hereinafter defined) in the Smoke Rise Reservation.

D. In order to conform with contemporary concepts of planned developments; to more efficiently operate the Smoke Rise Community; to provide for flexibility in the rules by which the owners are governed in order to respond to changing conditions, and to amend the administration of the community to reflect the values and experience of the Smoke Rise Community, a majority of the Owners of Lots in Smoke Rise have approved the adoption of this Declaration of Covenants and Restrictions.

PART I: INTRODUCTION TO THE COMMUNITY

The Smoke Rise Lot Owners have adopted this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall administration, maintenance and preservation of the Smoke Rise Community as planned development. Part I

describes the historical creation of the Smoke Rise Community and the general effect of the Declaration on property interests within the Smoke Rise Community.

1.0 **Establishment of Community.** Pursuant to the individual deeds of conveyance from the Smoke Rise Company, Inc., its successors and assigns, the Smoke Rise Developers established a Smoke Rise Reservation and created the Smoke Rise Community Plan by which each Lot Owner within Smoke Rise is bound. An integral part of the Smoke Rise Community Plan is the operation and maintenance of various common areas and community improvements by The Smoke Rise Club, Inc., whose duties include the administration and enforcement of this Declaration and the other Governing Documents referred to in this Declaration. Each Lot Owner, subject to satisfying certain pre-conditions, is a member of the Smoke Rise Club.

2.0 **Binding Effect.**

2.1. Property and Persons Bound. All Lots conveyed by the Smoke Rise Company, Inc., or its successors or assigns, and the Dwellings located thereon, shall be owned, conveyed and used subject to all of the provisions of this Declaration which shall run with the title of each of the Lots. This Declaration shall also be binding upon the property owned by The Smoke Rise Club, Inc. (“Common Property”). The lands constituting the Lots that are subject to this Declaration and the Common Property shall hereinafter be referred to as the “Property.” This Declaration shall be binding upon all persons having any right, title or interest in any portion of the Property, as well as the occupants of any Dwelling, and their guests and invitees.

2.2. Enforcement of Governing Documents. Enforcement of the Governing Documents shall be by the Club according to the procedures set forth by reference in Article XV of the Bylaws and by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction against any person or persons, firm or corporation violating or attempting to violate or circumvent any covenant; or to recover damages against any Owner to enforce any lien created by this Declaration in any covenant herein contained; or by self-help. Additionally, the Lot Owners having agreed that any violation of the terms of the Governing Documents may cause irreparable harm, the Club shall be entitled to obtain an injunction in a court of competent jurisdiction to enjoin any activity that is in violation of the Governing Documents.

2.3. No Obligation to Enforce. The Club will not be obligated to enforce every violation of the terms, conditions, covenants, restrictions, Rules and Regulations contained in any of the Governing Documents if the Board

determines, in the reasonable exercise of its discretion, that it is imprudent, impractical or infeasible to enforce any particular Rule; it having been determined that it is in the best interests of the Lot Owners to vest the broadest discretion in the Board with respect to the enforcement of the Governing Documents, provided, however, the Board will have an obligation to enforce the Governing Documents if the failure to do so would have a material detrimental impact upon the value of any of the Lots or would materially affect the common welfare of the Lot Owners. Nothing in this Declaration is intended to prevent any Lot Owner from undertaking an appropriate action at law or in equity to enforce the terms of any of the Governing Documents.

- 2.4. No Waiver. No provision contained in this Declaration, its Exhibits, or the Rules and Regulations shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

PART II: DEFINING THE PROPERTY INTERESTS; RESPONSIBILITY FOR MAINTENANCE.

The concept of ownership of a planned community is different than other forms of real property. The following sections describe the maintenance responsibilities of the Lot Owners in connection with the Lots, and the Club, in connection with the Common Property.

3.0 **Definitions and Concepts.** The following terms, when capitalized in this Declaration, shall have the following meanings, unless the context in which they are utilized clearly indicates otherwise:

- 3.1 “**Annual Assessment**” means the total revenues projected to be collected from all Lot Owners pursuant to the budget adopted by the Club members as set forth in Article IX, Section 2, of the Bylaws and shall also mean, as the context indicates, the allocable share of the Club’s budget assessed to an individual Lot.
- 3.2 “**Authorized Votes**” means the number of votes equal to one vote for each Lot in the Smoke Rise Community.
- 3.3 “**Board**” means the Board of Governors of the Club and any reference in this Declaration or in the Certificate of Incorporation, Bylaws or Rules and Regulations to any power, duty, right of approval or any other right of the Club shall be deemed to refer to the Board and not the membership of the Club, unless the context expressly indicates to the contrary.

- 3.4 “**Bylaws**” means the Bylaws of the Club, a copy of which is attached hereto as Exhibit “B,” together with all future amendments or supplements thereto.
- 3.5 “**Certificate of Incorporation**” means the Certificate of Incorporation of the Club together with all future amendments or supplements thereto, attached hereto as Exhibit “C.”
- 3.6 “**Club**” means The Smoke Rise Club, Inc., a New Jersey non-profit corporation, formed to administer, manage and operate the common affairs of the Lot Owners of the Smoke Rise Community and to maintain, repair and replace the Common Property as provided in this Declaration and the Bylaws.
- 3.7 “**Common Property**” means the real property owned by the Club and all improvements constructed thereon, including any improvements that may be hereinafter constructed, or the replacement of any existing improvements or hereinafter constructed improvements.
- 3.8 “**Common Expenses**” means the expenses incurred or anticipated to be incurred by the Club for the general benefit for all Lots, including any reasonable reserve (exclusive of capital or deferred maintenance reserves), as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Certificate of Incorporation.
- 3.9 “**Community Standards**” means the standard of conduct, maintenance or other activity established by the Board for all properties within the Smoke Rise Community. The standard is expected to evolve over time and may be amended from time to time by the Board.
- 3.10 “**Declaration**” means this instrument together with all future amendments or supplements thereto.
- 3.11 “**Design Guidelines**” means the architectural guidelines and procedures, if any, adopted pursuant to Section 11.0 of this Declaration.
- 3.12 “**Dwelling**” means a structure intended for use and occupancy as a detached residence for a single family; provided, a garage apartment or similar structure on the Lot containing living quarters in addition to the primary dwelling on such Lot shall not be deemed a separate Dwelling.
- 3.13 “**Eligible Mortgage Holder**” means and refers to any holder of a first mortgage encumbering any Lot who has requested, in writing, by certified mail, return receipt requested, notice of certain matters from the Club. The notice to the Club must state the name of the mortgage holder and the address

to which notices are to be sent and shall identify the mortgaged Lot. All notices to an Eligible Mortgage Holder shall be effective upon mailing to the address provided by the mortgage holder, unless the address is modified by written notice given to the Club in the same manner as provided above.

