

AMENDED BYLAWS
OF
THE SMOKE RISE CLUB, INC

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ARTICLE I

Nature of Amended Bylaws

Section 1. Name. The name of the corporation The Smoke Rise Club, Inc., hereinafter referred to as the “Club,” a non-profit corporation organized under Title 15A of the New Jersey Statutes Annotated. It was established by the Certificate of Incorporation filed with the office of the New Jersey Secretary of State in 1946.

Section 2. Purpose of the Club. The purpose of the Club is defined in its Certificate of Incorporation. The Club is the governing body of the Smoke Rise Community established under the laws of the State of New Jersey. It provides for the management, administration, utilization and maintenance of the Common Property located in the Smoke Rise Community and enforces the terms of the Governing Documents. Without limiting the generality of the foregoing, or any of the powers or duties of the Board as set forth in the Governing Documents, the Club’s purposes shall include: (a) the formulation of rules and regulations and providing for the enforcement thereof, for the use of all Club properties and facilities, now owned or hereafter acquired; (b) providing an adequate system of administration; and (c) making available protection for all Club properties.

Section 3. Purpose of the Amended Bylaws. These Amended Bylaws are intended to govern the administration of The Smoke Rise Club, Inc.

Section 4. Definitions. For the purpose hereof, the following terms shall have the following meanings, unless the context in which same are utilized clearly indicate otherwise:

- (a) “**Amended Bylaws**” means these Amended Bylaws of The Smoke Rise Club, Inc.
- (b) “**Annual Assessment**” means the total revenues projected to be collected from all Lot Owners pursuant to the budget adopted by the Board as set forth in Article IX.
- (c) “**Acquisition Fees**” means those fees that are paid by all purchasers upon acquiring title to a Lot, as defined under Article IX, Section 11, of these Amended Bylaws.
- (d) “**Authorized votes**” means 952 votes, representing one vote for each Lot in Smoke Rise Community.
- (e) “**Board**” means the Board of Governors of the Club.
- (f) “**Capital Fund**” has the meaning set forth in Article IX, Section 9(b), of these Amended Bylaws.

- (g) “**Certificate of Incorporation**” means the Certificate of Incorporation for Smoke Rise Club, Inc. attached to the Declaration as Exhibit “C.”
- (h) “**Club**” means The Smoke Rise Club, Inc., a New Jersey nonprofit corporation, its successors and assigns.
- (i) “**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.
- (j) “**Common Expenses**” means the expenses incurred or anticipated to be incurred by the Club for the general benefit of all Lots, including any reasonable reserve (but 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.
- (k) “**Declaration**” means the Declaration of Covenants and Restrictions for The Smoke Rise Club, Inc. in connection with which these Amended Bylaws have been recorded as an exhibit.
- (l) “**Delinquent Lot Owner**” has the meaning set forth in Article IX, Section 13, of these Amended Bylaws.
- (m) “**Dwelling**” means a structure intended for use and occupancy as a detached residence for a single family.
- (n) “**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.
- (o) “**Eligible Votes**” means the number of Lots whose Owners are in good standing, as defined in Article III, Section 5, of these Amended Bylaws.
- (p) “**First Mortgagee**” means a bank, savings and loan association, credit union, insurance company, or other institutional lender who has provided monetary consideration in exchange for a recorded first priority mortgage lien containing a face amount of not more than the consideration actually advanced or to be advanced pursuant to a loan agreement.

- (q) **“Governing Documents”** means the Declaration, these Amended Bylaws, the Certificate of Incorporation, any Rules and Regulations adopted by the Board.
- (r) **“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.
- (s) **“Lot Owner”** means one or more persons or entity having fee simple title to a Lot.
- (t) **“Member”** means an Owner who has satisfied all of the prerequisites for membership in the Club as set forth in the Declaration and these Amended Bylaws.
- (u) **“Operating and Maintenance Fund”** means the operating account of the Club, established and maintained for the purposes specifically set forth in Article IX, Section 9(a), of these Amended Bylaws.
- (v) **“Property”** shall have the meaning set forth in Section 2.1 of the Declaration.
- (w) **“Quorum”** means, in connection with any membership meeting, 15 percent of the Eligible Votes unless otherwise required by the Certificate of Incorporation, the Declaration, or these Amended Bylaws.
- (x) **“Resident Owner”** means an owner of a Lot who has actually resided in the Club for 183 or more days during the immediately preceding 12-month period.
- (y) **“Resident Spouse”** means the spouse of an owner of a Lot who has actually resided in the Club for 183 or more days during the immediately preceding 12-month period. The term “Resident Spouse” will include a domestic partner provided the State of New Jersey has statutorily recognized such relationships.
- (z) **“Declaration”** means the Declaration of Covenants and Restrictions for The Smoke Rise Club, Inc. in connection with which these Amended Bylaws have been recorded as an exhibit.
- (aa) **“Rules and Regulations”** means those rules and regulations lawfully adopted by the Board in accordance with the powers granted to it under the Governing Documents or by law.

- (bb) “**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 the 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.
- (cc) “**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.

Section 5. Organizational Structure. The Club shall utilize the following organizational structure:

- (a) Board of Governors;
- (b) Officers of the Smoke Rise Club;
- (c) Standing Committees;
- (d) Other Committees; and
- (e) Sub-Clubs

Section 6. Principal Office. As of the adoption of these Amended Bylaws on _____, 2005 the principal office of the Club is 9 Perimeter Road, Kinnelon, New Jersey 07405, County of Morris, State of New Jersey. The principal address of the Club may be amended by recorded resolution of the Board, from time to time.

ARTICLE II

Applicability

Section 1. General. These Amended Bylaws, and all other Governing Documents, will apply to all current and future Owners, occupants, Tenants or other persons or entities claiming an interest in any Lot.

Section 2. Personal Application. All present and future Owners, occupants, Tenants, future Tenants or their respective employees, or any other person that might use the facilities of the Club in any manner, are subject to the terms of these Amended Bylaws. The acquisition, use, or rental of a Lot, or use of a Common Property or easement, by any person or entity, shall mandate compliance with these Amended Bylaws.

ARTICLE III

Membership and Voting Rights

Section 1. Members. Subject to the pre-conditions that a new Owner: (a) attend a mandatory orientation session with a committee designated by the Board (Section 18.2 of the Declaration); and (b) pay the Acquisition Fees, if any (Article IX, Section 11, of these Amended Bylaws) every person, firm, Club, corporation or other legal entity who is a record owner, or co-owner of the fee simple title to any Lot shall be a Member of the Club; provided, however, that any person, firm, Club, corporation or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to mortgagees or Governors under deeds of trust) shall not be a Member of the Club. Failure of a Lot Owner to qualify as a Member will not relieve the Lot Owner from payment of all fees assessed pursuant to the Governing Documents.

Section 2. Associate Members. Every person who is entitled to possession and occupancy of a Lot as a Tenant or lessee of a Lot Owner may be an associate Member of the Club, but shall not be entitled to any vote with respect to Club matters.

Section 3. Change of Membership. Change of membership shall be accomplished by recording in the Morris County Clerk's Office a deed or other instrument establishing a record title to a Lot, and delivery to the Secretary of the Club at the principal office of the Club of a certified copy of such instrument. The membership of the prior Owner shall simultaneously terminate with the membership of a new Owner.

Section 4. Rights of Membership. Every person who is entitled to membership in the Club, pursuant to the provisions of the Certificate of Incorporation and these Amended Bylaws, shall be privileged to use and enjoy the Common Property subject to the terms and conditions of Section 16.1 of the Declaration. Further, no new Lot Owner will be entitled to the benefits of membership until he (or she) has participated in an orientation meeting with a committee designated by the Board as set forth in Section 18.2 of the Declaration.

Section 5. Good Standing; Suspension of Rights.

- (a) If any individual Member is not in good standing, as defined in this section, no vote may be cast with respect to any Lot in which that Member holds an ownership interest. A Member is in good standing if the Member is (i) not in default, breach or violation of the terms, conditions, restrictions or covenants contained in the Governing Documents as determined following the opportunity to have a hearing before the Judicial Committee, if any, or the Board, or (ii) not more than 30 days late in the payment of any installment due for assessments made or levied against the Lot by the Club pursuant to the Declaration or these Amended Bylaws, together with all interest and/or costs, attorney's fees, penalties, fines and other expenses chargeable to the Member, or the Member's Lot.

- (b) Any Member not in good standing seven days prior to a membership meeting, will not, in connection with any Lot in which such Member has an ownership interest, be permitted to cast any vote in connection with any matter coming before the membership, nor be permitted to run for any elected office of the Club, nor will the Lot(s) owned by such an Owner be counted towards the Eligible Votes. The Board shall also have the right to suspend (i) the easement rights of a Lot Owner who is not in good standing, as described in Paragraph 16.1(c)(ii) of the Declaration; (ii) the right of a Lot Owner to participate in any Club or sub-Club activities; (iii) the use of any Club recreational facilities; and (iv) a Lot Owner's right to utilize the Club facility known as the "Inn" in connection with any activity that is not open to the general public.
- (c) A Member's rights, as set forth in subsection (b) above, will be reinstated eight days following the restoration of the owner's good standing, provided, however, that in connection with any adjournment of a meeting in connection with which the Member was not in good standing, the Member will not have a right to vote or be counted as an Eligible Vote in connection with such adjourned meeting.

Section 6. Votes. Members shall be entitled to one vote for each Lot to which the Member holds title. When more than one person holds title, the vote for each Lot shall be exercised as the co-owners among themselves determine. Members will be allowed to cast ballots anonymously by mail, provided that a procedure will be utilized to ensure that a ballot has been cast by a Member who is in good standing. A mailed ballot will constitute a proxy for purposes of determining a quorum in connection with a vote that is required to be conducted at a meeting of the Members. Any vote may, at the election of the Board, be cast electronically provided that (a) the Club is able to verify that the vote is cast by a Member eligible to vote, and (b) the ballot may be cast anonymously, or where that is not reasonably practical the selection indicated on any electronic ballot shall only be known to a person or persons appointed to count the ballots, which person or persons shall not be a member of the Board and who shall subscribe to an oath not to divulge the selection indicated by any Member casting an electronic ballot. If the anonymity of an electronic ballot cannot be guaranteed, electronic voting may be permitted, provided a Member is given the option of casting an anonymous written ballot. A Member voting by electronic means will be deemed present at a meeting at which a vote is to be conducted for the purpose of determining whether a quorum was obtained.

Section 7. Proxies. A written ballot shall, as provided in Section 6 of this Article III, constitute a proxy. Formal proxies that provide the proxy with the discretion to cast a vote as the proxy may determine will be permitted only where: (a) any matter to be voted on may result in an alternative proposal being presented at a meeting of the Members; (b) there are more than twice the number of candidates as there are Governor positions open for election; or (c) there are less candidates than open Governor positions. In no event may a proxy document permit the proxy agent to cast a vote on a matter other than as set forth on the written ballot to be voted upon at a membership meeting, except procedural motions such as, but not limited to, motions to

adjourn. All proxies must be in writing, signed by a Member, or by his duly authorized representative(s) and delivered to the Secretary of the Club, or such other person as the President may designate. All proxies will be effective only in connection with the meeting for which it is given, and all lawful adjournments of the meeting. Proxies may be revoked, in writing, at any time prior to the opening of the polls. Proxies may only be given to a Member of the Club in good standing in the Club. All proxies shall be substantially in the form prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board.

ARTICLE IV

Membership Meetings

Section 1. Place of Meeting. All meetings of the Members shall be held within the community or at such other place convenient to the Members as may be designated by the Board, provided that if a meeting is not held in the community it shall be held in Kinnelon Borough, or in an immediately adjacent municipality.

Section 2. Annual Meetings. All annual meetings of the Members shall be held during the month of November, on the date determined by the Board. Annual meetings shall be scheduled in addition to the regular meetings of the Board of Governors set forth in Article VII, Section 1, of these Amended Bylaws.

