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**FARMINGTON PONDS HOMEOWNER'S ASSOCIATION, INC.**

**RESTATED**

- **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, EASEMENTS AND LIENS**
- **BY-LAWS**

**MADE BY:**

Petra Anderson, Sharyl DiGiovanni and Christine Bayles  
Farmington Ponds Homeowner's Association, Inc.

**DATED:**

June 24, 2016

CHRISTOPHER T. PUSATERI, ESQ.  
KENNEY SHELTON LIPTAK NOWAK, LLP  
16 East Main Street, Suite 900 Rochester, New York  
14614 585.232.1911

**RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
EASEMENTS and LIENS**

**FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.**

THIS RESTATED DECLARATION, and BY LAWS made this 26th day of January, 2016, by the undersigned lot owners representing more than two-thirds (2/3) of the votes of all lots comprising of the Farmington Ponds Homeowners' Association, Inc., hereinafter referred to as the "Owners."

**WITNESSETH**

WHEREAS, the undersigned Owners are the owners of certain subdivided real property and adjacent property in the Town of Farmington, Ontario County, New York, more particularly described in Schedule "A" attached hereto and made a part hereof said land in its entirety being hereinafter referred to as "Properties"; and

WHEREAS, the Owners wish to amend and restate such Declaration of Covenants, Conditions and Restrictions, Easements and Liens along with the By-Laws of Farmington Ponds Homeowners' Association, Inc., and

WHEREAS, THE FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC. is a New York Not-for-Profit Corporation formed for the purpose described in its Certificate of Incorporation; and

NOW, THEREFORE, the Owners hereby declare that all of the Properties (and the common area herein described) shall be subject to the following easements, restrictions, covenants, and conditions, and By-Laws which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Properties for and during the period of time specified hereafter, and be binding on all parties having any right, title or interest in the Properties or any part thereof their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I.** **LOCATION**

The name of the corporation shall be Farmington Ponds Homeowners' Association, Inc. The office of the Association shall be designated by the Board of Directors.

## **ARTICLE II.** **DEFINITIONS**

SECTION 1: "Association" shall mean and refer to Farmington Ponds Homeowners' Association, Inc., its successors and assigns.

SECTION 2: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall include all of the premises described as "Properties," excepting there from the townhome lots, as shown on the map of the Properties filed in the Ontario County Clerk's Office.

SECTION 3: "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

SECTION 4: "Declarant" shall mean and refer to the Board of Directors his heirs, successors and assigns.

SECTION 5: "Properties" shall mean and refer to Schedule A, which includes all Lots and Common Areas, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 6: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or re-subdivision map of the Properties, with the exception of the Common Areas.

SECTION 7: A "Fine" shall be a sum of money not to exceed ten percent (10%) of the total annual common assessment for an individual lot. A fine may be a penalty.

**ARTICLE III.**  
**PROPERTY RIGHTS AND EASEMENTS**

**SECTION 1: RIGHTS AND EASEMENTS OF LOT OWNERS**

Subject to the rights and easements of the Association set forth in this Declaration, each Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have the following rights and easements:

- a.      **Enjoyment** - to enjoy all Association Property,
- b.      **Ingress and Egress** - an easement by vehicle or on foot for ingress and egress in common with other Lot Owners over all roadways located on Association Property, and
- c.      **Utilities and Conduits** - to use, maintain, repair and replace any pipes, wires, cables, conduits, drainage areas, and other utility lines servicing such Owner's Lot (Unit) but located on Association Property on another Lot or in another Unit.

All of such rights and easements shall be appurtenant to and shall pass with the interest of an "Owner" as defined in Article II, Section 3 of this Declaration.