- 3.14 **“Eligible Votes”** means the number of Lots whose owners are in good standing, as defined in Article III, Section 5, of the Bylaws.
- 3.15 **“Governing Documents”** means this Declaration, the Bylaws, the Certificate of Incorporation, and any Rules and Regulations adopted by the Board.
- 3.16 **“Lease”** means any agreement for the leasing or rental of any Lot or Dwelling, including any sublease.
- 3.17 **“Lot”** means an independent parcel of property upon which a Dwelling has been constructed or upon which a Dwelling may be constructed in accordance with all applicable law, or any individual parcel of property shown on a final subdivision map recorded in the Office of the Clerk of Morris County, which has been conveyed to an individual owner by a Smoke Rise Developer.
- 3.18 **“Lot Owner”** or **“Owner”** means one or more persons having fee simple title to a Lot, as shown on the records of the Morris County Clerk’s office, but despite any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until the mortgagee has acquired title to any Lot following foreclosure proceedings or any proceeding in lieu of foreclosure, nor shall the term “Lot Owner” or “Owner” refer to any lessee or tenant of a Lot Owner.
- 3.19 **“Permitted Mortgage”** means and refers to any mortgage lien encumbering a Lot held by a bank, mortgage banker, trust company, insurance company, savings and loan association, pension fund, governmental agency or any Eligible Mortgage Holder, or which is a purchase money mortgage held by the seller of a Lot, or any other mortgage lien which is expressly subordinate to any existing or future common expense liens imposed against a Lot by the Club.
- 3.20 **“Property”** shall have the meaning set forth in Section 2.1 of this Declaration.
- 3.21 **“Purchasing Lot Owner”** has the meaning set forth in Section 18.1 of this Declaration.

- 3.22 “**Quorum**” means, in connection with any membership meeting, 15 percent of the Eligible Votes unless otherwise required as set forth in this Declaration or by the Certificate of Incorporation or the Bylaws.
- 3.23 “**Rules and Regulations**” means those rules and regulations set forth in Exhibit “E” to this Declaration, together with all future amendments or supplements thereto, lawfully adopted by the Board in accordance with the powers granted to it under the Governing Documents or by law.
- 3.24 “**Selling Lot Owner**” has the meaning set forth in Section 18.1 of this Declaration.
- 3.25 “**Smoke Rise Community**” means (i) the Property; (ii) all improvements now or hereinafter constructed in, upon, over or through the Property, whether or not shown on any exhibit to this Declaration; (iii) all rights, roads, privileges belonging to or associated with the Property; and (iv) any and all lands, premises, roads, interests, improvements, privileges which may be added to the Smoke Rise Community.
- 3.26 “**Smoke Rise Developer**” has the meaning set forth in Recital “B” on Page 1 of this Declaration.
- 3.27 “**Tenant**” means any person having a possessory interest in a Dwelling. Any person not an Owner who resides in a Dwelling for more than 30 days (whether or not the Owner is present) will be deemed a tenant and the Owner must comply with all Use Restrictions and Rules and Regulations, if any, applying to tenancies, unless the Owner provides proof to the reasonable satisfaction of the Board that the person residing in the Dwelling is not a tenant.
- 3.28 “**Use Restrictions and Standards**” means those restrictive covenants and standards set forth in Exhibit “D” to this Declaration.

4.0 **General Description of Smoke Rise Community.** As of the date of this Declaration, the Smoke Rise Community includes the lands described in Exhibit “A” and 952 Lots, as the same may be increased by the conveyance of a Lot by a Smoke Rise Developer to a third-party purchaser or the subdivision of an existing Lot, or decreased as the result of the merger of two or more Lots.

5.0 **Maintenance Obligations of Lot Owners.**

- 5.1. Maintenance of Dwellings and Lots. Each Owner shall maintain his or her

Lot, Dwelling and all structures, parking areas, landscaping and other improvements located on the Lot in a manner consistent with the Community Standards, unless such maintenance responsibility is otherwise assumed or assigned to the Club.

Each Owner shall also: (i) maintain, mow, irrigate, replace sod and prune all landscape lying within the right-of-way of adjacent streets and roads between the Lot boundary and the curb or edge of pavement of such street or road, and between the Lot boundary and any adjacent easements for pedestrian paths or sidewalks, in a manner consistent with the Community Standards; and (ii) maintain, repair and replace any drainage culvert located under a driveway serving an Owner's Lot, unless responsibility for maintaining such landscaped areas or drainage culverts has been assigned to and assumed by the Club.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Club may perform such maintenance responsibilities and assess all costs incurred by the Club against the Lot and the Owner in accordance with Section 12.4 of this Declaration. The Club shall afford the Owner notice and a reasonable opportunity to cure the failure to maintain prior to entry, except where entry is required due to an emergency situation. "Emergency situation" shall refer to any situation in which there is imminent peril to life or property.

5.2. Responsibility for Repair and Replacement. Each Owner shall be responsible for obtaining and maintaining property insurance on all insurable improvements on his or her Lot. Each Owner further covenants and agrees that in the event of damage to or destruction of structures or other improvements on his Lot, the Owner shall proceed promptly to repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11.0 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community Standards. The Owner shall pay any costs which are not covered by insurance proceeds.

5.3. Misuse or Negligent Act by an Owner. If, due to the misuse, negligent act or omission to act by a Lot Owner, or a member of his family or household pet, a guest, occupant or visitor of a Lot Owner (whether authorized or unauthorized by the Lot Owner), damage shall be caused to the Common Property, or to the Lot(s) or Dwelling(s) owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then the Lot Owner shall pay the cost of restoring the damage and be liable for any damages, liability, costs, expenses, including attorney's fees, caused by or arising out of the circumstances. Further, the required maintenance, repairs and replacements to the Common Property or the Lot(s) shall be subject to the Bylaws and the Rules and Regulations.

5.4. Maintenance of Common Property. Except as otherwise set forth in this Declaration, the maintenance, repair and replacement of the Common Property shall be the responsibility of the Club, in accordance with the terms of the Bylaws.

PART III: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct within the Smoke Rise Community provide the Community with its identity and make it a place in which people desire to live. This Declaration establishes a set of standards that were agreed upon by the Lot Owners upon adoption of this Declaration, and further establishes a procedure under which the Lot Owners may readily modify the standards as the Community changes and as technology and public perceptions change.

[TURN TO EXHIBIT “D” FOR THE USE RESTRICTIONS AND STANDARDS ADOPTED BY THE LOT OWNERS.]

6.0 Compliance by Owners.

6.1. Obligation to Comply. Each Owner or occupant of a Lot or Dwelling shall comply with, and shall assume ownership or occupancy subject to laws, rules and regulations of governmental authorities having jurisdiction over the Smoke Rise Community, the provisions of the Governing Documents and any other documents, amendments or supplements to the foregoing. Failure to comply with any provisions of the Governing Documents shall be grounds for judicial relief to prohibit non-compliant behavior or activities (“injunctive relief”) by the Smoke Rise Club, or any Lot Owner, and for such other sanctions or relief as set forth in the Bylaws (including, without limitation, the imposition of fines) and as may be available at law or in equity.

6.2. Legal Fees and Costs. In the event the Club files a lawsuit, counterclaim or third-party claim, against any Lot Owner to enforce any term or provision of the Governing Documents, and the Club prevails on its claim, the Club shall be entitled to collect reasonable costs and attorneys’ fees from the Lot Owner in connection with the claims, counterclaims or third-party claims asserted. If the Club seeks to collect its reasonable costs and fees, it will cause the costs and fees to be set forth in the judgment or order of the court adjudicating the claim. Collection of attorneys’ fees and costs may be enforced against any Lot Owner as if the attorneys’ fees and costs were a Common Expense owed by the Lot Owner.