Section 3. Special Meetings. Special meetings of Members may be called by the President whenever such a meeting is deemed advisable, or may be called by the Secretary when so ordered by the Board, or upon the written request of Members representing not less than 15 percent of the Eligible Votes. The request must state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. Unless Members representing not less than 50 percent of the Eligible Votes request such a meeting, no special meeting may be called to consider any matter that is substantially the same as a matter voted upon at any meeting of the Members held during the preceding 12 months. Special meetings must be held within 45 days of the filing of a written request complying with the terms of this section.

Section 4. Emergency Meetings. In the event that the Board is required to deal with such matters of urgency and importance that delay for the purpose of providing forty-eight (48) hours advance notice would be likely to result in substantial harm to the interests of the Club, the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

Section 5. Meeting to Review Use Restrictions and Standards. As provided in Article 7.0 of the Declaration, upon the sixth anniversary of the recording of the Declaration, and every six years thereafter, a meeting shall be held for the purposes set forth in Article 7.0 of the Declaration. The meeting required under this section may be combined with the Annual Meeting of the Club, and need not be conducted as a separate meeting.

Section 6. Proxies and Adjourned Meetings. All proxies or ballots validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or special meeting and new proxies may be received for any such subsequent reconvened meeting.

Section 7. Notice of Meetings. Notice of each meeting of Members, whether annual or special, will be given not less than 10 days, nor more than 60 days before the day on which the meeting is to be held. Notice will be sent by U.S. mail, regular post with postage prepaid, addressed to the Lot Owner at the address on the records of the Club pursuant to Article XIX of these Amended Bylaws. Every such notice shall state the time and place of the meeting and shall state briefly the purpose(s) of the meeting. At least once each year, within thirty (30) days following the annual meeting of the Club, the Board shall post and maintain posted throughout the year, notice of Board meetings to be held in Board-designated locations. Notice of any meeting in which the Board is to take action, other than the annual meeting, an emergency meeting, or the meetings to be noticed under the preceding sentence, shall be given at least forty-eight (48) hours in advance of that meeting, including the time, date, location and when possible, the agenda for that meeting, to all Lot Owners in the manner provided in Article VII, Section 2 of these Amended Bylaws. Except where otherwise expressly required by law, no publication of any notice of a meeting of Members will be required.

Section 8. Quorum and Adjourned Meetings. The quorum for any membership meeting, unless otherwise specifically set forth in the Certificate of Incorporation, the Declaration or these Amended Bylaws, shall be 15 percent of the Eligible Votes. Only Members in good standing who are present in person or by proxy shall be counted in establishing a quorum. Once a quorum has been established, the quorum will remain in effect, despite the subsequent departure or absence of one or more persons from the meeting, provided that any action taken by the membership is approved by at least a majority of the quorum for that meeting. In the absence of a quorum, the persons holding votes present in person or by proxy and entitled to vote, may, by majority vote, adjourn the meeting from time to time, until a quorum shall be present or represented. To establish a quorum at the adjourned meeting, the number of Members that were present either in person or by proxy at any meeting adjourned due to lack of a quorum are considered present at any subsequent meetings of the original adjourned meeting, except that issues not expressly voted on in any proxies cannot be counted. The quorum will be determined by the Secretary or his designee.

Section 9. Organization. At each meeting of the Members, the President, or in his absence, the Vice President, or in the absence of both, another Governor chosen by a majority vote of the Members present in person or represented by proxy and entitled to vote at the meeting, shall act as a chair, and the Secretary, or in his absence, a person whom the Chair shall appoint, shall act as Secretary of the meeting.

Section 10. Number of Votes Required. Except as otherwise required by the Certificate of Incorporation, the Declaration, these Amended Bylaws, or any law, a quorum being present, the affirmative vote of a majority of the quorum present, in person or by proxy, will be sufficient on those matters that are to be voted on by the Members. Any vote permitted to be cast by a Member, may be cast by the Resident Spouse of a Member who does not hold record title to the Lot. Unless determined by a majority of the votes of the Members present at such meeting, in person or by proxy, or determined by the chairperson of the meeting to be advisable, the vote on any other question need not be by ballot, unless expressly otherwise required pursuant to the Declaration or these Amended Bylaws.

Section 11. Inspectors. If at any meeting of the Members a vote by ballot will be taken on any questions, except the election of Governors, the Club's accountant (or one or more employees with the accounting firm acting as the Club's accountant) will act with respect to the vote (hereinafter the "Independent Inspector"). Notwithstanding the foregoing, no Independent Inspector may be a resident of Smoke Rise. In connection with voting for candidates for Governors, the vote shall be counted pursuant to the terms of Article V, Section 3 of these Amended Bylaws. Each Independent Inspector shall first subscribe an oath stating that the Independent Inspector promises to perform his or her duties to the best of his or her ability and in a fair and impartial manner. The Independent Inspectors will decide upon the qualifications of voters and will report the number of Eligible Votes represented at the meeting and entitled to vote on the question, will conduct and accept the votes, and when the voting is completed, will ascertain and report the number of votes respectively for and against the questions; but as to the election of Governors, the number of votes received by each candidate will be reported to the presiding officer of the meeting, but need not be reported to the membership at large. Reports of the Independent Inspectors will be in writing and subscribed and delivered by them to the Secretary of the meeting. The Independent Inspectors may obtain the opinion of the Club's attorney concerning any matter within the Inspectors' discretion, as set forth in this section.

Section 12. Closing of Polls. In any matter to be voted on by ballot (excepting such matters voted upon at a meeting where a motion is approved to conduct a vote by ballot) the polls for receipt of the ballots shall not close until 8:00 p.m. on the business day following the date of the meeting.

Section 13. Order of Business. The order of business at the annual meeting of the Members or at any special meetings insofar as practicable shall be:

- a. Call of the roll and certifying the proxies and determining the quorum;
- b. Proof of notice of meeting and waiver of notice;
- c. Approval of the minutes of the previous membership meeting;
- d. Appointment of inspectors, if appropriate;
- e. Election of Governors, if appropriate;
- f. Receiving reports of officers (which reports may be in written form);
- g. Receiving reports of committees (which reports may be in written form);
- h. Membership comments;

- i. Noticed business;
- j. Old business;
- k. New business;
- l. Adjournment.

Section 14. Ascertainment of Votes Needed. Whenever the Governing Documents require a specific percentage or fraction to vote in the affirmative, the percentage or fraction shall be applied to the Eligible Votes, unless any provision of the Declaration, the Certificate of Incorporation or these Amended Bylaws require a percentage of all Lot Owners to approve an action. For example, under Article XVI, Section 1(b), of these Amended Bylaws, an amendment to the Bylaws may be approved by an affirmative vote of at least a majority of Eligible Votes present in person or by proxy at a duly called annual or special meeting of the Members, with a minimum quorum of 50 percent of the Eligible Votes. Thus, if 50 percent of the Members in Good Standing were present in person or by proxy at that meeting, then the amendment may be approved by an affirmative vote equal to one-half of those Members plus one additional vote.

Section 15. Minutes. Minutes of every membership meeting shall be taken by the Secretary or the Secretary's designee. A copy of the unapproved minutes shall be available for distribution to any Member requesting same in writing to the Secretary, or to the Secretary's designee, no later than 30 days after the meeting.

ARTICLE V

Board of Governors

Section 1. Express and Implied Powers. The property, affairs and business of the Club will be managed by the Board of Governors, which shall have all those powers granted to it by law, the Declaration, the Certificate of Incorporation, and these Amended Bylaws, including, without limitation, the power to:

- (a) Establish, adopt and enforce rules and regulations (the "Rules and Regulations") in connection with the conduct of Owners, occupants, Tenants, guests, visitors and invitees with respect to the Common Property and the Lots. In connection with any rule or regulation that concerns Tenants or guests, any person, other than a child, mother or father of a Lot Owner, who is not an Owner, and who resides in a Lot Owner's 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 Rules and Regulations, if any, applying to tenancies or leases, unless the Owner provides clear and convincing proof to the reasonable satisfaction of the Board that the person residing therein is not a Tenant; and
- (b) Enforce by any legal means the provisions of the Governing Documents including imposing fines, and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Club; provided, however, the Club will not

be obligated to take action to enforce any covenant, restriction or rule which the Board in the exercise of its reasonable business judgement determines is, or is likely to be construed as inconsistent with applicable law, or in any case in which the Board reasonably determines that the Club's position is not likely to be successful unless 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; and

- (c) Establish such committees in addition to the Standing Committees referenced in Article XII, as the Board may, from time to time, determine, which committees will serve at the pleasure of the Board and in accordance with the duties and limitations placed upon such committees by the resolution of the Board establishing them;
- (d) Authorize, in writing, the use of the “Smoke Rise” name by sub-clubs or such other entities or organizations as the Board may determine, subject to such terms and conditions as the Board may impose in its absolute discretion; and the Board shall be authorized to enforce, by any lawful means, its right to limit the use of the “Smoke Rise” name by those persons or entities who are not entitled to the use of the name or by those persons or entities who have failed to comply with the terms and conditions imposed by the Board for the use of the name, it being the intention of this Section that no committee, sub-club or other entity be permitted to use the “Smoke Rise” name without the written authorization of the Board.
- (e) Exercise all powers necessary or reasonably implied to carry out the functions of the Board as set forth in the Declaration, these Amended Bylaws, the Non-Profit Corporations Act, or otherwise by law, it being the intention of this provision to grant the broadest powers reasonably necessary to carry out its functions.

Section 2. Number and Qualifications; Nomination.

- (a) The Board will consist of 12 Governors, each of whom must be a Resident Lot Owner or Resident Spouse of a Lot Owner who has resided in the Smoke Rise Community for not less than three years prior to the date scheduled for the election.
- (b) All Members of the Club in good standing may vote for candidates for all Governorships. Not more than one resident of a Lot may serve on the Board at any one time. No person may be a candidate for a Governor position who is not a Member in good standing. No person may be a candidate for a Governor position who has not actively served for at least one year as a member of a Club committee or as a member of a sub-club.

- (c) Prior to each election of Governors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a *bona fide* interest in serving as a Governor may file as a candidate. The Board may also establish other rules and regulations as it deems appropriate to conduct the nomination of Governors in a fair, efficient and cost-effective manner.
- (d) The Nominating Committee shall nominate one or more qualified Members to be a candidate for the Board, as set forth in Article XII, Section 5, of these Amended Bylaws, provided that the names of any candidate(s) proposed by the Nominating Committee must be delivered to the Board, in writing, not later than 30 days after the closing date provided in sub-part (c) of this Section.
- (e) The Board will forward the names of all nominees for election nominated prior to the meeting, to the Members, not later than 10 days prior to the meeting and each candidate will be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.
- (f) In addition to candidates nominated by the Nominating Committee any Member who satisfies the qualifications to be a candidate as set forth in these Bylaws may become a candidate for a Governorship by obtaining a petition for their nomination executed by Members (one Member per Lot) representing 10 percent of the total Lots in Smoke Rise. Such petition must be delivered to the Secretary of the Club not later than closing date described in sub-part (c) of this Section.

Section 3. Election Procedures. All elections shall be by ballot cast at the annual meeting in person or by proxy, absentee ballot or electronic ballot, if electronic ballot is permitted in connection with such election. The Secretary shall cause notice of the election to be mailed or delivered to each Owner at least 10 days prior to the annual meeting established by the Board. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the terms of this Article. The notice shall specify the name and address to which the ballot should be returned and, where a Member will not attend, the date by which they must be received in order to be counted, which date shall be the "Election Date."

Each Owner holding an Eligible Vote, may cast a vote assigned to his Lot for each position to be filled from the slate of candidates on which the Owner is entitled to vote. No cumulative voting shall be permitted.