**SECTION 2: RIGHTS OF ASSOCIATION**

In accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the following rights:

- a.      **Promulgate Rules and Regulations** - 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 Lot Owners,
- b.      **Grant Easements to Utility Companies and Governmental Entities** — to grant easements or rights of way, with or without consideration to any public or private utility corporation, cable television company, governmental agency or political subdivision,
- c.      **Transfer, Lease, Sell, Exchange or Encumber Association Property or Acquire or Lease Real Property** - to dedicate, sell, transfer, donate, lease, abandon, partition, encumber or otherwise dispose of, all or any part of the Association Property which the Association owns or to acquire or lease other real property for such purposes and subject to such conditions as may be agreed to by the Association and the transferee or transferor. Such action (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Lot Owners) shall require a "Hearing" and the consent of

Owners of not less than 75% of all Lots who shall vote by written ballot which shall, not less than 10 days nor more than 50 days in advance of the date or initial date of the canvass thereof, be sent to all Lot Owners and to those lending institution first mortgagees of Lots whose names appear as such on the books or records of the Association. No such conveyance shall be made if lending institution first mortgagees of 51% or more of the Lots subject to first mortgages held by lending institutions whose names appear as such on the books or records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable,

d. Inspect Lots for Possible Violations of Provisions of this Declaration — to enter upon and inspect Lots for the purpose of ascertaining compliance with the provisions of this Declaration or with rules and regulations promulgated pursuant to this Declaration, and

e. Construct, Modify, Alter or Demolish Improvements on Association Property or Change the Use of Association Property - to construct, modify, alter or demolish improvements on Association Property or change the use of Association Property following- (i) a Hearing, (ii) the affirmative vote of not less than three-fourths (75%) of the entire Board of Directors.

### SECTION 3: EASEMENTS OF ASSOCIATION

The Association (and its employees, contractors and agents) shall have the following easements over each Lot:

a. Utility Line Maintenance - for the use, installation, maintenance, repair and replacement of any pipes, wires, cables, conduits, drainage areas, light standards and other utility lines located on such Lot and servicing Association Property or two (2) or more Lots,

b. Utility Banks and Telephone Pedestals - for installation, maintenance, repair and replacement of utility banks and telephone pedestals on the exterior walls of Buildings,

c. Other Maintenance on Lots - for the installation, maintenance, repair and replacement of any improvements on the Lots, including walkways, fencing, walls, landscaping, driveways, roadways and building exteriors, and for snow removal, to the extent the Association is obligated to undertake such installation, maintenance, snow removal, repair and replacement under this Declaration,

d. In Conjunction with Maintenance of Association Property - to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvement on Association Property, or other improvements constructed on the Lots, and

e. Water for Watering of Lawns - to tie into and use water from any Unit for the watering of any lawns which the Association is obligated to maintain.

To the extent reasonably appropriate any such entry onto a Lot (i) shall be on reasonable notice to the Owner of the Lot to be entered, except that, in an emergency, such entry may be without notice, and (ii) may include entry to any improvement on such Lot.

#### SECTION 4: PARTY WALLS

a. Each wall built as part of the original construction of the homes on the Lots which shall serve and separate two adjoining homes shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

b. Each Owner shall have an easement to enter upon the Lot of an adjacent Owner for the purpose of maintaining or making repairs to a party wall. This easement is to be limited to the area of the other Owner's Lot reasonably necessary to effect said repairs, and such easement must be used in a reasonable manner so as not to unnecessarily interfere with the other Owner's enjoyment of his or her Lot. The area where such work is performed is to be restored to its condition prior to entry, as near as possible.

c. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

d. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

e. Notwithstanding any other provision of this section, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by willful acts or negligence causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

f. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

**ARTICLE IV.**  
**MEMBERSHIP & VOTING RIGHTS**

SECTION 1: MEMBERSHIP The Association shall have as members Lot Owners. All Lot Owners shall, upon becoming such be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" as found in Article II of this Declaration.

SECTION 2: PURPOSE OF ASSESSMENTS The assessments levied by the Association shall be used exclusively (i) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its Members, their guests, tenants and invitees, and (ii) to provide service for the individual Lots as described further in this Declaration.

SECTION 3: SPECIAL ASSESSMENTS In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, emergency repair, service or replacement of any improvement upon the Common Area, provided that any such assessment in excess of \$1,000.00 shall have the assent of two-thirds (2/3) of the votes of the Members present in person or by proxy, at a meeting duly called for this purpose.

SECTION 4: NOTICE AND QUORUM Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article IV shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. The presence of Members, in person or by proxy, entitled to cast two-thirds (2/3) of all the votes of the membership (with the Declarant having one vote for each Lot he owns) shall constitute a quorum.