7.0 **Periodic Review of Use Restrictions and Standards.** Upon the sixth anniversary of the recording of this Declaration, and every six years thereafter, the Club will provide written notification to all Lot Owners requesting recommendations for: (a) modification of existing Use Restrictions and Standards; (b) deletion of existing Use Restrictions and Standards; or (c) adoption of new Use Restrictions and Standards. Upon

receipt of written responses within 30 days thereafter, the Board will determine, with the assistance of its attorney, whether the recommendations received are lawful, and mail a written survey to the Lot Owners to determine whether any of the lawful recommendations receive the support of 15 percent or more of the Eligible Votes. If, within 30 days after the mailing of its survey, the Board receives approval by 15 percent or more of the Eligible Votes for any recommendation, it shall refer the recommendation to the attorney for the Club who shall prepare, in appropriate form, an amendment to this Declaration, together with such amendments as may be proposed by the Board. The prepared amendments shall be submitted to the Lot Owners for approval by ballot. Any proposed amendment receiving the lesser of (a) two-thirds of the Eligible Votes cast where at least 50 percent of the Eligible Votes are cast; or (b) 60 percent of all Eligible Votes, shall be deemed adopted. The Board shall allow a time period of not less than 90 nor more than 360 days for the receipt of ballots. The ballots shall be cast at a meeting of the members called by the Board, provided the meeting may be coincident with the annual meeting of the Club. This Declaration may also be amended as provided in Article 22.0 of this Declaration.

8.0 Board's Rule Making Authority. In addition to the Use Restrictions and Standards the Board is authorized to adopt Rules and Regulations as set forth in Article V, Section 1(a), of the Bylaws. The Rules and Regulations in effect as of the adoption of this Declaration are annexed as Exhibit "E."

9.0 Adoption of Rules by Lot Owners. The Lot Owners, at a special meeting duly called pursuant to Article IV, Section 3, of the Bylaws, may adopt rules that further implement, define or amplify upon existing Use Restrictions and Standards or which provide exceptions to Use Restrictions and Standards, by a vote of a majority of all of the Eligible Votes. Any such rules thus adopted shall be referred to the attorney for the Club to be placed in proper form.

10.0 Owner's Acknowledgement and Notice to Purchasers.

10.1. Use of Lots. All Lot Owners and occupants of Lots are given notice that the use of their Lots is limited by the Use Restrictions and Standards as they may be modified under this Declaration. Each Lot Owner further acknowledges that there is no vested right to continue conduct that is prohibited by the adoption of amendments to the Use Restrictions and Standards except as expressly provided by law. Each Lot Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot may be affected by this provision and that the Use Restrictions and Standards may change from time to time in accordance with Article 7.0 above.

10.2. Vested Rights. Despite any statement in Section 10.1 that may indicate to the contrary, no rule or Use Restriction and Standard that is adopted after the adoption of this Declaration may prohibit the conduct contained totally within a Dwelling, provided such conduct was being lawfully conducted at the time the new rule or Use Restriction or Standard

was adopted, and further provided the conduct sought to be prohibited is not detrimental to the safety or health of other Owners.

It shall be the obligation of an Owner claiming the right to continue conduct in violation of a new rule or Use Restriction and Standard to prove, to the reasonable satisfaction of the Board, that an exception, as set forth in this Section, applies to the Owner.

11.0 Architecture and Landscaping.

11.1 Review Required. No structure shall be placed, erected or installed upon any portion of the Property and no improvements (including staking, clearing, excavation, grading, and other site work, and exterior alteration of existing improvement) (such activities being referred to in this Article as “Work”) shall take place within the Property except in compliance with this Article and the Design Guidelines, if any, promulgated pursuant to Paragraph 11.4(a) of this Declaration.

This Article shall apply to any structure or improvement, grading, site work or exterior alteration of an existing improvement proposed by a sub-club.

This Article shall not apply to the activities of the Club, nor shall it apply to maintenance of an existing improvement or like-kind replacement of an existing improvement or the maintenance or replacement of an improvement hereinafter approved pursuant to this Article.

11.2 Each Owner acknowledges that the Owners have a substantial interest in insuring that the improvements upon the Property enhance the Smoke Rise Community’s reputation. Therefore, each Owner agrees that no Work shall be commenced on the Owner’s Lot unless and until the Board, or an architectural review committee appointed by it, has given its prior written approval for such Work.

11.3 Architecture and Variance Committee. The Board may, from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to an Architecture and Variance Committee appointed by the Governor of Architecture and Variance, as provided in Article V, Section 7, of the Bylaws.

The Architecture and Variance Committee (“AVC”) shall consist of at least three but not more than nine persons (in addition to the Governor of Architecture and Variance). The members of the AVC must be members of the Club in good standing and may, but need not, include architects, engineers or similar professionals whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Members of the committee shall continue to serve for the

designated term until: (i) resignation; (ii) the approval of a motion to remove one or more members of the committee by members of the committee representing three-quarters of its full membership (but not counting the member whose removal is proposed); or (iii) the approval of a motion to remove one or more members of the committee by nine members of the Board.

11.4 Guidelines and Procedures.

- (a) Design Guidelines. The Board, or to the extent delegated to the AVC, the AVC, may, but shall not be required to, establish design and construction guidelines and review procedures (the “Design Guidelines”) to provide guidance to Owners regarding matters of particular concern to the Smoke Rise Club. The Design Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of an application.

Any Design Guidelines adopted pursuant to this Section shall be subject to amendment from time to time. Any Design Guidelines proposed to be adopted by the AVC must be approved by the Board. The Board shall have the right to adopt, supplement, amend or delete any Design Guidelines as the Board, in its sole discretion, may determine. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modifications has commenced.

The AVC shall make copies of the Design Guidelines, if any, available to Owners, and builders who seek to engage in construction on a Lot, and may charge a reasonable fee to cover its printing costs.

- (b) Procedures. Prior to commencing any Work for which review and approval is required under this Article, an application for approval of such Work shall be submitted to the reviewing entity in such form as may be required by the reviewing entity or the Design Guidelines. The application shall include plans showing the site layout, exterior elevations, exterior materials and color, landscaping, drainage, lighting, irrigation, and other features of the proposed construction, as required by the Design Guidelines, if any. The reviewing entity may require the submission of such additional information as it deems necessary to consider any application.

The reviewing entity may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevation, harmony of external designs surrounding structures and environment, location and relation to surrounding structures, compliance with the general intent of the Design Guidelines, if any,

and architectural merit. Decisions may be based on purely aesthetic considerations. The determinations as to such matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The reviewing entity shall, within 30 days after receipt of each submission of the plans, advise the parties submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of the plans, or (ii) the disapproval of such plans, specifying the segments or features of the plans which are objectionable and suggestions, if any, for curing of such objections. In the event the reviewing entity fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the plans, the applicant may give the reviewing entity written notice of such failure to respond, stating that unless the reviewing entity responds within 14 days of receipt of such notice, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given. If any time period stipulated herein would expire on a legal holiday, Saturday or Sunday, the time for response shall be deemed extended to the next business day. No approval granted by default shall be inconsistent with the Design Guidelines, if any, unless a variance has been granted pursuant to Paragraph 11.4(d).

If construction does not commence on any Work for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans for reconsideration in accordance with such Design Guidelines as are then in effect prior to commencing such work. All Work shall be completed within 12 months of commencement (as evidenced by the date of the building permit, if any, for the Work, or otherwise upon the date of actual commencement of the Work) or such greater or lesser period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the reviewing entity. If the Owner fails to complete the Dwelling within the permitted time period, the Club may deny access by the contractors, subcontractors or agents of the Owner to the Smoke Rise Community and the Club shall be authorized to cause any incomplete structure to be demolished or completed, and all disturbed areas of the Lot to be graded and properly stabilized, all of which shall be at the sole cost and expense of the Owner and may be charged to the Owner and collected from the Owner in the same manner as Common Expenses. The Club shall have no liability whatsoever to the Owner for demolishing or completing a structure in accordance with the terms of this subparagraph (b), and the commencement of construction of any improvement by an Owner or Owner's agent shall be an acknowledgement

that the Owner releases the Club from any such liability.