In any election where there are more candidates than vacancies open for election, the ballots shall be counted by either (i) a committee of impartial Owners having no relationship with any of the candidates; (ii) by a reputable, independent third party organization organized to provide such services; or (iii) the Club's accountant (the "Inspector"). The Inspector may commence the counting of the ballots that have been received by the Club at 5:00 p.m. on the

date of the annual meeting, provided that each candidate who so desires may be present or have a representative present to observe the counting of the ballots. The Inspector will also count all ballots in person at the election meeting. The Inspector shall determine the validity of all ballots and proxies, and may consult with counsel to the Club in connection with determining the validity of any ballot or proxy. If the Inspector disqualifies any proxy or ballot, it shall not be counted, but shall be maintained by the Inspector for a period of a minimum of 60 days in the event the election is contested. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

Section 4. Election and Term of Office. Four Governors shall be elected at each annual meeting to serve for a term of three years. Governors may serve not more than two consecutive full terms. Any Governor filling a partial term shall be deemed to have served a full term if the remaining term of office, upon his or her appointment, exceeds 18 months. A Governor who has served two consecutive full terms shall be eligible for election after such Governor has not served for at least one full year (or the number of days occurring between two consecutive annual meetings, whichever is less). At least thirty (30) days prior to the annual meeting, the Board shall notify each Member by mail addressed at his last known place of address of the name of the individuals who desire to be candidates for Governorships at the meeting. Service of the notice may also be accomplished by delivery of the notice to the Member at his last known address. A resume of each candidate shall accompany the 10-day notice set forth in Article IV, Section 7, unless there are only four candidates, each of whom is an incumbent Governor. The résumé may include only a summary of education, employment and work and Club experience. If there is an unexpired term to be filled at the annual meeting, the notice shall also contain the name and resume of the individual(s) who is a candidate for the unexpired term. A Governor shall hold office until his successor has been elected.

Section 5. Removal of Governors.

- (a) At any duly held regular or special meeting of the Members, any one or more Governors may be removed with or without cause by a majority of the Eligible Votes present (no proxies), provided that (i) the notice of the meeting expressly includes the removal of one or more Governors, and (ii) the Governor(s) whose removal is proposed will receive not less than 7 days prior notice of the intention to vote upon his removal, (iii) the Governor(s) will be given an opportunity to be heard at the meeting, and (iv) the total votes cast in favor of removal constitute not less than 25 percent of all Eligible Votes. If the removal of one or more Governors is proposed to be placed on the annual meeting agenda, a petition containing 15 percent of the Eligible Votes must be submitted to an officer of the Club at least 30 days prior to the annual meeting. If one or more Governor's removal is to be considered at any special meeting of the Club, the procedure established in Article IV, Section 3, will be followed. If a vote to remove a Governor(s) is approved, a successor(s) may then and there be appointed by the President (or where the President is removed, then the Vice-President) to fill the vacancy thus created. Each person so appointed shall be a Governor for the

unexpired portion of the term to which such person was appointed, unless, in accordance with Section 6 below, the Members are entitled to elect a Governor for the unexpired term.

- (b) Any Governor who ceases to be a Resident Owner or Resident Spouse, or who is determined not to be a Member in good standing for a period of more than 30 days after being notified that he is not a Member in good standing, will automatically be removed as a Governor.
- (c) Any Governor missing more than three regular meetings of the Board in a 12-month period without approval of the Board, may be removed by the remaining Governors, in which case the vacancy will be filled pursuant to Section 6 below. However, any Governor whose removal has been proposed by the Board shall be given an opportunity to be heard at a Board meeting prior to the vote for removal.
- (d) In the event that all of the Governors are removed, successors shall be elected by the Members in the manner set forth in Article V, Section 3 of these Amended Bylaws to fill the vacancies thus created. Each person so elected shall be a Governor for the remainder of the term of the Governor whose term he is filling and until his successor is duly elected and qualified.

Section 6. Vacancies. Vacancies in the Board caused by any reason other than the removal of all Governors by a vote of the Members shall be filled by appointment by the President (or if the Governorship of the person who was serving as President becomes vacant, then the Vice-President), promptly after the occurrence of any such vacancy. If the remaining term of the vacancy is less than two years, any person so appointed shall be a Governor for the balance of the remaining term and until a successor is elected. If the remaining term of vacancy is more than two years, the person appointed by the President (or Vice-President, as the case may be) shall serve until the next annual meeting at which time the Members shall elect a candidate to fill the unexpired term. At any election at which Members are electing a candidate to fill an unexpired term, and where one or more candidates has not opted to specifically run for the unexpired term, the elected candidate receiving the fewest votes will fill the unexpired term. If all of the Governors are removed pursuant to the terms of Section 5 above, an election shall be scheduled within 45 days, which election shall be otherwise in accordance with the terms of this Article V, to fill the unexpired portion of the terms of the removed Governors, with the four candidates receiving the greatest number of votes serving a three-year term, the four candidates receiving the next highest number of votes serving a two-year term and the successful candidates receiving the least number of votes serving a one-year term.

Section 7. Areas of Responsibility. The President shall appoint each Governor to a specific area of responsibility, provided that the areas of responsibility will not be in lieu of the duties of each officer as set forth in Article VI of these Amended Bylaws. The President must appoint Governors to the following areas of responsibility:

- (a) Orientation;
- (b) Architecture and Variance;
- (c) Maintenance;
- (d) Aesthetics;
- (e) Security;
- (f) Village Inn;
- (g) Infrastructure;
- (h) Lake and Environment;
- (i) Recreation; and
- (j) Strategic Planning

In the event a standing committee does not exist for any of the foregoing areas of responsibility or any other area of responsibility adopted by the Board, and the budget established for such area of responsibility exceeds \$25,000.00, the Governor appointed to such area of responsibility shall appoint not less than five Members to a committee (excluding the Governor), which committee shall meet not less than six times annually. The Governor shall appoint the chairperson of such committee and the committee shall adopt a charter, which shall be subject to review and approval of the Board. In the event the Board does not approve the charter as presented, it shall advise the committee of the modifications required, and the committee shall adopt a charter as amended by the Board. Every three years thereafter the committee shall review the charter and it shall be re-approved by the Board following the same procedure as set out above. Notwithstanding any provision of these Bylaws to the contrary, in the event the Club employs a full-time manager, the requirements of this section may, in part or in full, be eliminated by a resolution of the Board, provided that in no event shall the Architecture and Variance Committee, Audit Committee, Nominating Committee or Judicial Committee be dissolved except by amendment duly adopted pursuant to Article XVI of these Amended Bylaws.

ARTICLE VI

Officers

Section 1. Designation. The officers of the Club shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom may, but are not required to be, members of the Board. The Board may also elect such other Assistant Treasurers and Assistant Secretaries as may be necessary in its judgment, provided that such assistants need not be members of the Board. No person may hold more than one officer position.

Section 2. Election of Officers. The officers of the Club shall be elected annually by the Board at the first Board of Governors meeting following each annual meeting and such officers shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of nine Governors, any officer may be removed, either with or without cause, after opportunity for a hearing, and his

successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. Duties and Responsibilities of Officers.

- (a) The President will be the chief executive officer of the Club. The President shall preside at all meetings of the Club and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of President of a non-profit corporation.
- (b) The Vice-President will take the place of the President and perform the duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board will appoint another Governor to so do on an interim basis. The Vice-President will also perform such other duties as shall from time to time be imposed by the Board.
- (c) The Secretary will be responsible for the keeping of the minutes of all meetings of the Board and the minutes of all meetings of the Members of the Club, which functions shall generally be undertaken by a recording secretary who shall be an employee of the Club designated by the Board; will have charge of such books and papers as the Board may direct; and will, in general, perform all the duties incident to the office of the Secretary.
- (d) The Treasurer will have the responsibility for the custody of Club funds and securities and will be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Club. The Treasurer will be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Club in such depositories as may from time to time be authorized by the Board.
- (e) The Assistant Treasurer, if any, will perform the duties of the Treasurer whenever the Treasurer shall be absent or unable to act.
- (f) The Assistant Secretary, if any, will perform the duties of the Secretary whenever the Secretary shall be absent or unable to act.

Section 5. Other Duties and Powers. The officers will have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

Section 6. Eligibility of Governors. Nothing herein contained will prohibit a Governor from being an officer.

ARTICLE VII

Meetings of the Board of Governors

Section 1. Notices; Waiver of Notice. Regular meetings of the Board may be held at such time and place as must be determined from time to time by a majority of the Board, but at least nine meetings must be held each year. Notice of regular meetings of the Board will be given to each Governor by telephone, mail, telegram or, if accepted in writing by a Governor as an authorized form of notice, by email, (any of the foregoing being “Valid Notice”) at least 10 days prior to the day of the meeting. Special meetings of the Board may be called by the President on three days’ notice to each Governor by Valid Notice, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board may be called by the President or the Secretary in like manner and on like notice on the written request of at least three Governors. Any Governor may, at any time, waive notice of any meeting of the Board in writing and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by Governors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the Governors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 2. Meetings Open to Lot Owners; Notice. No less than four (4) meetings of the Board each year shall be open to attendance by the Lot Owners. All other meetings of the Board except conference or working sessions at which no binding votes are taken, will also be open to attendance by all Members, except that the Board may, at its discretion, exclude or restrict attendance at those meetings, or portions of meetings, dealing with:

- (a) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including, without limitation, records, data, reports or information relating to an individual’s personal or family circumstances, unless the individual concerned or the individual’s representative consents, in writing, to public disclosure;
- (b) Any pending or anticipated litigation or contract negotiations;
- (c) Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise the ethical duties of a lawyer; or
- (d) Any matter involving the employment, promotion, discipline or dismissal of any employee or officer of the Club.

Written notice of the date, time, place and the agenda, to the extent known, of all open meetings of the Board of Governors shall be given by the Board to all Lot Owners at least seven days prior to a regular meeting and 3 days prior to a special meeting. Notice shall also (a) be posted in at least one place on the Common Property that is accessible at all times to all Lot

Owners, (b) be filed with the community manager, and (c) be published in one or more newspapers of general circulation, if such publication is required by law. Moreover, the Board shall also, within 30 days following the annual meeting of the Club, post in at least one place on the Common Property, and file with the community manager a schedule of the regular Board meetings to be held in the succeeding year, and make appropriate revisions thereto, as required. The date, time and location of each meeting shall be contained in the notice.

The foregoing notice will not be required in the event of an emergency, provided that only emergent matters may be voted upon at such meeting.

Section 3. Organization. The presiding officer of the Board of Governors' meetings shall be the President, or in his absence, the Vice President, or in the absence of both of them a Governor selected by the majority of the remaining Governors. The presiding officer will act as the chair of the meeting. The Secretary, or in his or her absence, a Governor appointed by the chair, shall act as Secretary of the meeting.

Section 4. Minutes. Minutes of the Board meetings will be taken, and copies of minutes will be made available to Lot Owners at the meeting following their approval by the Board, within seven (7) days following receipt of a written request by a Lot Owner. Minutes of closed meetings will be taken separately, and will not be available to Lot Owners, until the need for confidentiality no longer applies. Thereafter such minutes will be available on the same basis as other minutes of the Board.