SECTION 5: RATE OF ASSESSMENT Annual common and special assessments, shall be fixed at a uniform rate for all Lots, and may be collected on a monthly, quarterly, or annual basis.

SECTION 6: DUE DATES FOR ANNUAL COMMON & SPECIAL ASSESSMENTS The Board of Directors shall annually fix the amount of the assessments against each Lot. Written notice of any change in the assessments shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such change.

Due date(s) for payment of assessments shall be the first day of each month or as established by the Board. Payments received after the 15th day of the month may, at the

discretion of the Board, be subject to a late charge, which charge shall be a percentage of the assessment not to exceed the prime lending rate charged by the Association's current bank at the time of the charge plus three (3) percent.

The Association shall, upon demand of a buyer or seller or their attorney, furnish a certificate signed by an officer of the Association or the Managing Agent, setting forth whether the assessments on a specified Lot have been paid. The Association may assess a reasonable charge for the preparation of any such certificate.

**SECTION 7: EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION** If an Assessment, or installment thereof, is not paid on the due date, then such Assessment payment shall be deemed delinquent.

Any delinquent Assessment payment, together with late fees, and such interest thereon, accelerated installments, if any, and cost of collection including reasonable attorney's fees as herein provided, shall thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Lot Owner and such Lot Owner's heirs, devisees, personal representatives, successors and assigns. A notice of lien may be filed by the Association in the Recording Office providing notice that (i) delinquent Assessments are outstanding with respect to a specified Lot, and (ii) such delinquent Assessments and any future Assessments due are a continuing lien until paid, but such filing shall not be necessary to perfect or establish the priority of such continuing lien. In addition to the lien rights, the personal obligation of the then Lot Owner to pay such Assessment shall remain such Lot Owner's personal obligation and shall not pass to such Lot Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within thirty (30) days after the due date, 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. In the alternative, the Board may authorize and impose a sum certain late charge in the amount of between \$15.00 and \$25.00.

If the Assessment or any installment thereof, is not paid within forty-five (45) 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 Lot Owner, and (iii) the Association may bring legal action against the Lot Owner personally obligated to pay the same or foreclose the lien against the Lot of such Lot Owner, and the cost of such proceedings, including actual attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.



Once an Assessment is deemed delinquent as described above, any payments received from the Lot Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

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

**SECTION 8: SUBORDINATION OF THE LIEN TO FIRST MORTGAGES**

The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

**SECTION 9: RESERVES AND SURPLUSES** The Association's Board shall establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary or desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

**SECTION 10: UNSOLD LOTS** In spite of any provision to the contrary in this Article V, the Declarant shall not be liable for the payment of common charges for unsold Lots owned by it. The Declarant shall, however, contribute to the Association that amount equal to the difference between the cost of operating the Association and the assessments collected from Owners as set forth in the projected budget.

**SECTION 11: CONTRACTUAL AUTHORITY** The Association shall be entitled to contract with any corporation, firm or other entity in the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

## **ARTICLE V. MAINTENANCE**

Assessments levied by the Association shall be used exclusively (1) to operate, maintain, insure, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its Members, their guests, tenants and invitees, and to provide the following services:

- i. maintenance, repair, improvement, and snow plowing of roadways;
- ii. landscape and lawn maintenance of Common Areas and lots;
- iii. maintenance of Common Area drainage ditches and retention areas for surface water;
- iv. insurance on Common Area
- v. establish reserves for road maintenance.

## **ARTICLE VI. USE OF PROPERTY**

The use of the Properties shall be restricted to and in accordance with the following provisions:

A. A Lot shall be used for single family residential purposes only. For the purpose of this section Single Family Residential shall mean the immediate family and no more than two (2) unrelated adults. Only one (1) single-family dwelling and garage shall be erected, altered, placed or permitted to remain on any Lot.

B. The Common Areas shall be used for the use and enjoyment of the Owners, their guests, invitees and assigns.

C. Each Member's dwelling and Lot shall be maintained in good repair and overall appearance. If a Member fails to maintain his house or Lot in a reasonably well maintained and orderly manner, the Board of Directors may contract for exterior maintenance and any expenses incurred shall be considered additional common charges against the Lot in question.