- (c) No Waiver. Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to improvements involved but the reviewing entity may review to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.
- (d) Variations. The reviewing entity may, but shall not be required to, authorize variance from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, extreme hardship, or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as it may determine in its sole discretion. Such variances shall be granted only when, in the sole judgment of the reviewing entity, unique circumstances exist, and no Owner shall have any right to demand or obtain a variance. No variance shall (i) be effective unless it is in writing, (ii) be contrary to this Declaration, or (iii) estop a reviewing entity from denying a variance in other circumstances.

In the event of a request for a variance, the reviewing entity and the applicant for a variance shall observe the following procedures: (i) the application for a variance must be set forth in writing, and if the reviewing entity has adopted a specific variance application form, all information requested in such form shall be provided by the applicant, together with such plans or other documentation as may be requested by the reviewing entity; (ii) the reviewing entity shall review the application and accompanying documentation within 45 days of receipt, and if any additional documentation is deemed necessary by the reviewing entity, it shall so advise applicant, in writing, within such 45-day period; (iii) prior to rendering any decision with respect to an application, the applicant shall provide a notice in the manner described below, of the nature of the variance application, including a copy of the actual application, to all Lot Owners owning a Lot that is located within 200 feet from the Lot upon which a variance is requested; (iv) when requested by the reviewing entity, a hearing may be held to obtain oral testimony with respect to the requested variance, in which event the applicant shall be required to provide written notice of the time, date and place of the hearing to the same parties receiving notice as specified in subpart (iii) above; and (v) the reviewing entity shall issue a written decision concerning the request for a variance by the later of 30 days following receipt of all requested

documentation or 30 days following a hearing. In the event a hearing is held the reviewing entity shall appoint a chair whose determinations with respect to all procedural matters before the reviewing entity shall be final and binding.

The notice to Lot Owners described above shall be provided by the applicant for a variance by certified mail return receipt requested not later than 14 days after filing of an application with the reviewing entity. The applicant shall provide proof of such notice to the reviewing entity. The notice shall provide that any Lot Owner receiving the notice may provide written objections concerning the variance application to the reviewing entity.

The reviewing entity may, by resolution, adopt such additional procedural rules as it may deem necessary, provided the rules are not inconsistent with this section.

- (e) Limitation on Liability. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Smoke Rise Community, but neither the Club nor the AVC shall bear any responsibility for ensuring structural integrity or soundness, or compliance with building codes and other governmental requirements, or ensuring that structures are located so as to avoid impairing view from or other negative impact on neighboring Lots. Neither the Club, the Board, the AVC or any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any plans or specifications submitted, nor for any structural or other defects in Work done according to the approved plans, nor for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any structure.
- (f) Enforcement. Any Work performed in violation of this Article or in a manner inconsistent with the approved plans shall be deemed to be nonconforming. Upon written request from the Club or AVC, Owners shall, at their own cost and expense, remove any non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the non-conforming Work. Should an Owner fail to remove and restore as required, the Club or its designee shall have the right to enter the Lot, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Club may assess any costs incurred in taking enforcement action under this Section, together with interest and maximum rate then allowed by law, against the

benefited Lot in the same manner as a Common Expense assessment.

PART IV: FISCAL MANAGEMENT

Ownership of a Lot in the Smoke Rise Community creates both rights in, and obligations of, Owners. One of the essential obligations is the payment of annual and special assessments, without which the Club cannot perform, among other things, essential maintenance functions. The following sections describe the assessment obligation of Owners and the powers of the Club to collect those assessments.

12.0 List of Assessments; Notice of Assessment; Certificate as to Payment and Lien for Assessment.

12.1. Annual Assessments. Subject to the requirements that the Owners approve the budget created by the Board, as set forth in Article IX, Section 2, of the Bylaws, the amount of monies for expenses of the Club deemed necessary by the Board and the manner of its expenditure shall be the responsibility of the Board. Annual Assessments shall be made for the fiscal year of the Club and the Owners shall pay the Annual Assessments as provided in Article IX, Section 6, of the Bylaws. Each Lot containing a Dwelling will pay an Annual Assessment equal to each other Lot within Smoke Rise that contains a Dwelling. Each Lot that does not contain a Dwelling will pay one-half of the Annual Assessment due from Lots that contain Dwellings, provided, however, that where: (a) such a Lot has been merged with a Lot containing a Dwelling; (b) the Lot Owner has, by recording a deed with the Morris County Clerk, imposed a restrictive covenant prohibiting the development of such Lot in perpetuity in form and substance reasonably satisfactory to the Board; and (c) named the Club as an intended beneficiary of the restrictive covenant, no additional Annual Assessment shall be charged to such Lot; the only assessment being that charged to the Lot containing the Dwelling. In order to qualify for exemption from an Annual Assessment on an undeveloped Lot, the Lot Owner shall provide the Club with a copy of the recorded deed imposing the restrictive covenant required in accordance with this Section. The Board shall prepare an annual budget and the resultant per Lot assessment in accordance with Article IX, Section 2, of the Bylaws. The annual budget and the amount of the Annual Assessment for each Lot, which shall be kept in the Club office and shall be open to inspection, upon request, by any Lot Owner. Written notice of the Annual Assessments shall be sent to every Lot Owner.

12.2. Default Assessment. If an Annual Assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, and monthly installments on such assessment shall be due upon each installment payment date until changed by the Board by an amended assessment. If the Lot Owners do not approve a new budget, the Annual Assessment shall be established in accordance with a budget deemed approved in accordance with Article IX, Section 2, of the Bylaws.

12.3. Additional Assessment to Lots Uniquely Benefited. In addition to other

assessments authorized in this section, the Board may levy an additional assessment applicable only to a Lot Owner with annual recurring, non-routine maintenance charges relating to such Lot that are not common to all Lots in the Smoke Rise Community.

12.4. Special Assessments. In case of necessity or unusual circumstances, the Board of Governors may recommend "Special Assessments" and the basis for such assessments to the Membership for any sums needed for the support of the operations of the Club, or to replace or acquire additional Club properties. Such assessments can only be levied when approved by a majority of the votes of the Voting Members, who cast votes either in person or by proxy, at a meeting called for that purpose upon ten (10) days written notice to each Voting Member.

12.5. Personal Obligation. Every Lot Owner, by acceptance of a deed or other conveyance for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Club all assessments and other charges more particularly described in this Declaration. Upon the conveyance of title to a Lot, the portion of the then current Annual Assessment payable by the purchaser shall be an amount that bears the same relationship as the Annual Assessment period bears to 365.

12.6. Certification of Amount Due. The Club shall, upon the request of any Lot Owner liable for an Annual Assessment, or of the Eligible Mortgage Holder of any Lot, furnish to such Lot Owner or mortgagee, a certificate in writing, signed by an officer of the Club, setting forth whether or not such Annual Assessment has been paid. The certificate shall constitute conclusive evidence of the payment of Annual Assessments stated in the certificate to have been paid, provided that if the certificate is in error, it shall not relieve the owner of record at the time such certificate was issued from being responsible for the payment of the full sum due.