Section 5. Agenda. An agenda shall be followed for each meeting and copies of the agenda shall be made available to the Lot Owners at the beginning of each meeting and, to the extent known, will be made available through electronic means at least 72 hours prior to the meeting. The agenda shall include, in order:

- a. Calling of the roll; Certification of quorum;
- b. Proof of notice of meeting or waiver;
- c. Approval of minutes of previous meeting;
- d. Membership comments;
- e. Specific topics of business;
- f. Acceptance of reports of officers (which reports may be in written form);
- g. Acceptance of reports of committees (which reports may be in written form);
- h. Manager's report;
- i. Old Business;
- j. New Business;
- k. Adjournment

Upon motion and approval by a majority of the Board, the order of the agenda may be amended in the discretion of the Board. Each open meeting of the Board will provide for a period of Lot Owner comment following the calling of the roll, which period of Lot Owner comment may not exceed 45 minutes in its entirety, or such longer time as the Board may

determine, and the President or acting chair of the meeting may place reasonable limitations upon the time given to each Lot Owner seeking to comment to allow sufficient time for all Lot Owners seeking to comment. The Board will also provide a Lot Owner comment period prior to any vote of the Board concerning: (i) the adoption of rules or regulations; or (ii) the adoption of a budget, provided that the presiding officer may, at the officer's discretion, limit the total comment period to not less than 45 minutes and may reasonably limit comments in such a manner so as to provide each Lot Owner seeking to comment with an opportunity to do so. The failure to provide an adequate comment period or opportunity for each Member wishing to comment to do so will not be a basis upon which any action otherwise properly taken by the Board may be voided.

Section 6. Quorum, Voting and Adjourned Meetings. A majority of the Governors serving on the Board who are present in person at a Board meeting will constitute a quorum for the transaction of business. The vote of a majority of those present at a Board meeting at which a quorum is present shall be necessary for valid action by the Board on any matter, unless otherwise set forth in these Amended Bylaws. After a quorum of the Board of Governors has been established, the quorum will remain in effect, despite the subsequent departure or absence of one or more Governors thereafter, provided that any action taken is approved by at least a majority of the required quorum. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting to a new date. At any such adjourned meeting at which a quorum is present, any business that may have been transacted at the original meeting may be transacted without further notice.

Section 7. Joinder in Meetings by Approval of Minutes. The transaction of any business at any meeting of the Board, however called and noticed or whenever held, will be valid as though a meeting duly held after regular call and notice, if a quorum is present; and if either before or after the meeting, each Governor signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof or of the resolution or act adopted at such meeting. All such waivers, consents or approval, shall be in writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

Section 8. Non-Waiver. All the rights, duties and privileges of the Board will be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

Section 9. Consent in Lieu of Meeting and Vote. Despite anything to the contrary in these Amended Bylaws, the Certificate of Incorporation or the Declaration, the entire Board of Governors shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote, if the entire Board, or all the Governors empowered to act, whichever the case may be, shall consent in writing to such action.

ARTICLE VIII

Powers, Duties of the Board of Governors

Section 1. Powers, Duties and Responsibilities. It shall be the affirmative and perpetual obligation and duty of the Board to perform the following:

- (a) Cause the Common Property to be maintained according to accepted standards as set forth in the Declaration and including, but not limited to, such maintenance, painting, replacement and repair work as may be necessary, Common Property lawn maintenance and clearing of snow from roadways as the Board may deem appropriate. All repairs and replacements shall be substantially similar to the original application and installation and shall be of first-class quality; and
- (b) Investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, in order to properly maintain and operate the Common Property. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Club; and
- (c) Cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof to the Members at the annual meeting or at any special meeting when requested in writing at least 21 days in advance by Members representing at least 15 percent of the Eligible Votes; and
- (d) Allocate common surplus or make repairs, additions, improvements to, or restoration of the Common Property in accordance with the provisions of these Amended Bylaws, the Declaration and the after damage or destruction by fire or other casualty, or as a result of the condemnation or eminent domain proceedings; and
- (e) Take such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises maintained by the Club placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, and order the Board of Fire Underwriters or other similar bodies; and
- (f) Place and keep in force all insurance coverages required to be maintained by the Club, applicable to its property and Members including, but not limited to:
 - (i) *Physical Damage Insurance.* To the extent available in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all buildings and betterments located upon the Common

Property, together with all service machinery appurtenant thereto, as well as common personalty belonging to the Club, and covering the interest of the Club and the Board in an amount equal to the full replacement value of the buildings located upon the Common Property (exclusive of foundations and footings), and betterments, without deduction for depreciation. Prior to obtaining any renewal of a policy of fire insurance, the Board shall obtain an appraisal or other written evaluation of an insurance broker licensed to conduct business in New Jersey or other qualified expert as to the full replacement value of the buildings located upon Common Property (exclusive of foundations and footings) and betterments, for the purposes of determining the amount of fire insurance to be obtained pursuant to this subparagraph. The amount of any deductible and the responsibility for payment of same shall be determined by the Board, in its sole discretion.

- (ii) *Public Liability Insurance.* To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring within the Common Property (and any other areas which the Board may deem advisable), and the defense of any actions brought by injury or death of a person or damage to property, occurring within such Common Property, and not arising by reason of any act or negligence of any individual Lot Owner. Said insurance shall be in such limits as the Board may, from time to time, determine, covering each member of the Board, the managing agent, the manager, and each Member, and shall also cover cross liability claims of an insured against another. Such public liability insurance shall be in a single limit of not less than \$ 5,000,000 covering all claims for personal injury or property damage arising out of any one occurrence. The Board shall review such limits once a year.
- (iii) *Governors', Officers', and Committee Members' Liability Insurance.* To the extent obtainable in the normal commercial marketplace, liability insurance indemnifying the Governors, Officers and Committee Members of the Club against liability for errors and omissions occurring in connection with the performance of their duties in an amount of at least \$2,000,000 with any deductible amount to be in the sole discretion of the Board.
- (iv) *Workers' Compensation Insurance.* Workers' Compensation and New Jersey disability benefits insurance as required by law.
- (v) *Water Damage.* Water damage legal liability insurance.

- (vi) *Flood Insurance.* Flood hazard insurance in the event any of the insurable improvements located upon the Common Property are located within a federally designated zone of the greater than minimal flood hazard.
- (vii) *Boiler Insurance.* To the extent obtainable in the normal commercial marketplace, boiler explosion liability insurance.
- (viii) *Other Insurance.* Such other insurance as the Board may determine to be appropriate.

All policies shall: (i) provide if possible for recognition of any insurance trust agreement of the Club and that adjustment of loss shall be made by the Board of Governors with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, if \$50,000 or less shall be payable to the Board, and if more than \$50,000 shall be payable to the Insurance Trustee, if any; (ii) require that the proceeds of physical damage insurance be applied to the restoration of such Common Property and structural portions and service machinery as is required by the Declaration and these Amended Bylaws; (iii) to the extent obtainable contain agreed amount and inflation guard endorsements; construction code endorsement; demolition cost endorsement; contingent liability from operation of building laws endorsement and increased cost of construction endorsement; (iv) provide that the insurance will not be prejudiced by any act or omission of individual members that are not under the control of the Club; (v) to the extent obtainable contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured; and (vi) provide that such policies may not be canceled without at least 30 days' prior written notice to all the named insureds.

All policies shall show the named insured as: "The Smoke Rise Club, Inc.," or the Club's Insurance Trustee, if any. The policies must require the insurer to notify in writing the Club, at least 30 days before it substantially changes the Club's coverage.

The premiums for any and all insurance coverage maintained by the Club shall be a Common Expense of the Club.

To the extent reasonably obtainable in normal commercial marketplace, the Club shall provide liability coverage for all committees and sub-clubs. Where such coverage is not available to a sub-club, such sub-club must provide evidence of insurance coverage naming the Club as an additional insured in an amount of not less than \$1,000,000.00, by an insurance company authorized to do business in the State of New Jersey and which insurance company is acceptable to the Board.

(g) Cause, on behalf of the Lot Owners, solid waste, including recyclable waste, to be disposed of, in the event the Borough of Kinnelon does not provide solid waste disposal.

(h) Manage the fiscal affairs of the Club as hereinafter provided in Article IX.

(i) Appoint such committee members as are provided for pursuant to the terms of the Amended Bylaws.

ARTICLE IX

Fiscal Management

Section 1. Fiscal Year. The fiscal year of the Club shall be determined by the Board of Governors, but shall not be changed more frequently than once every three years.

Section 2. Approval of Budget and Annual Assessment, Notice of Budget. The budget and Annual Assessment for each fiscal year shall be approved by a majority of a quorum of the voting Members at the annual meeting of the Club. A copy of the proposed budget that was approved by the Board shall be mailed to all Lot Owners at the address appearing on the records of the Club at least 10 calendar days prior to the date of the annual meeting. The Lot Owners shall be given the opportunity to comment on the budget or its component parts. Members shall be allowed a comment period of not less than 45 minutes, and reasonable limitations may be placed upon the comment time given each Lot Owner seeking to comment, to allow sufficient time for all Lot Owners seeking to comment. The Board shall give written notice to any Eligible Mortgage Holder who requests same, of the budget adopted by the voting Members for the management and operation of the Club for the next ensuing budget period. If the Members do not approve the budget, the Board will prepare an amended budget that addresses the concerns of the Membership no later than two (2) weeks following the vote. The amended budget and assessment can be levied if approved by a majority of the quorum 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. If the voting Members do not approve the amended budget at the special meeting, the budget for the current fiscal year will be the amount of the prior fiscal year's budget increased by the extent of changes in the current 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 October of the year preceding the year in which the budget was not approved will be the Reference Base Index. The amount of the budget shall be increased by the positive difference between the Base Reference Index and the Index as of October of the then current year (the "CPI Adjusted Budget").

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 the 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.

The administrative failure to deliver a copy of the proposed budget to one or more Lot Owners prior to the annual meeting, as required by this section, shall not invalidate approval by the Membership of the budget.

Section 3. Common Receipts. The Board shall have the duty to collect through legal enforcement proceedings, if necessary, from each Lot Owner, his, her, or their heirs, administrators, successors and assigns, as “Common Receipts,” the proportionate part of the Annual and Special Assessments assessed against such Lot Owner as provided in the Declaration, the Certificate of Incorporation, these Amended Bylaws, and in accordance with applicable law.

Section 4. Assessment Period. The Annual Assessment period shall be consistent with the Club’s fiscal year.

Section 5. Special Assessments. The Board may levy a Special Assessment in accordance with the terms of Section 12.4 of the Declaration.

Section 6. Collection of Annual Assessments. Lot Owners shall pay to the Club either (i) the entire balance of the Owner’s pro-rata share of the Annual Assessment by January 31st, or (ii) at least 30 percent of the Owner’s pro-rata share of the Annual Assessment by January 31st, followed by 7 equal monthly installments starting in March including interest thereon at interest rates determined from time to time by the Board of Governors, with such Owner’s pro-rata share being determined by the Club pursuant to the terms of Section 2 of this Article IX. If an Owner elects option (ii) in the preceding sentence and thereafter fails to make any required monthly payment within 30 days of the date it is due, the balance of the monthly payments for the then current fiscal year will be accelerated. The Board may, by resolution, adopt such Annual Assessment payment interval as it determines, provided, however, that notwithstanding the payment interval chosen, the failure to pay any interval payment within 30 days of its due date shall cause acceleration of the balance of payments for the then current fiscal year.

Section 7. Disbursements. The Board will collect and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and as required by the Declaration, the Certificate of Incorporation, and applicable law.

Section 8. Depositories. The depository of the Club will be a bank or banks, or other financial institutions providing a reasonably secure depository for the funds of the Club as will be designated from time to time by the Board and in which the monies of the Club will be deposited. Withdrawal of monies from such accounts shall be only by checks signed by at least one (1) officer as is authorized by the Board or by use of a Board-authorized purchasing card with predetermined credit limits. Check signing limits shall be established by the Treasurer with approval of the Board.

Section 9. Accounts. The receipts and expenditures of the Club shall be related to the Operating and Maintenance and Capital Fund.

(a) The Operating and Maintenance Fund (“O&M Fund”) includes the Annual Assessments and other operating revenues that are available to pay expenses on an unrestricted basis and shall be utilized, without limitation, for expenses for the year in which the budget is adopted and will include general Club Property maintenance (e.g. landscaping, irrigation, snow clearing, etc.), payroll, utility charges, annual insurance premiums, professional fees, and the like. At the end of each fiscal year, the unexpended amount remaining in the O&M Fund shall be applied to reduce the assessments for current expenses for the succeeding year, or may be distributed to the Membership, as the Board may determine by resolution, or as otherwise may be required to be determined in accordance with the regulations promulgated by the Internal Revenue Service. Included in this Fund will be a Contingency Reserve that will be maintained at a minimum level which is equal to ten (10) per cent of the total budget of Capital and Operating and Maintenance expenditures.