D. The Board of Directors may designate certain portions of the Common Area for use as paths, restricted common areas, nature trails, and specific recreation areas for the use of Owners, their. Invitees, and guests.

E. Garbage and rubbish (including holiday decorations) shall not be dumped or allowed to remain on any Lot or Common Area except in accordance with the rules of the Association. Bins should be placed no earlier than the evening before pick-up and returned to garage the day of pick-up.

F. Nothing shall be stored in the Common Areas except with the prior written consent of the Board of Directors. The common pathways must not be obstructed. The Common Area landscaping is for enjoyment of the members and shall not be cut or tampered with.

G. No commercial or business activities shall be permitted upon the Property except those related to the operation of the Association unless approval of the Board is received. No nuisance shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to residents of which interfere with the peaceful possession and proper use of the Property by its residents.

H. No unlicensed or unregistered vehicles may be stored or parked on any portion of the Property, except in a garage. No vehicles shall park on the Association's lawn or roadways except that commercial delivery vehicles or contractors providing services on the property may park on roadways during the time of such delivery or work. Vehicles of homeowners or their guests must be parked in the homeowners' driveway, garage or in designated parking areas.

I. No boating vessel or trailer may be parked or left on the common property, except in an enclosed garage or in areas designated by the Association, and with its permission and consent.

J. No advertising signs, except a "For Sale" or "For Rent" sign as described in the By-laws, shall be placed on or permitted to remain on any property.

K. No fences, hedges or walls shall be erected or maintained upon said property by Owners without Board approval.

L. No exterior television or radio antennas or satellite dishes shall be installed or attached to the exterior of any dwelling or maintained upon any portion of the property without prior approval of the Board. Unit Owners will remain responsible for any damage to their Unit as a result of the installation.

M. No Units may be rented or leased. Current Owners of Units at the time this Declaration is recorded are excluded from this prohibition. Once a current Owner transfers title to a Unit, that Unit is bound by this prohibition. Hardship waivers will be considered by the Board.

N. The Association may arrange for the providing of any special services and facilities for the benefit of such Lot Owners and/or occupants of Lots as may desire to pay for the same, such as deck staining. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to the Lot Owners receiving such services, or paid from the Association's general funds and levied as a Special Assessment against the Lot Owners receiving such services.

O. No trampolines, sheds, swing sets, or pools may be erected and or maintained upon said property by Owners without Board approval.

P. Any agent of the Association may at any reasonable time or times, enter upon the Lot of the Owner 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. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Q. Owners who are in violation of the sections of Article VI may be subject to a fine imposed by the Board. The initial fine may not be more than \$25.00, but shall increase by \$25.00 per month (not to exceed \$100 per month) each month thereafter the violation is not cured or corroded by the Owner. In addition, any fine imposed pursuant to this article may continue as a lien on said property in the same manner as unpaid common charges and special assessments are enforced. Said lien can be filed with the appropriate recording officer of the county, and otherwise be foreclosed by virtue of the process set forth herein Article IV.

## **ARTICLE VII.**

### **INSURANCE & CASUALTY DAMAGE**

A. The Association, for the Common Areas, will obtain and maintain in force and effect a policy of liability, casualty, and other necessary insurance, in an amount, and with such coverages as are acceptable to the Association.

B. An annual evaluation shall be made by the Board of Directors to determine the adequacy of the insurance.

C. The Owner of any Lot shall be responsible for securing public liability, fire and all insurance necessary to protect his townhome, fixtures and personal property interests as he shall be so advised.

**ARTICLE VIII.**  
**ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION**

SECTION 1: Declarant, its successors or assigns, shall have the right, without the consent of the members of the Association, to subject additional Properties to this Declaration within three (3) years of the original date of this instrument, such Properties to be developed substantially as the Properties contained herein. However, neither Declarant, nor its successors or assigns, shall be bound to make such additions.

Such additions shall be made by recording in the Ontario County Clerk's Office a supplemental Declaration with respect to the additional Properties, which shall extend the scheme of the Declaration to such Properties.

SECTION 2: Additions to the Properties by the Association, Annexation of additional property by other than Declarant, shall require the assent of seventy-five percent (75%) of Members, at a meeting duly called for this purpose on the same notice, and in the same manner as is required for meetings and voting by the By-Laws.