12.7. No Avoidance of Liability. No Lot Owner may waive or otherwise avoid liability for Common Expenses by non-use of the Common Property. Each assessment shall be a continuing lien upon the Lot against which it was made and shall also be the personal obligation of the owner of the Lot at the time when the Annual Assessment fell due, together with interest thereon and cost of collection thereof (including attorney's fees). Liens for unpaid Annual Assessments may be foreclosed by suit brought in the name of the Club in the same manner as a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid Annual Assessments may be maintained without waiving the lien securing them.

13.0 **Use of Common Expenses.** The Annual Assessments shall be used exclusively for promoting the health, safety, pleasure and welfare of the members of the Club, including, but without limitation, the maintenance, repair and replacement of Common Property; payment of all taxes and insurance premiums; all costs and expenses incidental to the operation and administration of the Club; and such other items as may from time to time

be deemed appropriate by the Board.

14.0 **Acquisition Fee.** The financial obligations of purchasers to the Club are specifically set forth in Article IX, Section 11, of the Bylaws.

PART V: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the Smoke Rise Community is dependent upon the support and participation of every Owner in its governance and administration. This Declaration affirms The Smoke Rise Club, Inc., as the mechanism by which each Owner is able to provide that support and participation. The following sections, in addition to the Bylaws, describe the basic governance structure of the Club.

15.0 **The Administering Club.** The Smoke Rise Community shall be administered, supervised and managed by The Smoke Rise Club, Inc., a non-profit corporation of the State of New Jersey, having its principal office at 9 Perimeter Road, Borough of Kinnelon, Morris County, State of New Jersey, which shall act by and on behalf of the Lot Owners in accordance with this instrument, the Bylaws and the law applicable to the operation of the Smoke Rise Community. The Bylaws form an integral part of the plan of ownership described in this Declaration and this instrument shall be construed in conjunction with the provisions of the Bylaws. The Club is hereby designated as the form of administration of the Smoke Rise Community and the Club is hereby vested with the rights and powers, privileges and duties necessary to and incidental to the proper administration of the Smoke Rise Community, the same being more particularly set forth in the Bylaws.

PART VI: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with the ownership of the Common Property by a separate corporate entity and including certain benefits and burdens, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Club and others within or having rights with respect to the Community.

16.0 Easements

16.1. **For Benefit of Lot Owners.** Every Lot Owner, his successors and assigns, shall have the following perpetual easements with respect to the Common Property:

- (a) A non-exclusive easement for ingress and egress to his or her Lot in, upon, under, over, across and through the Common Property;
- (b) An easement in common with Owners of all other Lots to use all pipes, wires, cables, conduits, public utility lines, cable television and any other

utilities that may hereafter exist upon the Common Property to provide such services to the Owner's Lot; and

- (c) A perpetual and non-exclusive easement in, over and through the Common Property and to use the roads, walks and common facilities within the Smoke Rise Community subject to the right of the Board to:
- (i) promulgate Rules and Regulations for the use and enjoyment of the Common Property, including, without limitation, Rules and Regulations relating to the restriction of certain portions of the Common Property for use by the members of a Smoke Rise sub club;
 - (ii) suspend the enjoyment of any Lot Owner, including suspension of the right to utilize the facility known as the "Inn" in connection with any activity that is not open to the general public, as provided in Article III, Section 5, of the Bylaws, when any installment of the Annual Assessment remains unpaid, or so long as any infraction of its Governing Documents continues, it being understood that any suspension for either non-payment of any assessment or a breach of the Governing Documents of the Club shall not constitute a waiver or discharge of the Lot Owner's obligation to pay the assessment or comply with Governing Documents;
 - (iii) impose user fees upon any Lot Owner or group of Lot Owners in connection with any special services or privileges provided by the Club to such Lot Owner(s) and not provided or available to all Lot Owners;
 - (iv) grant an easement or license over all or any part of the Common Property, as the Board, in its sole discretion, may deem to be in the best interest of the Club, including, without limitation, the right to grant an easement or license to a sub-club over a portion of the Common Property for its use by the sub-club and its members; and
 - (v) dedicate or transfer all or any part of the Common Property, to any municipal, county, state, federal or other public agency, authority or utility, for such purposes and subject to such conditions as may be agreed upon by the Lot Owners, provided that such dedication, transfer or determination shall be authorized by the affirmative vote of two-thirds of

- (vi) the Eligible Votes present in person or by proxy at a duly constituted meeting of the members of the Club, and written notice of the proposed resolution authorizing such action will be sent to every Lot Owner at least 30 days in advance of the date of the scheduled vote, when such action will be taken. A true copy of such resolution together with a certificate of a result of the vote taken therein shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Club, and the certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property other than the Lots, prior to the recording thereof in the Office of the Morris County Clerk. The certificate shall be conclusive evidence of authorization by the membership.

16.2. For Benefit of Club and Others. The Property shall also be subject to the following easements:

- (a) The Club shall have a perpetual, exclusive easement for the existence, continuance, and maintenance of any Common Property, or of any improvements owned by it which presently or may hereafter encroach upon a Lot;
- (b) The Club, through the Board, or any manager, or managing agent, or other respective agents or employees, shall have the perpetual and non-exclusive right of access to each Lot to inspect it and remove any violations under the Governing Documents, to undertake such maintenance and make such repairs as it is authorized to make under Section 5.1 of this Declaration; provided that notice of entry is made in advance and that any such entry takes place during normal business hours that are reasonably convenient to the Lot Owner. In case of any emergency, such right of entry shall be immediate, whether the Lot Owner is present at the time or not;
- (c) Any Eligible Mortgage Holder, its officers, agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Club or any part thereof to inspect the condition and repair of the Common Property, or any mortgaged Lot. This right shall be exercised only during

reasonable daylight hours, and then whenever practicable, only after advance notice to and with permission of the Board and the Lot Owner;

- (d) A blanket, perpetual and non-exclusive easement in, upon, over, across and through the Common Property for the purpose of the installation, maintenance, repair, service and replacement of all sewer, water, power and telephone pipes, lines, mains, conduits, wires, poles, street lights, transformers or cable television facilities and any and all other equipment or machinery necessary or incidental to the proper function of any utility systems serving the Property, which easement shall be for the benefit of any governmental agency, or utility company or other entity which requires it for the purpose of furnishing one or more of the foregoing services; and
- (e) A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Property to the Borough of Kinnelon and their respective officers, agents and employees (but not the public in general) and all police, fire and ambulance personnel in the proper performance of their respective duties.

17.0 **Mortgage Provisions.**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained herein.

17.1. Notices of Action. Any institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Club stating its name and address and the street of the Lot to which its Mortgage relates shall be deemed an “Eligible Mortgage Holder” and shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Club; or

- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

17.2. Other Provisions for First Mortgagees. To the extent not consistent with New Jersey law:

- (a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Mortgage Holders of first Mortgages on Lots to which at least 51 percent of the votes of Lots subject to Mortgages held by such Eligible Mortgage Holders are allocated.
- (b) Any election to terminate the Club after substantial destruction or a substantial taking by condemnation shall require the approval of the Eligible Mortgage Holders of first Mortgages on Lots to which at least 51 percent of the votes of Lots subject to Mortgages held by such Eligible Mortgage Holders are allocated.
- (c) An election to terminate the Club under any other circumstances shall require the consent of 67 percent of the Eligible Votes, and the approval of the Eligible Mortgage Holders of the first Mortgages on Lots to which at least 67 percent of the votes of the Lots subject to a Mortgage held by an Eligible Mortgage Holder appertain.