(b) The Capital Fund (“Capital Fund”) includes net assets generated by revenues from Acquisition Fees and capital assessments that are temporarily restricted to the purchase of capital improvements and furtherance of the Club’s physical infrastructure. The Capital Fund will be used for the acquisition or replacement of capital assets of the Club that is in accordance with the Smoke Rise Club Capitalization Policy.

Section 10. Treatment of Surplus and Deficits at end of each Fiscal Year.

(a) The framework for the treatment of Fund surpluses and deficits is as follows: At the end of each fiscal year, during the budget process, if it is determined that a net surplus will exist in the Operating and Maintenance or Capital Fund, the net surplus shall be classified as “Prior Year Surplus” in the revenues section of the next year’s budget, thereby reducing the next year’s budget assessment for the Fund(s). If it is determined that a net deficit will exist in either Fund, the net deficit shall be classified as “Prior Year Deficit” in the expenses section of the next year’s budget, thereby increasing the next year’s budget assessment for that Fund(s). In this manner, equity account balances shall never be less than zero on the first day of the beginning of each fiscal year for the Operating and Maintenance and Capital Funds.

(b) Should it be determined during the fiscal year, after a thorough review of all budgeted line items within the Fund, that a temporary or permanent cash shortfall will exist in the Operating and Maintenance or Capital Fund, the Board shall raise additional monies in the Fund in the following sequential manner: 1) utilize monies from the contingency reserve (which is a sum provided for in each annual budget), then have the option to either 2) borrow monies from its credit line, or 3) levy a special assessment, which may be, but will not be limited to, an interim measure.

A temporary cash shortfall is defined as being caused by timing differences between the collection of revenues and the payment of expenses, and will normally occur prior to

the collection of the Club's Assessment Revenues. A permanent cash shortfall is defined as being caused by either collecting less revenue or incurring greater expense, or a combination thereof, than the approved Fiscal Budget, and will generally occur during the latter part of the Club's fiscal year.

Borrowing monies from its credit line/margin account or utilizing monies from the Contingency Reserve requires approval of the Board. A special assessment, whether interim or otherwise, requires approval of the membership.

Monies utilized or borrowed by the Operating and Maintenance or Capital Funds for temporary cash shortfalls must be repaid when the Assessment Revenues are ultimately received, whereas monies utilized or borrowed for permanent cash shortfalls must be repaid from the subsequent year's budget of the Borrowing Fund.

(c) The Treasurer shall invest the excess cash of the Club, not to include borrowed funds, in a prudent manner to obtain a reasonable yield, while maintaining the liquidity necessary to support the Club's current and anticipated operating requirements.

Investments should not exceed a one-year maturity and should be restricted to U.S. Government direct, agency or guaranteed debt; corporate debt (rated at least AA, by Standard and Poor's or Aa by Moody's); or, major money market funds, money market deposit accounts or certificates of deposit issued by domestic FDIC-insured banks (at least S&P rated A, or Moody's, rated A3), Treasury Bills or commercial paper (rated at least A-1 by Standard and Poor's or P-1 by Moody's). Corporate debt shall not exceed one-third of the total of such investments.

Interest income received on investments and interest expense paid on borrowings shall be accounted for and reported in the Operating and Maintenance Fund.

Section 11. Acquisition Fees. Each purchaser, upon acquiring title to a Lot, shall, as a condition of membership in the Club, pay an Acquisition Fee as determined from time to time by the Board of Governors.

The foregoing fee will be nonrefundable, nontransferable and shall not be credited to the purchaser by the Club upon sale by the purchaser of his, her, or their Lot. The following additional rules shall apply to the obligation to pay an Acquisition Fee:

- (a) If all parties owning a Lot ("Original Lot") purchase an additional Lot ("New Lot") and transfer the Original Lot to a third party (in which none of the parties owning the Original Lot have an ownership interest) within 365 days after acquiring the New Lot, the Acquisition Fee paid upon acquisition of the Original Lot shall be refunded.

- (b) If all of the parties owning an Original Lot sell the Original Lot and do not close title to a New Lot within 365 days, and thereafter all parties owning the Original Lot purchase a New Lot, the Acquisition Fee shall be the difference between the fee paid upon closing of the Original Lot and the amount of the acquisition fee then being charged by the Club upon closing of the New Lot.
- (c) If two or more persons jointly acquire a Lot and thereafter one of the Owners of the Lot acquires another Lot, with one or more of the other Owners retaining title to the Original Lot, a full Acquisition Fee will be due upon closing of the New Lot.
- (d) If a Lot is owned by one spouse or lawfully recognized domestic partner and the other spouse or lawfully recognized domestic partner is conveyed an interest in the Lot, no Acquisition Fee shall be due.
- (e) If a Lot is conveyed to a family member other than a spouse or lawfully recognized domestic partner, an Acquisition Fee shall be payable to the Club.
- (f) If a Lot is purchased for the purpose of construction or renovation of a dwelling and sale of same to a third party, an Acquisition Fee shall be due upon the purchase of the Lot and, again, upon the purchase by the third-party buyer.
- (g) If a Lot is conveyed pursuant to a will or trust agreement to a father, mother, child, brother or sister of one of the Owners, an Acquisition Fee shall be payable to the Club.
- (h) If a Lot is conveyed to a living trust by Owners who maintain the dwelling on the Lot as their residence, no Acquisition Fee shall be payable to the Club.
- (i) Any party claiming an exemption to the payment of an Acquisition Fee as set forth in this section must advise the Club in writing within 30 days following closing of title on the Lot for which an exemption is claimed. In order to qualify for the exemption the party claiming an exemption shall comply with all reasonable requests by the Board for additional documentation. Any person who has paid an Acquisition Fee and who has failed to make written request for an exemption within 90 days of the closing upon the Lot shall not be entitled to a refund of the Acquisition Fee.

Any unpaid Acquisition Fee shall be a lien on the Lot and collectable in the same manner as any unpaid Annual and Special Assessment attributable to the Lot. The Board may, by resolution, reduce or eliminate the Acquisition Fee if, in the exercise of its sole discretion, it determines that such fee is having a detrimental impact upon the sale of Lots within Smoke Rise. At any time thereafter the Board may restore the Acquisition Fee to such sum as the Board may

determine. The reduction or elimination of the Acquisition Fee by the Board on one or more occasions shall not entitle any Owner who previously paid the Acquisition Fee to a refund.

Section 12. Financial Statements Procedure. The financial statements of the Club, and the budgets included in the Ten Day Notice, shall be prepared on an accrual basis in accordance with Generally Accepted Accounting Principles for nonprofit organizations. The Club's year-end financial statements shall be audited by an independent certified public accounting firm. Copies of the accounting firm's reports shall be made available to the Club Membership. The independent CPA firm shall be recommended by the Audit Committee and approved by the Board of Governors.

Section 13. Delinquent Lot Owner.

(a) "A Delinquent Lot Owner" means a Lot Owner who owes any annual or special assessment, fines, or any other charges to the Club that are 30 or more days past due.

(b) Late fees may be levied on a Lot when an assessment payment balance or monthly installment payment is not received within 10 days of the due date; the Lot Owner shall be so notified and billed by the Club. The late fee shall be an amount to be determined by the Board by resolution and will be applied to each installment that is not paid by its due date. If an installment remains late for more than thirty (30) days, the Board may accelerate all remaining installments for the assessment period for the Lot; the Lot Owner(s) shall be notified by certified mail return receipt requested upon acceleration. All installments of the annual assessment that are more than 30 days late shall bear interest until the installment is paid, at such rate as may be established by resolution of the Board. If any installment of the annual assessment is more than 60 days past due, the Board may cause the recording of a notice of lien with the Morris County Clerk's Office. If any installment is not received within 90 days after the date it was due, the Board may foreclose the lien in the manner prescribed for the foreclosure of mortgages, or commence an action against the Lot Owner(s) seeking payment of all outstanding amounts. All costs and legal fees incurred by the Club to recover any past due installment shall be paid by the Delinquent Lot Owner and will be assessed against the Lot and may be collected in the same manner as the collection of the annual assessment.

Section 14. Assignment of Rent.

(a) Subject to the rights of First Mortgagees, the Club may collect from the rent due from a tenant to a Delinquent Lot Owner, as defined in Section 13, an amount not more than the unpaid assessments, late fees, interest, and costs of collection, including reasonable attorneys' fees (collectively, "charges").

(b) Prior to taking any action permitted by this Section, the Club will give written notice by certified mail, return receipt requested to the Delinquent Lot Owner at the Lot Owner's last known address, of the Club's intent to collect the rent. The notice will set forth the exact amount the Club claims is due and will indicate the intent of the Club to collect the past due

charges from rent, along with any other amounts that become due in the future and that remain unpaid for 30 days after becoming due, including any Annual Assessment fees lawfully accelerated pursuant to the Declaration and Amended Bylaws. A copy of the notice will also be sent to the Lot's First Mortgagee. Any cost incurred by the Club to ascertain the identity of the First Mortgagee, including the cost of the preparation of a title search, will constitute additional charges with respect to the Lot.

(c) A Delinquent Owner will have 10 days from receipt of the notice required to be sent pursuant to paragraph (b) above to provide proof of payment or a statement of the grounds upon which the assessment is disputed. Upon the failure of the Delinquent Owner to respond within 10 days after receipt of the notice, or within 15 days of mailing if no receipt is obtained, and provided that no notice is received from the First Mortgagee that it is exercising its right of assignment of rental proceeds, the Club will be entitled to notify and direct each tenant renting a Lot from the Delinquent Owner to pay all or a portion of the rent otherwise due from the Delinquent Owner to the Club. The amount to be applied from the rent will be limited to the lesser of: (i) the amount as stated in the notice to the Delinquent Owner or, (ii) an amount adjusted to reflect any calculation errors sought to be corrected by the Lot Owner, as stated in the response to the Club, if timely sent. No offset will be allowed for amounts that are unrelated to claims of calculation errors. The Club will have a continuing right to collect the rent from the tenant or tenants until the delinquent charges are paid in full.

(d) Nothing in this Section will prevent a Lot Owner or the Club from seeking a judicial remedy in a court of competent jurisdiction.

(e) This Section will not affect the right of a First Mortgagee that is entitled to an assignment of rents and which has exercised its rights by written notice recorded in the Morris County Clerk's Office and such First Mortgagee may collect such rents in accordance with an assignment of rents under which it is an assignee.

Section 15. Termination of Membership. No obligation or liability of a Lot Owner that accrued during ownership of a Lot shall expire, terminate or be waived upon termination of membership, nor shall termination of membership impair any rights or remedies that the Club may have against any former Owner.

Section 16. Access to Records. The audited financial statements, as well as all books, records and papers of the Club, shall be made available for examination or for copying by any Member and his authorized agents, during reasonable business hours, in the offices of the community manager or such other place reasonably convenient to both the Club and the requesting Member, within 10 business days of written request by the Member, except any records: (i) the disclosure of which would constitute an unwarranted invasion of individual privacy; (ii) concerning pending or anticipated litigation or contract negotiations; (iii) falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or (iv) involving the employment, promotion, discipline or dismissal of a specific officer or employee of the Club; however, increases in the

amounts of compensation awarded to an employee of or under contract with the Board shall not be deemed a matter of personal privacy. If a Member requests copies of any documents required to be made available under this Section, the Club shall make a copy for the Member at a reasonable cost to the Member, or may permit the Member to make copies, at the discretion of the Club. Notwithstanding the 10 business days' notice requirement of this section, the Club shall be entitled to respond within a reasonable time period for requests for records spanning more than one year, or for requests which will require the copying of voluminous documents.