**ARTICLE IX.**  
**GENERAL PROVISIONS**

SECTION 1: DURATION AND AMENDMENT The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, the Association, or the Owner of any land subject to this Declaration, their respective heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the Owners of the Lots has been recorded, agreeing to change such covenants and restrictions, in whole or in part.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than sixty-six and two thirds ( $66 \frac{2}{3} \%$ ) of the Owners, and thereafter by an instrument signed by not less than sixty six and two thirds ( $66 \frac{2}{3} \%$ ) of the Owners. Any amendments must be recorded in the Ontario County Clerk's office to become effective.

The Board of Directors shall hold a Hearing for the purpose of considering such proposed amendment. The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 or more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose owners specifically consent in writing to such termination, extinguishment or modification

**SECTION 2. SEVERABILITY** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**SECTION 3: ENFORCEMENT**

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 member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure momentarily 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 and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Unit occupant 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 Lot Owner, and shall be collectible in the same manner as Assessments.

**SECTION 4: AMENDING FOR ERRORS** The Association, may make amendments to this Declaration to correct omissions or errors, which amendments shall not substantially or adversely modify rights of any Owner without such Owner's written consent.

**SECTION 5: OWNER RESPONSIBILITY FOR TENANTS/ GUESTS** Any lease of a Unit shall provide and specify in writing within the lease specific reference to the "By-laws" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant or any guest of a Lot Owner is in violation of this Declaration, or the By-laws or rules and regulations of the Association, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies or who hosted such guest, in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings are not commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to this Declaration.

Attached to this Amendment is a Certification of the Board of Directors of the Association certifying that the required consents of more than (2/3) of the Lot Owners have been received and filed with the Board of Directors.

**FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.**

By: Petra Anderson

Petra Anderson, President

Farmington Ponds Homeowners' Association, Inc.

STATE OF NEW

SS.

YORK COUNTY OF

~~ONTARIO~~ Wayne

On the 2<sup>nd</sup> day of February, in the year 2016, before me, the undersigned, personally appeared PETRA ANDERSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Irene E. Unterborn  
Notary Public

IRENE E. UNTERBORN  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WAYNE COUNTY  
NO. 01UN6180173  
MY COMMISSION EXPIRES JAN. 07, 2020

**FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.**

By: Sharyl Ann DiGiovanni

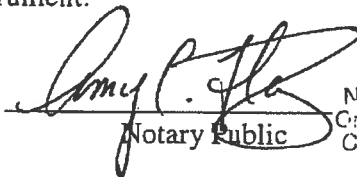
Sharyl DiGiovanni, Treasurer

Farmington Ponds Homeowners' Association, Inc.

STATE OF NEW YORK

COUNTY OF ONTARIO

On the 10<sup>th</sup> day of Feb., in the year 2016, before me, the undersigned, personally appeared SHARYL DIGIOVANNI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

AMY C. FLAITZ  
Notary Public, State of New York  
Ontario County Reg. #01FL6181690  
Commission Expires 02/11/2020

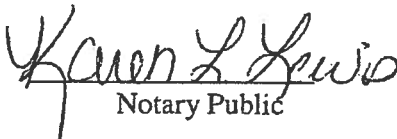
FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.

By: Christine Bayles  
Christine Bayles, Secretary  
Farmington Ponds Homeowners' Association, Inc.

STATE OF NEW YORK

COUNTY OF ONTARIO

On the 4 day of February, in the year 2016, before me, the undersigned, personally appeared CHRISTINE BAYLES, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

KAREN L. LEWIS  
Notary Public, State of New York  
No. 01LE5059784  
Qualified in Wayne County  
Commission Expires 05-06-2018



**CERTIFICATE OF RECEIPT OF CONSENT OF MEMBERS**

The undersigned being a majority of the Members of the Board of Directors of the FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, (the "Association") do hereby certify, pursuant to the Declarations that

1. Consents to the above Restated Declaration have been received from those Owners of the Lots as set forth on EXHIBIT "1" attached hereto and have been filed with the Board of Directors,
2. The number of Lot Owners consenting thereto exceeds the minimum number required to amend pursuant to Declaration, and
3. All Lot Owners have been given or have waived the proper notice as required by the Declaration.