17.3. Amendments to Documents. The approval of Eligible Mortgage Holders of first Mortgages on Lots to which at least 51 percent of the votes of Lots subject to a Mortgage held by an Eligible Mortgage Holder appertain shall be required to materially amend any provisions of this Declaration, the Bylaws or the Articles which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

17.4. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving an Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

17.5. Notice to Club. Upon request, each Owner shall be obligated to furnish to the Club the name and address of the holder of any Mortgage encumbering such Owner's Lot.

17.6. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements

less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

17.7. Construction of Article 17.0. Nothing contained in this Paragraph shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or New Jersey law for any of the acts set out in this Article 17.0.

17.8. Failure of Mortgagee to Respond. Any Eligible Mortgage Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Club does not receive a written response from the Eligible Mortgage Holder within 30 days of the date of the Club's request, provided such request is delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested, to the address specified by the Eligible Mortgage Holder in its notice to the Club requesting that it be deemed an Eligible Mortgage Holder.

17.9. Reasonable Charge. Wherever, pursuant to the Restated Declaration or the Amended Bylaws, a mortgagee may request documentation from the Club, the Club shall be entitled to charge a reasonable fee for the administrative costs of accumulating and forwarding copies of documents. This provision shall not apply to any document to which a mortgagee is entitled in connection with which the mortgagee's approval or vote is required.

PART VII: CHANGES IN THE COMMUNITY

The Smoke Rise Community is evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. The following provisions allow the Smoke Rise Community to adapt to change.

18.0 Changes in Ownership of Lots.

18.1. Notice of Transfer. Any Lot Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Club at least 10 days prior written notice of the name and address of the purchaser or transferee, the date such transfer of title is anticipated, and such other information as the Board may, by rule, require. The transferor (Selling Lot Owner) shall continue to be jointly and severally responsible with the transferee (Purchasing Lot Owner) for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Club, notwithstanding the transfer of title.

18.2. Orientation. No Purchasing Lot Owner shall meet the qualifications to be a member (as defined in the Bylaws) of the Club or be entitled to the benefits, entitlements or privileges of membership until the member has attended an orientation meeting with the Orientation Committee. Each Owner of a Lot must participate in the orientation meeting, whether or not such Owners intend to reside within the Smoke Rise Community. Upon completion of the orientation meeting, the committee designated by the Board to conduct

such meeting shall issue a certificate in the form approved by the Board, which certificate shall be filed in a book maintained by the Club for such purpose, and a copy of such certificate shall be provided to the Purchasing Lot Owner. Each new Tenant shall also attend an orientation meeting with the Orientation Committee.

18.3. Closing Certificate. The purchaser of any Lot may require a Selling Lot Owner to deliver to the Purchasing Lot Owner a certificate, issued by the Club, containing:

- (a) a statement setting forth the amount of the monthly Common Expense assessment currently due and payable from the Selling Lot Owner;
- (b) a statement of any other fees payable by the Selling Lot Owner;
- (c) a statement of any capital expenditures approved by the Club for the current and succeeding fiscal years;
- (d) the most recently prepared balance sheet and income and expense statement, if any, of the Club;
- (e) the current operating budget of the Club;
- (f) a statement of any unsatisfied judgments against the Club and the status of any pending suits in which the Club is a defendant;
- (g) a statement describing any insurance coverages maintained by the Club;
- (h) a statement as to whether the Board of Governors has given or received written notice that any existing uses, occupancies, alterations or improvements in or to the Lot violate any provision of the Declaration;
- (i) a statement as to whether the Board of Governors has received written notice from a governmental agency of any violation of environmental, health, or building code with respect to the Lot, or any other portion of the Smoke Rise Community which have not been cured;
- (j) a statement of any restrictions in the Declaration affecting the amount that may be received by a Lot Owner upon sale, condemnation, casualty loss to the Lot or to the Common Property, or termination of the Smoke Rise Community;
- (k) a statement describing any pending sale or encumbrance of the Common Property; and

- (l) a statement disclosing the affect on the Lot to be conveyed of any restrictions on the Owners' right to use or occupy the Lot or Dwelling located upon the Lot, or to lease the Lot, or Dwelling, to another person.

The Club may charge a reasonable fee, not to exceed \$150.00 for the preparation of the closing certificate. If not previously requested by the Selling Lot Owner, the Club shall issue the closing certificate upon a request by the Purchasing Lot Owner or its agent for a statement with respect to the status of Common Expenses, in which event an additional charge not to exceed \$150.00, will be added to the Seller's account.

19.0 Eminent Domain. If any part of the Common Property constituting more than one acre of land shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67 percent of the Eligible Votes) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking, including takings of less than one acre of land, shall be payable to the Club as trustee for all Owners to be disbursed as follows:

- (a) If the taking involves a portion of the Common Property on which improvements have been constructed, the Club shall restore or replace such improvements on the remaining land included in the Common Property to the extent available, unless within 60 days after such taking 67 percent of the Eligible Votes shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.
- (b) If the taking does not involve any improvements on the Common Property, or if the decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award of net funds shall be disbursed to the Club and used for such purposes as the Board shall determine.

20.0 Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Property. No Person shall seek any judicial partition unless the portion of the Common Property which is the subject of such partition action has been removed from the provisions of this Declaration. This Article 20.0 shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of real property which may or may not be subject to this Declaration.

21.0 Damage or Destruction. If an improvement upon the Common Property or any part thereof is damaged or destroyed by fire or casualty, the Board shall cause such improvement to be restored or repaired provided there are adequate proceeds of insurance to undertake such repair or replacement. In the event the insurance proceeds are insufficient to repair the damaged improvement, the Club may assess each Lot Owner an equal share of the

deficiency. In the event the Club determines not to repair or restore the damaged property, any insurance proceeds payable to a Lot Owner as a result of damage or destruction to his share of the Common Property must be assigned and shall be paid to the Eligible Mortgage Holder of a first mortgage lien on the Lot for application to the sums secured by said mortgage with the excess, if any, paid to the Lot Owners.

22.0 Amendment of Declaration.

22.1. Method for Amendment. In addition to the ability to amend the Use Restrictions and Standards, as set forth in Article 7.0 above, the Declaration may be amended as follows:

- (a) The provisions of this Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Club, certifying that such amendment has been approved at a meeting of the Lot Owners, held in accordance with the Bylaws, by the vote or written consent of at least 67 percent of the Eligible Votes present at a meeting called for this purpose, with a quorum for this purpose being 50 percent of the Lot Owners in good standing.
- (b) The Board of Governors will have the authority to amend this Declaration upon the affirmative vote of 75 percent of the full membership of the Board, solely when necessary to render this Declaration in compliance with any applicable law as set forth in a written opinion by the Club's counsel, but only to the extent necessary to render this Declaration compliant.
- (c) This Article 22.0 of this Declaration may be amended in accordance with the procedure in subpart (a) of this section, provided that the amendment must be approved by 67 percent of all Eligible Votes.

22.2. Effective Upon Recordation. An amendment will be effective upon its recordation in the Morris County Clerk's Office. Any amendment adopted under this provision will be distributed to the Lot Owners within 30 days of receipt of the recorded amendment, provided, however, that the failure to distribute will not render the amendment ineffective or void.

23.0 **Adjustment of Dollar Amounts.**

23.1. Consumer Price Index.

All dollar amounts set forth in this Declaration will change according to and to the extent of changes in the Consumer Price Index for Consumer Price Index-All Urban Consumer: New York-Northern New Jersey-Long Island, NY-NJ-CT-PA , All Items 1982-84=100, compiled by the Bureau of Labor Statistics, the United States Department of Labor, (the "Index"). The Index for December, 2004, which was 206.8, is the Reference Base Index.