Section 17. User Fees. In addition to other charges or assessments provided for in this Article, the Board may also assess user fees under the terms of Section 12.3 of the Declaration. User fees shall be collectible in the same manner as the Annual Assessments.

ARTICLE X

Corporate Seal

The Club shall have a seal in circular form having within its circumference the words "The Smoke Rise Club, Inc."

ARTICLE XI

Compensation, Indemnification and Exculpability of Officers, Governors Committee Members and Former Trustees

Section 1. Compensation. No compensation will be paid to any officer, Governor, or committee member for acting as such officer, Governor, or committee member. Nothing herein stated will prevent any officer or Governor, or committee member from being reimbursed for out-of-pocket reasonable expenses or compensated for services rendered in any other capacity to or for the Club, provided however that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

Section 2. Indemnification. Each current or former Governor, officer or committee member of the Club and all former Trustees who were members of the Board of Trustees under any prior bylaws of the Club will be indemnified by the Club against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Governor, officer, committee Member or Trustee of the Club, or delegee, except as to matters as to which he will be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification will be provided only in connection with such matters covered by the settlement as to which the Club is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

Section 3. Exculpability. Unless acting in bad faith, neither the Board as a body, any Governor, officer, any committee Member nor any former Trustee of the Club, shall be personally liable to any Lot Owner in any respect for any action or lack of action arising out of the execution of his office. Each Lot Owner will be bound by the good faith actions of the Board, officers and committee Members of the Club, in the execution of the duties of said Governors, officers, Trustees and committee members.

ARTICLE XII

Standing Committees

Section 1. Judicial Committee.

(a) Membership. The Board shall act as the Judicial Committee, with all the powers and responsibilities associated therewith, unless and until it appoints non-Board members to serve on the committee. In that event, there shall be a Judicial Committee consisting of not less than three members and may include two alternates. The alternates may be invited to attend meetings and hearings and shall participate as a voting member of the committee upon direction of the committee chair. The members of, and alternates to, the Judicial Committee will be appointed by the Board and will serve for a term of one year. The committee members may recommend a chair to the Board, and the Board will appoint a chair for a 1-year term. 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. If the Board appoints a separate Judicial Committee no member of the Board may serve on the Judicial Committee.

(b) Purpose. The purpose of the Committee will be to:

- (1) Hear complaints involving alleged violations of the Governing Documents, and issue determinations with respect to whether the conduct complained of constitutes a violation of any term of the Governing Documents; and
- (2) Provide interpretations of the Governing Documents upon request.

(c) Powers. The Judicial Committee will hear complaints brought by any Member of the Club, its Committees or Club community manager as set forth in the Enforcement Procedures in Schedule "A" to these Amended Bylaws. The Judicial Committee may decline to schedule a hearing in connection with any matter with respect to which it determines that sufficient cause does not exist to prosecute an alleged violation or that the alleged violation, if proven, does not constitute a violation of the Governing Documents. The Judicial Committee will have the power to issue a cease and desist request to a Lot Owner in connection with the actions of the owner,

his guests, Tenants, licensees or invitees that are inconsistent with the provisions of the Governing Documents. The Judicial Committee will from time to time, as required, provide interpretations of the Governing Documents pursuant to the intents, provisions and qualifications thereof when requested to do so by a Club Member, the Board, or the community manager.

Any action, ruling or decision of the Judicial Committee may be appealed to the Board by any party deemed by the Board to have standing as an aggrieved party or the Board may, on its own motion, review any action, ruling or decision of the Judicial Committee and a vote of a majority of the full authorized membership of the Board may modify or reverse any action, ruling or decision. Any appeal shall be filed with the Board within 25 days of the Judicial Committee's written action, ruling or decision. Appeals shall be conducted as set forth in the Enforcement Procedures in Schedule "A" to the Amended Bylaws.

If the Board undertakes a review of any action, ruling or decision on its own motion it must notify the Judicial Committee and all Members directly affected by the action, ruling or decision within 25 days of the Judicial Committee's written action, ruling or decision. A final decision of the Board must be made within 60 days of such appeal. The Board must take action at its regularly scheduled meeting or at a special meeting for such purpose. The party appealing to the Board will be entitled to at least 10 days' prior written notice of the decision of the Board's action affording to such person the opportunity to be heard, with or without counsel.

(d) Authority. The Judicial Committee, in the case of a decision, shall have the additional duties, powers and authority as set forth in the Enforcement Procedures in Schedule "A" to the Amended Bylaws including the power (i) to impose an obligation for the Lot Owner to pay damages or other expenses caused by the a violation, (ii) to impose non-monetary penalties and other sanctions, including suspension of the right to use the Club's facilities by the Lot Owner, his family, guests and lessees, and (iii) to impose fines. A schedule of fines is included in Schedule "B". The enforcement procedures in Schedule "A" and the fines in Schedule "B" to these Amended Bylaws may, from time to time, be amended by the adoption of a Resolution by the Board.

If, having established a Judicial Committee, the Board determines there are insufficient members willing to serve, the Board will carry out the duties and responsibilities of the Judicial Committee as set forth in these Amended Bylaws.

Section 2. Architecture and Variance Committee.

The Architecture and Variance Committee will be constituted, and shall have such powers as are set forth in Section 11.3 of the Declaration.

Section 3. Audit Committee.

(a) Membership. The Audit Committee shall consist of not less than three nor more than five members. The members of the Audit Committee shall be appointed by the Treasurer

with the approval of the President and Board and will serve for a term of three years. Prior to appointing any candidate to the committee or renewing a term of a member of the committee the Treasurer may consult with and receive recommendations for potential nominees from the Audit Committee. The foregoing shall not, however, be a limitation on the Treasurer's sole authority to appoint members of the committee, subject to the President's and Board's approval. The Audit Committee shall annually elect a chairperson. 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.

(b) Purpose. The Audit Committee shall maintain independent oversight of the Club's financial operations. The Audit Committee shall serve the Club membership and provide independent verification that: (i) expenditures are conforming to budget authorizations; (ii) budget variations are being reviewed for corrective action before major or unauthorized expenditures may occur; (iii) accounting, appropriation and budget procedures are updated (or new procedures are initiated) to adapt to situations not previously encountered or not covered by current methods; and (iv) the Board is cooperating with and responsive to observations, comments, and recommendations of the Club's independent certified public accountant.

The Audit Committee shall recommend an independent certified public accountant to the Board, provided, however, that the Board shall choose the Club's accountant in its sole discretion.

(c) Reporting. The Audit Committee shall furnish a report to the Club Members for the annual meeting of its activities on the Club's financial position after it has reviewed the Club's fiscal year-end audited financial statements. The report shall be delivered to the Club's counsel for review and approval not less than three business days prior to being forwarded to the printer or the Members to insure that no statement therein creates any legal liability or is beyond the scope of the committee as set forth in this section. In all other instances the Audit Committee shall report to the President.

Section 4. Infrastructure Committee.

(a) Membership. The Infrastructure Committee shall consist of not less than five nor more than nine Members appointed by the Governor of Infrastructure with the approval of the President and Board. Preference for membership shall be given to those Members who have backgrounds in any of the following areas: professional engineering, architects, builders or contractors, attorneys and/or those having experience in financial matters or construction. The chair of the committee shall be selected by the Governor of Infrastructure, with Board approval, for a term of one year. In addition to the chair, the committee shall have two assistant chairs to be responsible for the assets now in existence. The chair shall appoint the assistant chairs with the approval of the Board of Governors. Each committee member shall serve for a term of three years, and shall serve not more than two consecutive terms. Following service for two

consecutive terms on the committee, no committee member may be re-appointed unless at least two years have elapsed since the conclusion of the committee member's prior service. The Governor of Infrastructure shall replace, in any one year, not more than two members who have served a full term. 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.

(b) Purpose. The Infrastructure Committee reporting to the Infrastructure Governor, or to the President in the absence of a Governor of Infrastructure, shall provide oversight and advice to the Board regarding the annual maintenance, long-term improvement of the Club's existing physical assets. The committee shall have the following duties:

- (1) With respect to assets now in existence:
 - (i) Maintain a schedule of each physical asset owned by the Club. The schedule should also include, in a separate section, assets that are not owned, but for which the Club has shared accountability or are important to the interests of the Club, such as the dam and the tower.
 - (ii) The schedule of assets shall be annually updated for additions and deletions and shall be published and distributed to the Board of Governors at the end of each fiscal year.
 - (iii) Physical assets are defined as, and include, the physical plant (buildings), equipment, vacant property and utilities. Items such as roads, drainage systems, wells, septic systems, tools, motorized vehicles, furniture, and fixtures are typically categorized by the individuals involved in the maintenance repair and installation of new assets, such as, Governor of Finance and Administration concerning assets in the Club office or the Governor of Maintenance concerning roads and drainage systems.
 - (iv) Inspect and perform periodic assessments of each asset to determine its functionality, state of repair and remaining useful life.
 - (v) Recommend a maintenance program for each asset or asset type.
 - (vi) Recommend a plan for the repair and replacement of assets.
- (2) With respect to assets to be acquired in the future:

- (i) Work with the Governors of Strategic Planning, Infrastructure and Maintenance and the Treasurer in the preparation of the annual budget and the development of a five-year capital plan and report directly to the Governor of Infrastructure.
 - (ii) Review the individual asset acquisitions and projects as proposed to be contained in the annual capital budget and five-year capital plan with respect to cost, feasibility, priority, functionality, and consistency, and make recommendations thereon.
 - (iii) Monitor approved asset acquisitions and projects and provide technical assistance as appropriate.
- (3) With respect to organization and administrative matters:
- (i) The committee shall be responsible for following the policies and procedures necessary to carry out its responsibilities, which shall be approved by the Board of Governors.
 - (ii) The full Committee shall meet at least monthly and shall provide the Board with timely, prepared minutes of its meetings.
 - (iii) The Committee shall appoint one of its members or an additional Member to be Secretary.

Section 5. Nominating Committee.

(a) Membership. The Nominating Committee shall consist of five to seven members. The President shall, at least 120 days prior to the scheduled date of the annual meeting, appoint members for the open positions for a term of one year, provided, however, that where the President intends to be a candidate for election, the Nominating Committee shall be appointed by the Board. A preference shall be given to appointing the immediate past-President, who shall serve as chair of the Nominating Committee, unless such person has previously served as chair (or co-chair) of the Nominating Committee. Additional members of the Nominating Committee will be appointed from the Club Membership at large, with preference being given to those Members actively participating in community matters. The names of the Members of the Nominating Committee appointed by the President shall be posted on the bulletin board in the Club office and in the Smoke Rise newsletter at least 90 days prior to the annual meeting. All members of the Nominating Committee shall be Members. Each member of the Nominating Committee shall serve for a term of one year. Persons appointed to fill vacancies shall fill the unexpired term.

(b) Purpose. The Nominating Committee will nominate candidates for all vacancies to governorships open to election at the following annual meeting. When it is anticipated that there will be four open governorships available for election, the Nominating Committee shall, whenever practicable, solicit a minimum of six candidates for the open governorships, and from such candidates shall select four nominees. If additional governorships are anticipated to be open for election due to vacancies upon the Board the minimum number of candidates to be recommended shall increase by one for each additional vacancy. The Nominating Committee shall ensure that each nominee meets the minimum qualifications set forth in Article V, Section 2 of these Bylaws. The Nominating Committee shall also appoint members of the Orientation Committee as provided in Section 7 of this Article.