Petra Anderson

Shawn Ann DiGiovanni

Christa R. Begg

(Signatures)

**RESTATED**  
**BY-LAWS OF**  
**FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I.**  
**IDENTITY**

These are the By-Laws of the Farmington Ponds Homeowners' Association, Inc.

These By-Laws provide the method by which Farmington Ponds Homeowners' Association, Inc. (herein the "Association"), a homeowner's association in the Town of Farmington, Ontario County, New York, organized under the Not-For-Profit Corporation Law, shall be governed.

The office of the Association shall be as designated by the Board of Directors.

The fiscal year of the Association shall be the calendar year.

**ARTICLE II.**  
**DEFINITIONS**

- A. "Association" shall mean and refer to Farmington Ponds Homeowners' Association, Inc., its successors and assigns.
- B. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Restrictions, Easements and Liens and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- C. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.
- D. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.
- E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- F. "Declarant" shall mean and refer to the Board of Directors, their heirs, successors and assigns.
- G. "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements and Liens applicable to the Properties and recorded in the Ontario County Clerk's Office.

- H. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration
- I. A "Fine" shall mean a sum of money determined and levied by the Board of Directors or their agent on an Owner for the violation of the Declaration, By-Laws, or Rules of the Association. A fine cannot exceed 10% of the total annual common assessment.

### **ARTICLE III. BOARD OF DIRECTORS**

- A. Membership and Initial Selection The Association shall be governed by a Board of Directors consisting of not less than three (3) nor more than five (5) persons. These directors shall be members in good standing of the Association. The initial Board of Directors shall be designated by Declarant who is authorized to choose the directors until all Lots have been transferred or until five (5) years after the transfer of the first unit, whichever first occurs. The directors designated by the Declarant need not be members of the Association.
- B. Term and Election At such time as the members become empowered to elect the Board of Directors they shall elect three (3) directors, the person receiving the greatest number of votes serving three (3) years, the person receiving the next highest number of votes serving two (2) years, and the person receiving the next highest number of votes serving one (1) year. Thereafter, at each annual meeting the members shall elect one (1) director to serve for three (3) years.
- C. Removal Any director may be removed from the Board with or without cause by a majority vote of the members of the Association. In the event of death, resignation, or removal of a director his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.
- D. Compensation Directors may receive compensation not to exceed the Associations annual assessment for the budget year for any services they may render to the Association when said Association has chosen to self-manage. Any director may be reimbursed for their actual expenses incurred in the performance of their duties.
- E. Action Taken Without a Meeting The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining approval of all the directors. Any actions so approved shall be in writing and have the same effect as though taken at a meeting of the directors.
- F. Powers and Duties The Board of Directors shall exercise all the powers and duties permitted the governing body of the Association, including those existing under the Not-For-Profit Corporation Law of New York State. Such powers and duties shall be exercised in accordance with the provisions of the Declaration of Covenants, Restrictions, Easements and Liens applicable to the property recorded in the Ontario County Clerk's Office (herein the "Declaration") which govern the use of the land, and shall include but shall not be limited to the following powers and duties:

1. To make and collect assessments, including special assessments, against members to defray the costs of the Association. To file a lien against any property for which assessments are not paid within thirty-one (31) days after due date, or to bring an action at law against the Owner personally obligated to pay the same.
2. To establish reserve funds for such lawful purposes as it, in its sole discretion, may determine necessary or desirable for the financial security of the Association, including capital reserve accounts.
3. To issue or cause to be issued upon demand of a buyer or seller or their attorney or mortgagee, a certificate setting forth whether or not an assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
4. To assure the maintenance, repair, replacement and operation of all Association property for the common use and enjoyment of the lot owners.
5. To adopt, publish, and distribute to members rules and regulations governing the use of the Common Areas, and the personal conduct thereon of members and their guests, and to establish penalties or fines for the infraction thereof
6. To enforce by legal means the provisions of the Declaration, By- Laws, and Regulations for the use of the Properties.
7. To procure and maintain adequate liability and casualty insurance on property owned by the Association. The Board of Directors shall annually review the amount of insurance coverage to assure that the Association and its members are fully protected. The Board shall also procure insurance on all directors, officers or employees having fiscal responsibility as it may deem appropriate.
8. To authorize the officers to enter into management agreements with third parties in order to facilitate the efficient operation of the facilities and services of the Association. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of the facilities, and all improvements included therein, designated as Common Areas, and the receipt and disbursement of such funds as may be authorized by the Board of Directors. The term of these management agreements shall be as determined by the Board to be in the best interests of the Association.
9. To employ personnel for reasonable compensation to perform, or to retain and/or contract for, the services required for proper administration of the purposes of the Association.
10. To pay the cost of all snow plowing, lawn care, road maintenance and other lot services rendered to the Association and not billed to members' individual lots.