23.2. Change in Dollar Amounts.

All dollar amounts specified in this Declaration will change on July 1 of each year if the percentage of increase, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, but (i) the portion of the percentage change in the Index in excess of any multiple of 10 percent must be disregarded and the dollar amounts will change only in multiples of 10 percent of the amounts appearing in this Declaration on the date of its adoption; (ii) the dollar amounts will not change if the amounts required by this section are those currently in effect pursuant to this Declaration as a result of the earlier application of this section; and (iii) in no event may the dollar amounts be reduced below the amounts appearing in this Declaration on the date of adoption.

23.3. Revision of Index.

If the Index is revised after the date of the adoption of this Declaration, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, the Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, then Index referred to in this Article is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers in the New York Metropolitan Area.

PART VII: MISCELLANEOUS

24.0 **Invalidity.** The invalidity of any provisions of this Declaration, the Certificate of Incorporation, or Bylaws of the Club shall not be deemed to impair or affect in any manner the validity, enforceability or affect the remainder of this Declaration or the Bylaws and in such event, all of the other provisions of this Declaration and the Bylaws shall continue in full force and as if such invalid provision had never been included therein.

25.0 **Gender; Headings.** The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires. The captions and headings contained in this Declaration are for convenience of reference only and shall not be construed as a limitation on the scope of any particular article, section or subsection of this Declaration. The captions may not be used in interpreting the meaning of any Article, section or subsection of this Declaration.

26.0 **Club's Power of Attorney.** By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Smoke Rise Community, each and every such contract purchaser, Lot Owner, mortgagee, or other lien holder or party having a legal or equitable interest in the Smoke Rise Community does automatically and irrevocably name, constitute, appoint and confirm the Club as Attorney-in-Fact for the following purposes: (i) to acquire title to or lease any Lot whose Owner desires to surrender, sell or lease the same, in the name of the Club or its designees, corporate or otherwise, on behalf of all Lot Owners to convey, sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise, dispose of any such Lots so acquired or to sublease any Lots so leased by the Club; (ii) to prepare, execute and record any amendments to the Declaration adopted hereunder. At no time shall the Club or the Board impose any right of first refusal or similar restriction on any Lots.

27.0 **Compliance by Owners; Membership in the Club.** Upon acceptance of a deed to a Lot and payment of any transfer fees, each Lot Owner shall automatically become a member of the Club. All Lot Owners, whether or not (a) qualifying as members or (b) having their membership rights revoked as provided in the Bylaws, shall be subject to all provisions of the Governing Documents, but shall not have the benefits or privileges of membership until complying with prerequisites for membership.

IN WITNESS WHEREOF, the Club has caused this instrument to be signed, sealed and delivered by its proper corporate officers and its corporate seal to be affixed on this _____ day of _____, 2005.

ATTEST:

THE SMOKE RISE CLUB, INC.

, Secretary

, President

STATE OF NEW JERSEY :
: ss.
COUNTY OF MORRIS :

BE IT REMEMBERED, that on this _____ day of _____, 2005, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared _____, who, being by me duly sworn upon his oath, deposes and makes proof to my satisfaction, that he is the Secretary of the Club, _____, the corporation named in the within instrument; that the execution, as well as the making of this instrument, has been duly authorized by a proper resolution of the Board Governors of the said corporation; that deponent well knows the corporate seal of said corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by said Member as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as attesting witness.

,Secretary

Sworn and subscribed to before
me on the date aforesaid

Notary Public

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EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

AMENDED BYLAWS

EXHIBIT C

CERTIFICATE OF

INCORPORATION

EXHIBIT D

USE RESTRICTIONS AND STANDARDS

USE RESTRICTIONS. The Lot Owners have adopted the following Use Restrictions and Standards for their common benefit and the benefit of the Smoke Rise Community:

- (a) Lots shall be used only as private single-family residences and such other uses as may be permitted under the zoning ordinances of the Borough of Kinnelon provided that no business, trade, or similar activity, may be conducted in any Lot, except that an Owner or occupant residing in a Lot may conduct “discrete business activities” within the Lot so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; the business activity does not involve regular visitation of the Lot or door-to-door solicitation of residents of the Property; and the business activity is consistent with the residential character of the Property and does not violate these Use Restrictions. Examples of “discrete business activities” include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that it determines interfere with the enjoyment or residential purpose of the Property in its sole and absolute discretion.
- (b) No Lot may contain more than one single-family dwelling, and may not contain any outbuildings or other structures separate from the principal dwelling that serves as a temporary or permanent residence for any person. No outbuildings or detached garages shall be permitted except as may be approved pursuant to Article 11.0 of the Declaration.
- (c) No structure shall be erected nearer to any Lot boundary than the limits established by the setbacks shown on any recorded subdivision plot, nor nearer than 50 feet from the front, side and rear lines of the Lot, whichever setback is greater. A variance may be granted from this restriction pursuant to the terms of Article 11.0 of the Declaration.
- (d) No nuisance or anything that is or may become an annoyance to other Lot Owners shall be maintained on any part of a Lot. All animals other than customary household pets shall be considered a nuisance. The Board may determine, by resolution, those pets that constitute “customary household pets,” and may further define, by resolution, those activities that constitute a nuisance, which, once defined, shall be binding upon all Lot Owners. No Lot Owner shall permit any dog to cause any injury to any persons or other animals, or to cause damage to any Common Property or any property of any other Lot Owner. The Board may, by resolution, limit the number and type of pets that may be kept or maintained in a Lot, provided, however, that in no event may the Board require the removal of pets validly kept or maintained within a Lot pursuant to a prior resolution of the Board, except that if the Board determines, in its sole discretion, that any particular breed of dog constitutes a safety or health risk to other owners (“malicious breed”), the Board may prohibit the keeping of specific malicious breeds, in which event the owners of any malicious breed may be required to remove it from the Smoke Rise Community within 30 days of the effective date of the resolution.
- (e) No power boats shall be permitted on the lakes or waters of the Smoke Rise Community except (i) those that are electrically powered, or (ii) those boats utilized by the Club.