(c) Other Procedures. The names of the candidates nominated by the Nominating Committee shall be posted on the bulletin board in the Club office and published in the Smoke Rise Club newsletter at least 30 days before the annual meeting. Nominations for candidates may also be made by execution of a petition for nomination signed by 50 or more Members (with not more than one Member per lot counting toward the minimum requirement). A petition for nomination must be posted on the bulletin board at the Club office and delivered to the secretary at the Club office a minimum of 20 days prior to the date of the annual meeting. No nominations from the floor may be made at the annual meeting. The names of all nominees to the Board shall be set forth in a written notice to the Members not less than 10 days prior to the annual meeting.

Section 6. Lake and Environmental Committee.

(a) Membership. The Lake and Environmental Committee shall consist of not less than three nor more than ten members appointed by the Governor of Lake and Environmental, with the approval of the President and the Board. The chair of the committee shall be appointed by and serve at the pleasure of the Governor of Lake and Environmental. The Governor of Lake and Environmental shall endeavor to appoint Members to the Lake and Environmental Committee who have background in biology, chemistry, water treatment, environmental science, hunting, fishing, or general outdoorsmanship. 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.

(b) Purpose. The Lake and Environmental Committee shall provide oversight and advice to the Board concerning the protection and preservation of the unique and special environment. This shall include but not be limited to overseeing the integrity and quality of Lake Kinnelon and the 50-foot buffer zone surrounding the lake. The committee shall recommend policies to the Board concerning environmental protection of the lake and matters concerning boating, fishing and hunting within Smoke Rise. The purposes of the Lake and Environmental Committee are more particularly set forth in Schedule "D" to these Amended Bylaws, which purposes may be amended from time to time by resolution of the Board.

Section 7. Orientation Committee.

(a) Membership. The Orientation Committee shall consist of six members, each of whom shall serve a term of one year, and all of whom shall be appointed by the Governor of Orientation with the approval of the President and the Board. The Orientation Governor may appoint up to 24 alternates, all of whom shall be approved by the President and the Board. 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.

(b) Purpose. The Orientation Committee shall be responsible for carrying out the orientation functions required by Section 18.2 of the Declaration. The orientation to be carried out shall include, but not be limited to, acquainting each purchasing Lot Owner with all rules and regulations that Owners are required to comply with, matters requiring approval by the Architecture and Variance Committee and the financial obligations of each Lot Owner to the Club. The Orientation Committee shall also provide an orientation to each new Tenant.

Section 8. Other Committees; Miscellaneous.

(a) Appointment. Committees required pursuant to Article V, Section 7, shall be appointed in the manner set forth therein. The Board shall appoint such committees as it deems advisable for the welfare of the Club and its membership. The Board may appoint committees or task forces for a limited purpose or disband any committees created under this Section.

(b) Reporting. Unless otherwise set forth in a resolution adopted by the Board, any additional committees created by the Board shall report to the President.

(c) Charters. Each committee shall adopt a charter, which shall be subject to review and approval of the Board. In the event the Board does not approve the charter as presented, it shall advise the committee of the modifications required, and the committee shall adopt a charter as amended by the Board. Every three years thereafter each committee shall review the charter and it shall be re-approved by the Board following the same procedure as set out above.

(d) Committee Dissolution. Notwithstanding any provision of these Bylaws to the contrary, in the event the Club employs a full-time manager, any one or more of the committees set forth in this Article may be dissolved, in part or in full, by resolution of the Board, provided that in no event shall the Architecture and Variance Committee, Audit Committee, Nominating Committee or Judicial Committee be dissolved except by amendment duly adopted pursuant to Article XVI of these Amended Bylaws.

(e) Terms. Wherever in these Amended Bylaws or the Declaration a specific term is established for a committee member, such term shall commence upon the later of appointment by the President or a Governor or approval by the Board, and shall end: (i) the number of years thereafter specifically stipulated, or (ii) upon resignation or removal. No portion of a term that was not contiguously served may be served at a later point in time.

ARTICLE XIII

Sub-Clubs

Section 1. Designation of Sub-Clubs. The Board may designate such sub-clubs as it deems appropriate to perform such tasks and functions and operate in accordance with a charter as the Board may approve by resolution. No sub-club charter shall be approved for more than five years. Upon expiration of the charter the Board may approve the same or a modified sub-club charter. Any resolution establishing a sub-club shall designate the requirements, if any, for membership therein. Each sub-club shall operate in accordance with the terms of the resolution establishing such sub-club. Notwithstanding any statement in this Section 1 to the contrary, the Board shall not require any modification of a previously approved sub-club charter nor decline to renew a charter unless: (i) a modification of the sub-club's charter is required in order to render the activities or legal status of the sub-club in compliance with any law applicable thereto; (ii) a modification of the sub-club's charter is requested by an insurance carrier providing insurance coverage to The Club, or is required as a condition of an insurance carrier to provide insurance to The Club; (iv) the refusal to extend a charter or revocation of a charter is necessary in order that The Club be in compliance with all laws; (iv) not less than two-thirds of the fully constituted Board approves the modification; or (v) the sub-club consents to the modification.

Section 2. Use of Name. No organization may use the "Smoke Rise" name without the express written consent of the Board, provided, however, that sub-clubs approved by the Board as provided in Section 1 of this Article XIII may utilize the words "Smoke Rise" in its name.

Section 3. Existing Sub-Clubs. The following sub-clubs have previously been approved by the Board and shall not be required to be re-approved under Section 1, provided, however, that the expiration of the charter for each sub-club, as set forth in Section 1, shall apply to all existing sub-clubs unless a shorter charter period applies:

- | | |
|------------------------|-----------------------|
| A. Women of Smoke Rise | B. Sailing Club |
| B. Mother's Group | C. Solo's Club |
| D. Riding Club | E. Players' Club |
| F. Laurel Guild | G. Automobile Club |
| H. Bowling Club | I. Golf Club |
| J. Gourmet Club | K. Trap & Field Club |
| L. Striders' Club | M. Photography Club |
| N. Swim Team | O. Paddle Tennis Club |
| P. Tennis Club | |

ARTICLE XIV

Alternative Dispute Resolution ("ADR")

Section 1. When ADR is to be Offered. Whenever the Board reasonably determines that a dispute exists between the Club and any Member of the Club, or between Members of the Club that relates to: (a) the use of a Lot; or (b) an interpretation of the use restrictions, rules or regulations contained in the Governing Documents with respect to the use of the Lot, the use of the Common Property by a Member or the permitted behavior of a Member or resident of Smoke Rise Community, and the Board reasonably concludes, with or without the advice of its attorney, that the dispute may result in litigation, the Club will offer a method of dispute resolution as set forth below.

Section 2. Designation of Method of ADR. In the event any dispute arises between the Club and a Lot Owner or between Lot Owners with respect to a matter described in Section 1 of this Article, the Club, through the Board, will offer alternative dispute resolution prior to the commencement of litigation or, where litigation is commenced, as soon as the Board receives notice of any litigation involving a matter described above. The Board may satisfy the obligation described in this Article by offering any of the following methods of ADR:

- (a) Mediation by a qualified third-party mediator designated by the Board;
- (b) Non-binding arbitration by a qualified third-party arbitrator designated by the Board;
- (c) Binding arbitration by a qualified third-party arbitrator designated by the Board;
- (d) Mediation by a person or persons who are not specifically trained in mediation, but who have expertise in community association matters and who have no personal interest in the matter in dispute and who are not Lot Owners. Persons who would qualify under this provision include, but are not limited to, persons who are members of the governing board for a community association other than The Smoke Rise Club, Inc.

- (e) Mediation by such other person as the Board may designate, including a person who is a Lot Owner, provided that all parties to the dispute consent to the designation of such a person.

Section 3. Notice of Acceptance. No member of the Board may act as a mediator or arbitrator. Following the Board's determination to offer ADR under this Article, the Board will provide notice to all parties to the dispute by personal delivery or certified U.S. mail, return receipt requested. The notice shall advise the parties to the dispute of the method of dispute resolution selected by the Board and shall provide a response form indicating whether the person involved in the dispute accepts or rejects the method of dispute resolution from subparagraphs (a) through (e) above. If the Board selects a method of dispute resolution utilizing subparagraph (a) through (d) above, and one or more persons involved in the dispute reject the offer of alternative dispute resolution, the Board will have satisfied its obligation under this Article and will have no further obligation. If the Board selects a method of dispute resolution utilizing subparagraph (e) above, and one or more persons involved in this dispute rejects the offer of dispute resolution, the Board shall offer an additional method of dispute resolution in the same manner as provided above. The notice advising a Lot Owner of the designation of a method of ADR will provide that the Lot Owner must accept the Board designation method within a specific time period, but in no event less than 10 days following the date of the letter offering ADR. Whenever the expiration date falls on a Saturday or Sunday or legal holiday, the expiration date will be the following business day. If a Lot Owner does not agree to participate in the ADR method offered by the Board on or before the expiration date, the Lot Owner will be deemed to have rejected the offer.

Section 4. Scheduling of ADR. Upon receipt of acceptance of a designated method of ADR from all necessary and indispensable parties to a dispute, the Club will offer a minimum of two alternative dates and times for the ADR procedure. At least one of the alternate dates and times will be during non-business hours to accommodate the working schedules of the participants. The location of the ADR procedure will be on the grounds of the Club or at a location reasonably convenient to the participants. The notice of the alternate dates and times for ADR will provide that if a recipient does not respond within seven days of the date of the notice, the nonresponding participant will be deemed to have rejected ADR. If the response from the participants does not indicate a mutually acceptable date and time for ADR, the Club will make one attempt to obtain a date and time reasonably acceptable to the participants, but if unsuccessful in that attempt, will have no further obligation under this Article.

Section 5. Participation by the Board. If any dispute that is subject to ADR pursuant to this Article includes the Club as a participant in the dispute, at least one member of the Board will be present at the ADR hearing, and the Board will make available such employees or agents of the Club that are necessary in order that the Club fully participate in the ADR process. If the method of ADR selected is a form of mediation and the dispute involves the Club as a party, the Board will authorize the attending members of the Board to have the power and authority to act

on behalf of the Board, but may impose reasonable limitations on the authority and power granted.

Section 6. Procedures. The ADR hearing is intended to be an informal process, despite the form of ADR mechanism chosen. As a result, technical rules of evidence will not apply, provided however, that the person presiding over the ADR proceedings may require the administration of oaths and may exclude irrelevant, immaterial or unduly repetitious testimony or evidence. Any party to an ADR proceeding may, but is not required to, be represented by an attorney. The person presiding over the ADR process will determine all other procedures applicable to the hearing, including the length of the hearing, the order of presentation and, where appropriate, whether additional hearing dates are required or desirable in order to resolve the dispute. The person presiding over the ADR procedure may also, prior to the ADR hearing, request the parties to produce documentary evidence that the presiding person believes to be helpful or relevant to resolving the dispute.

Section 7. Fees and Costs. When the Board designates a form of ADR that requires a fee to be paid to the presiding person, the Club will bear the expense of the presiding person. All other costs, such as, but not limited to, the fees of any attorneys representing the individual parties, will be borne by the respective parties.

Section 8. Non-Applicability of ADR. Despite anything to the contrary contained in this Article, no ADR need be offered in a matter solely concerning the collection of maintenance fees nor prior to the commencement of any litigation that seeks emergent relief in order to maintain the *status quo ante*.

ARTICLE XV

Enforcement Procedures

Section 1. Fines; Suspension of Privileges. In addition to such other rights as are specifically granted under the Declaration, the Club shall have the right to impose monetary fines in accordance with the procedures set forth in Article XII, Section 1, which fines shall be a lien upon the Lot of the violator, and the Club shall have the right to suspend an Owner's right to vote or any person's right to use the Common Property if such person has been found to be in violation of any duty imposed under the Governing Documents; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Dwelling. In addition, the Board may suspend any services provided by the Club to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Club.

Section 2. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws, or the rules of the Club by self-help or, following compliance with the procedures set forth in Article XIV of these Amended Bylaws, if applicable, by suit at law or in equity to enjoy any

violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner responsible for the violation of which abatement is sought shall pay all costs of the Club, including reasonable attorneys' fees actually incurred. The Members have agreed upon adoption of these Amended Bylaws that a violation of any term of the Governing Documents may cause irreparable harm to the Club and/or its Members, and consent to the imposition of judicially-imposed temporary or permanent restraints against such violations.