11. To use the proceeds of assessments in the exercise of its power and duties.
12. To receive, consider, and act upon any application which pertains to the building, rebuilding, or any alteration of a structure, and landscape of property in accordance with Article IX of the Declaration.
13. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
14. The Association may arrange for the providing of any special services and facilities for the benefit of such Lot Owners and/or occupants of Lots as may desire to pay for the same, such as deck staining. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to the Lot Owners receiving such services, or paid from the Association's general funds and levied as a Special Assessment against the Lot Owners receiving such services.

G. Method of Calling Meetings

1. The first meeting of the Board of Directors shall take place within thirty (30) days after the expiration of Declarant's control period and thereafter regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board. Notice of regular meetings shall be given to each director personally or by mail, telephone or telegram at least three (3) days prior to the day named for the meeting unless such notice is waived. The first regular meeting held in each calendar year shall be the annual, meeting of the Board.
2. Special meetings of the Board of Directors may be called by the President and must be called by the Secretary at the written request of three directors. No less than three (3) days notice of the meeting shall be given personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting.
3. A director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

- H. Quorum A quorum at the Board of Directors meeting shall consist of a director or directors present in person, holding at least a simple majority of the eligible votes. The acts of the Board approved by a majority of the directors present in person or by proxy at a meeting at which a quorum is present shall constitute the acts of the Board of Directors except as specifically otherwise provided in the Declaration. If at any meeting of the Board of Directors there be less than a quorum present, the directors present shall adjourn the meeting from time to time until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

- I. Action Without Meeting Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the members of the Board of Directors consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors.
- J. Officers The officers of the Association shall be a President, Secretary, and Treasurer. They shall be elected at the annual meeting by the Board of Directors from among the members of the Board and shall hold office for a term of one (1) year or until the next annual meeting. Officers may be removed and replaced by vote of the directors at any meeting. Any person may hold two (2) offices except that the President shall not be the Secretary. The Board of Directors may from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.
1. The President shall be the chief executive officer of the Association and shall preside over the meetings of the Board of Directors and of the members. He shall have all the powers and duties which are usually vested in the office of the president, including but not limited to the power to appoint committees from among the directors, members, and residents of the subdivision from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.
  2. The Secretary shall keep the minutes of all proceedings of the Board of Directors and of members. He shall attend to the giving and serving of all notices to the directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary, and as may be required by the directors or the President. The Secretary shall keep a current record containing the names, alphabetically arranged, of all persons who are members of the Association, showing their place of residence. Such record shall be open for inspection as prescribed by law. In the absence or disability of the President, he shall exercise the powers and perform the duties of the President.
  3. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members including an account for each Lot in the subdivision; he shall keep the books of accounts of the Association in accordance with good accounting practices. The Treasurer shall receive and deposit in appropriate bank accounts as shall be designated as depository by the Board of Directors all monies of the Association; disburse funds of the Association as directed by action of the Board of Directors; sign with the President all checks and promissory notes of the Association; cause an annual audit of the accounts of the Association to be made by an accountant, selected by the Board of Directors, at the completion of each fiscal year; and prepare an annual budget and statement of income and expense at the inception of each fiscal year. Upon adoption of said budget and financial statement by the Board of Directors, the Treasurer shall deliver a copy of same to each member of the Association. The fiscal year shall be the calendar year.

4. Compensation. The officers shall not receive any salary for their services unless Association has chosen to self-manage and then their salary shall not exceed the annual homeowner assessment per year. An officer may also be reimbursed for actual expenses incurred in the performance of his duties.
5. Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors. The premium on such bonds shall be a common expense and be paid by the Board of Directors.
6. Vacancies. A vacancy in any office may be filled by appointment by the remaining members of the Board of Directors. The officer so appointed to such vacancy shall serve for the remainder of the term of the office to which they are appointed.