- (f) No fertilizer containing phosphates may be utilized on any Lot or upon the Common Property. The Board may adopt rules and regulations controlling the use of any fertilizer, pesticide or other chemical treatment that the Board reasonably determines has, or with the passage of time is likely to have, a detrimental impact on the environmental quality of any water body within Smoke Rise.
- (g) Commencing June 1, 2006 any unregistered vehicles or equipment of the following types shall not be parked on any Lot except fully within a garage: mobile homes, recreational vehicles, vehicles in excess of three tons, school buses, vehicles or equipment containing lettering, logos or commercial equipment racks of any nature, trailers, watercraft and aircraft. Registered vehicles of the type described in the preceding sentence must, if not garaged, be parked in the rear or side yard of a Lot and may not be parked in full or part in the front yard. For purposes of this section “front yard” shall be that portion of a Lot lying between the portion of the Lot that fronts upon a road and a line extended across the entire Lot that is coincident with the front façade of the dwelling upon the Lot. The “rear yard” shall be the area from the rear boundary of the Lot to a line extended across the entire width of the Lot that is coincident with the rear façade of the dwelling. “Side yard” shall be those areas on the Lot lying between the front yard and the rear yard. No commercial vehicles of any type may be parked upon the roads or right-of-ways within Smoke Rise, except commercial vehicles parked during the period of time emergency service or repairs is being provided to a Lot Owner. “Commercial vehicle” shall mean and refer to any vehicle: (i) containing any lettering, marking or insignia (other than lettering, marks or insignia applied by the manufacturer to identify the make and model of the vehicle); or (ii) containing any equipment intended for commercial use, such as, but not limited to, ladders, racks, snow plows, or the like, whether or not such equipment is actually used for commercial purposes and despite whether or not the vehicle is commercially registered with the New Jersey Department of Motor Vehicles; or (iii) exceeding 20 feet in length, whether or not the vehicle is commercially registered with the New Jersey Department of Motor Vehicles. Vehicles that do not violate the commercial indicia set forth above will not be considered commercial vehicles solely because they are registered as commercial vehicles with the New Jersey Department of Motor Vehicles. “Recreation vehicle” shall mean and refer to: (i) any vehicle designed or altered in a manner to accommodate the sleeping of one or more individuals; (ii) any motorized vehicle designed or altered in a manner to permit it to be used off of public roads including, without limitation, all-terrain vehicles, snowmobiles, wave runners, and jet skis, but excluding sport utility vehicles or other similar vehicles registered for use on the public roads of the State of New Jersey; and (iii) other motorized vehicles not identified above but which are primarily intended for recreational use not on a public road.
- (h) No fence shall be constructed unless approved in accordance with the terms of Article 11.0 of the Declaration.
- (i) No tent or temporary building may be erected or maintained upon any Lot, except tents temporarily erected for lawn parties or similar functions, provided such tents are erected for not more than three days.

- (j) Each Lot Owner is responsible to maintain the property lying between the Lot boundary and any adjoining road surface. If the Lot Owner fails to maintain the Property in accordance with this subparagraph (i), the Club shall have the right to perform such necessary maintenance pursuant to the terms of Section 5.1 of the Declaration.
- (k) Each Lot Owner shall arrange for sanitary disposal of all sewage, garbage and rubbish.
- (l) No signs of any kind, except for signs constructed of wood that contain the house number or the resident's name, or both, shall be permitted upon a Lot or within a Lot that is visible upon the Common Property. No newspaper boxes shall be permitted unless such box is manufactured as an integrated part of an approved United States Post Office mailbox.
- (m) No builder, contractor, real estate salesman or broker may utilize a Lot or Dwelling located thereon to conduct any business within the Smoke Rise Community, except as expressly set forth in subparagraph (a) of this Exhibit E.
- (n) No immoral, improper, offensive or unlawful use shall be made of any Lot; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over a Lot shall be observed.
- (o) No hazardous substance or hazardous waste (as those terms are defined pursuant to regulations issued by the New Jersey Department of Environmental Protection) may be stored in any Lot, except hazardous substances that are used in connection with commonly available household products intended for interior use and storage.
- (p) RESTRICTION AGAINST MEGAN'S LAW REGISTRANTS.
 - i. No person required to register with a designated registering agency pursuant to N.J.S.A. 2C:7-3, and who is thereafter determined to be a Tier-2 or Tier-3 registrant pursuant to N.J.S.A. 2C:7-8(c)(3) ("Megan's Law Registrant"), may permanently or temporarily reside in a Lot. As used in this section "resides" means living in or possessing any portion of a Lot for more than 14 days out of any 30 consecutive-day period.
 - ii. If, subsequent to the recording of this Declaration in the records of the Clerk of Morris County, a Megan's Law Registrant resides in a Lot as a tenant, or under any other possessor interest, the Lot Owner must immediately cause the person to vacate the Lot and, if the person does not vacate the Lot within 30 days of the date the Lot Owner was notified by the Club of the presence of a Megan's Law Registrant, then the Lot Owner will immediately commence eviction proceedings. If the Lot Owner fails to commence the eviction proceeding within 30 days following the date the Lot Owner is required to do so and diligently pursue the eviction to conclusion, then the Club may act as attorney-in-fact for the Lot Owner and pursue the eviction action at the Lot Owner's cost and expense. If any action seeking eviction of a Tier-3 tenant does not result in a judgment of

possession in favor of the Lot Owner, the Club may, but will not be obligated to, prosecute an appeal seeking the eviction of the tenant. In the event the Club obtains a final judgment resulting in the eviction of the tenant the Lot Owner will be responsible for all reasonable fees and costs of the Club in prosecuting the appeal.

Each Lot Owner hereby appoints the Club as the Lot Owner's attorney-in-fact for the purpose of commencing eviction proceedings, executing any and all documents pertaining to the proceedings or performing any or all responsibilities as may be required or necessary to be performed pursuant to this Paragraph "p" of the Club's Use Restrictions. This power of attorney is expressly declared and acknowledged to run with the title of any and all Lots and will be binding upon the heirs, personal representatives, successors and assigns of the Lot Owner.

- iii. Any Lot Owner, who by virtue of residing in a Lot, has been notified by the Club that he is in violation of this Paragraph "p" of the Club's Use Restrictions, must vacate the Lot within 90 days of receipt of the Club's notice. If the Lot Owner fails to vacate the Lot within 90 days, the Club may, in addition to all other remedies available to the Club, purchase the Lot at a purchase price equal to the average of two independent appraisals to be obtained by the Club, less the Club's anticipated costs of selling the Lot, including, without limitation, brokerage fees, of not more than seven percent (7%) of the appraisal value, the cost of the appraisal, the realty transfer tax (based on the appraisal value), and other customary and incidental selling costs not in excess of one percent (1%) of the appraisal value.
- iv. The Club will not be liable to any Lot Owner, anyone occupying or visiting Smoke Rise Community as the result of the Club's failure to dispossess a Megan's Law Registrant.
- (q) Commencing as of June 1, 2006, all playground equipment including, without limitation, plastic toddlers' play equipment, swing sets, sliding boards, trampolines, apparatus that contains a net and all equipment that is expressly used for play use, shall be located in the rear yard and set back at least 25 feet from any adjoining Lot. When it is not reasonably practicable to locate playground equipment in the rear yard a Lot Owner may apply for a variance to the Architectural Variance Committee. Without approval of a variance no playground equipment may be located other than in the rear yard.
- (r) Commencing as of June 1, 2006 all tarpaulins that are used to cover exterior property included, but not limited to, wood, vehicles, boats, furniture and trailers, must be brown, dark green or earth tone in color. No blue or other brightly colored tarpaulin may be used.
- (s) No tree having a diameter of four inches or more, as measured 48 inches from the adjoining ground, and within 25 feet of an adjoining Lot or within 25 feet of a road may be removed without written permission of the Architectural and Variance Committee. The foregoing restriction shall, except in the case of an emergency, apply to a tree claimed to be dead or dying in addition to live trees.

- (t) Each Tenant shall be required to attend an orientation meeting with the Orientation Committee, and each Lot Owner shall be responsible for insuring his, her or their Tenant's compliance with this requirement prior to the date the Tenant takes occupancy of the Lot Owner's Dwelling.
- (u) No vehicle may be parked overnight on any Smoke Rise right-of-way.
- (v) No Lot Owner may erect any item, obstruct to any extent, or use in any way the fifty (50) foot strip of land surrounding the perimeter of the Lake owned by the Club, subject to the easements set forth in this Declaration, and all applicable local, state and federal ordinances, regulations and law.

EXHIBIT E

RULES AND REGULATIONS

[Upon adoption of this Declaration the Rules and Regulations shall be the existing Rules and Regulations of The Smoke Rise Club as set forth in the document commonly known and referred to as the “Green Book,” a copy of which is available for review at the business office of The Smoke Rise Club]