**ARTICLE IV.**  
**ANNUAL MEETINGS OF THE HOMEOWNERS' ASSOCIATION**  
**AND POWER OF MEMBERS**

- A. Meetings The meetings of the members shall be held annually commencing after the expiration of the Declarant's control period and when called by the Board of Directors, or by the President, or by any three (3) members. Board members shall be elected at the Annual Meeting. Special assessments over \$1,000.00 shall have the assent of two-thirds (2/3) of the votes of the Members. All meetings shall be held at the principal office of the Association or at such other place in the Town of Farmington, or any immediately adjacent town, as may be fixed by the President. The meeting notice shall state the time, date, place and purpose of the meeting.
- B. Notice of Meeting The Secretary shall give not less than seven (7) days' notice of any meeting of members personally, or by mail, or telegram, which notice shall state the time, date, place, and purpose of the meeting. Any member may waive notice of a meeting before, at, or, after the meeting and such waiver shall be deemed equivalent to the giving of notice.
- C. Quorum A quorum at members meetings shall consist of a simple majority of the eligible members present by proxy or in person. The acts of the members must be approved by vote of a simple majority of the eligible members except as specifically otherwise provided in these By-Laws, the Declaration, or the Not-For-Profit Corporation Law.

**ARTICLE V.**  
**ARCHITECTURAL & LANDSCAPE CONTROL**

- A. The maintenance, repair and replacement of all common areas, including roads, landscaping and lawn maintenance are the responsibility of the Association.
- B. No fences, or walls shall be erected or maintained upon the Properties except those erected at the time of the original construction of the buildings located thereon, or of a

substantially similar nature, without the written application to and approval by the Board of Directors.

- C. No alterations, additions, building, rebuilding, or any exterior modification of any kind, or re-painting of the exterior of any building shall be made unless it shall conform in architecture, material and similar color to the building as originally constructed and is approved by the Board of Directors.
- D. No building, fence, wall or other structure or change in landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made, unless and until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to, and approved in writing as to the harmony of external design and location in relation to surrounding structures, by the Board of Directors of the Association.

In the event that said Board of Directors fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, no approval will be required and compliance with this Article will be deemed to have been made.

#### **ARTICLE VI.** **LIABILITY OF BOARD OF DIRECTORS**

In order to limit the liability of the Owners, any contract, agreement, or commitment made by the Board of Directors shall state that it is made by the Board of Directors as agent for the Owners as a group only and that no member of the Board of Directors nor individual Owner shall be liable for such contract, agreement, or commitment. The Board of Directors shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith and the Owners shall severally indemnify all members of the Board of Directors in accordance with their duties as such members except for acts of willful misconduct or acts made in bad faith. Such several liability of the Owners shall, however, be limited to the extent that his proportionate interest in the common area bears to the total liability of the members of the Board of Directors.

#### **ARTICLE VII.** **AMENDMENTS**

- A. These By-Laws may be amended at a regular or special meeting of the members by a vote of sixty-six and two-thirds percent (66 2/3%) of unit owners present in person or by proxy.
- B. In case of any conflict between the Articles of Incorporation and these By-Laws the Articles shall control and in the case of any conflict between the Declaration and these By-Laws the Declaration shall control.



This is a true copy of the By-Laws of Farmington Ponds Homeowners' Association, Inc. as of this 26th day of January, 2016.

**FARMINGTON PONDS HOMEOWNERS' ASSOCIATION, INC.**

Petra Anderson

Petra Anderson, President  
Farmington Ponds Homeowners' Association, Inc.

STATE OF NEW YORK)

COUNTY OF <sup>Wayne</sup> ~~ONTARIO~~) ss.

On the 2<sup>nd</sup> day of February, in the year 2016, before me, the undersigned, personally appeared PETRA ANDERSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

IRENE E. UNTERBORN  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN WAYNE COUNTY  
NO. 01UN6180173  
MY COMMISSION EXPIRES JAN. 07, 2020

Irene E. Unterborn  
Notary Public