Section 3. Obligation to Enforce. The Club 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 Owners. In all other instances, the Club will not be obligated to enforce every violation of the terms, conditions, covenants, restrictions, rules or 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 or regulation; it having been determined that it is in the best interest of the Owners to vest the Board's discretion in the Board with respect to the enforcement of the Governing Documents. Nothing in the Governing Documents is intended to prevent any Owner from undertaking an appropriate action at law or in equity to enforce the terms of any of the Governing Documents.

ARTICLE XVI

Amendments

Section 1. General. The provisions of these Amended Bylaws, other than this Article, may be amended or repealed by an instrument in writing, signed and acknowledged by the President and Secretary of the Club, certifying that such amendment has been approved by either of the following methods:

- (a) By the affirmative vote of all members of the fully constituted Board of Governors, provided the Board notifies the Lot Owners of the proposed amendment and includes a written ballot with the notice. The amendment will be deemed rejected, and of no force or effect, if five percent or more of the Eligible Votes reject the proposed amendment and the Club receives, at the address stipulated in the notice, the ballots rejecting the proposed amendment within 30 days following the mailing of the notice. Otherwise, the amendment will be effective on the 31st day following the mailing of the notice to the Lot Owners and its subsequent recording in the office of the Morris County Clerk.
- (b) By the vote of at least a majority of Eligible Votes present in person or by proxy at a duly held annual or special meeting of the Members upon which proper notification of intent to amend has been given to the Lot Owners, and at which a quorum of not less than 50 percent of the Eligible Votes is present in person or by

proxy. Notice of the meeting shall include the exact language of the amendment or proposed repeal.

- (c) By the Board upon approval of nine members of the Board, solely when necessary to render these Amended Bylaws in compliance with any applicable law as set forth in a written opinion issued by the Club's attorney, but only to the extent necessary to render the Amended Bylaws compliant.
- (c) An amendment will be effective upon its recordation in the Morris County Clerk's Office. Notice of any amendment adopted under this provision shall be distributed to the Lot Owners within 30 days of receipt of the recorded amendment, provided, however, that the failure to distribute the recorded amendment will not render the amendment ineffective and void.

ARTICLE XVII

Conflict; Invalidity

Section 1. Conflict. Anything to the contrary herein notwithstanding, if any provision of these Amended Bylaws is in conflict with or contradiction of the Declaration, the Certificate of Incorporation or with the requirements or any law, then the requirements of the Declaration, the Certificate of Incorporation or law shall be deemed controlling.

Section 2. Invalidity. The invalidity of any part of these Amended Bylaws shall not impair or affect in any manner the enforceability or affect the remaining provisions of the Amended Bylaws.

ARTICLE XVIII

Dissolution

Section 1. Procedure. In the event it is deemed advisable and for the benefit of the Members of the Club that the Club should be dissolved, the procedures concerning dissolution set forth in the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., shall be followed.

Section 2. Distribution of Assets. In the event of dissolution, the assets of the Club, after the payment of all debts including mortgages and other encumbrances, shall be distributed to the Lot Owners in proportion to the fair market value of their respective Lots.

ARTICLE XIX

Notice

Any notice required to be sent to any Lot Owner under the provisions of any of the Governing Documents shall be deemed to have been properly sent and notice thereby given, when sent by U.S. mail, regular post with postage prepaid, addressed to the Lot Owner at the address on the records of the Club at the time of such mailing, unless otherwise expressly set forth in a provision contained in the Governing Documents. Notice to one of two or more Owners of a Lot shall constitute notice to all Owners. Notice shall be deemed to have been received five days after mailing in a regular depository of the United States mail. It shall be the obligation of every Lot Owner to immediately notify the community manager of the Club in writing of any change of address. Valid notice, which shall be effective upon delivery, may also be given to a Member by (i) personal delivery to any occupant of a Lot over 14 years of age or (ii) by affixing the notice to or sliding same under the front door of any Lot.

ARTICLE XX

Gender and Number

The use of the masculine gender in these Amended Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

ARTICLE XXI

Immunity

In accordance with N.J.S.A. 2A:62A-13, the Club will not be liable in any civil action brought by or on behalf of a Lot Owner to respond to damages as a result of bodily injury to the Lot Owner occurring on the Property, the Common Property or within a Lot. This grant of immunity from liability will not be effective if the Club causes bodily injury to a Lot Owner by its willful, wanton or grossly negligent act of commission or omission.

SCHEDULE A

**COVENANTS ENFORCEMENT PROCEDURES
for
THE SMOKE RISE CLUB, INC.
(the "Club")**

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IV. NOTICE AND RECORDING

I. JUDICIARY COMMITTEE MEMBERSHIP.

A Judiciary Committee has been established by Article XII, Section 1 of the Amended Bylaws.

II. PROCEDURE FOR VIOLATIONS.

A. Definition of a Violation

A violation (a “Violation”) is a failure by a Lot Owner, his family, guests, or lessees to comply with the provisions of the Certificate of Incorporation, Declaration, Amended Bylaws, the Smoke Rise Rules and Regulations, or any Resolutions approved by the Board (collectively the “Governing Documents”).

B. Noticing the Alleged Violation

Alleged Violations can be noticed by:

1. Community Manager. The Club’s community manager (“Community Manager”), than may notice an alleged Violation during one of his periodic reviews of the property.

2. Club Member/Committee Member. Any Club or Committee member who notices an alleged Violation will notify the Community Manager or if there is no Community Manager, then another member of the Club’s staff designated by the Board,. This notification may be in the form of a telephone call, a personal note or an in-person conversation. The Community Manager, or if there is no Community Manager, then another person designated by the Board, shall investigate whether or not a Violation has occurred, and attempt to verify the alleged Violation.

3. Lessees. A Lessee of a Lot may not file a complaint under this Resolution unless the Lot Owner has provided written authorization to the Lessee to file the Complaint.

C. Violations Report by Community Manager

The Community Manager shall prepare a Violations Report for each Board of Governors meeting listing all Violations or alleged Violations noticed in Section B.1 and B.2 above.

D. Community Manager’s Decision on Disposition of an Alleged Violation

1. The Community Manager, based on his ability to verify an alleged violation and at his own discretion, may either:

a. Pursue the matter, in which case, the Community Manager will either obtain compliance through informal notice or, if unsuccessful, will issue a Violation Letter to the offending Lot Owner (The “Respondent”). The Respondent may attend a Hearing of the Judiciary Committee on the matter, and if unsuccessful, may then appeal to the Board. In these

instances, the Community Manager will represent the Club as the “Complainant”. The detailed procedures are set forth in Section E, “Alleged Violation Pursued by Community Manager.”

b. Not pursue the matter, in which case the Community Manager either (i) cannot verify an alleged Violation; or (ii) determines in his opinion that there has not been a Violation; or (iii) is uncertain whether an observation or a reported complaint constitutes a Violation of the Governing Documents.

c. The Community Manager may consult with the Club’s attorney or the Judiciary Committee chair regarding whether particular facts or circumstances constitute a violation.

2. Lot Owner’s right to pursue violations not pursued by Community Manager.

If a Lot Owner wishes to pursue a violation not pursued by the Community Manager, the Lot Owner will submit a written complaint to the Judiciary Committee in accordance with the detailed procedures set forth in Section F entitled “Alleged Violation Not Pursued by Community Manager.”

E. Alleged Violation Pursued by Community Manager

1. Informal Notice by Community Manager.

The Community Manager shall attempt to obtain compliance through informal notice, which may consist of telephone, written or in-person communication.

2. Violation Letter Issued by Community Manager.

If a matter is not resolved within a reasonable time (taking into consideration the severity of the violation) by informal notice and negotiation, the Community Manager shall send a formal Violation Letter (the “Violation Letter”) to the Respondent by either personal service or by certified mail, return receipt requested, at the address appearing on the records of the Club. If mailed, the letter will be deemed to have been received five days after mailing in a regular depository of the United States mail. A copy of the letter will also be sent to the Judiciary Committee. The Violation Letter will contain the following:

a. The acts or omissions with which the Respondent is charged and the identity of the specific Governing Document(s) that is (are) being violated. It should be as specific as possible as to time(s), date(s), place(s) and person(s) involved.

b. A deadline for the Violation to cease or be corrected.

c. A statement of the fines, penalties, costs of restoration of General Common or Limited Common Property, damages, other expenses and/or other sanctions that the Club is imposing for the Violation or will impose if the Violation continues.

d. A request that the Respondent notify the Community Manager if and when the alleged Violation ceased or was corrected.

e. A statement advising that a Notice of Hearing and Hearing date will be sent by the Judiciary Committee in accordance with subparagraph 5 below.

f. A statement advising that failure to respond to the Notice of Hearing within 15 days and in accordance with subparagraph 5c below, will be deemed an acknowledgement that the Noticed Violation(s) occurred. If the Respondent fails to respond to the allegation(s) in accordance with the Violation Letter, fines, penalties, damages or other costs will be automatically posted to the Respondent's/Lot Owner's account. The letter will also state that if a hearing is held, damages, fines, penalties and other sanctions will be stayed until the Judiciary Committee reaches a decision, but such decision by the Judiciary Committee may reinstate or perhaps increase or decrease the fines, penalties and other sanctions set forth in the Violation Letter.

3. Preliminary Consideration of Complaint by Judiciary Committee

Upon receipt and consideration of the Complaint of the Violation Letter, the Judiciary Committee may request additional information from the Community Manager and Respondent, then shall proceed as set forth below.

4. Cease and Desist Request.

The Judiciary Committee may, at its own discretion, issue a cease and desist request. Such cease and desist request shall be substantially in the following form:

“The Judiciary Committee has received the attached complaint.

By Authority of the Declaration and Amended Bylaws, the Judiciary Committee hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the Judiciary Committee, Board of Governors, or court of law permits.

Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation.”

5. The Notice of Hearing.

The Judiciary Committee will send a Notice of Hearing to the Respondent and the Community Manager, with a copy to the Board of Governors.

a. Service of the Notice of Hearing. The Judiciary Committee's Notice of Hearing will be served on all the parties by either personal service or by certified mail, return receipt requested, at the address appearing on the books of the Club at least 20 days prior to the Hearing. If mailed, service of Notice will be deemed to have been received five days after mailing in a regular depository of the United States mail.

b. Contents. The Notice will set forth the time, date and place of the Hearing and will contain the facts or other matters on which the Community Manager intends to rely, the names of those witnesses willing to be identified, and any other evidence (including sworn statements) which the Community Manager intends to present at the Hearing.

The Notice will advise the Respondent that: (i) he may be represented at the Hearing by counsel, if he so desires; (ii) he is entitled to request the appearance of witnesses; (iii) he is entitled to cross-examine any witnesses appearing against him; (iv) he may request the production of Club books or records by notice to the Board not less than five (5) days prior to the Hearing; and (v) he may request that the Judiciary Committee conduct a Hearing in his absence.

c. Response. The Notice will require that the Respondent send a written response to the Judiciary Committee Chair at the address of the Club's Property Management office within 15 days of its receipt indicating his intent to be present at the Hearing or submitting a request that the Hearing be conducted in his absence. Failure to file a response within 15 days will be deemed an acknowledgment that the noticed Violations have occurred. If any parties can promptly show good cause as to why they cannot attend the Hearing on the set date, and they indicate times and dates on which they would be available, the Judiciary Committee may reset the time and date of Hearing and promptly deliver notice of the new Hearing date.

d. Amended or Supplemental Complaints. At any time prior to the Hearing date, the Judiciary Committee may permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the Judiciary Committee shall afford the Respondent a reasonable opportunity to prepare proper defense.

e. Discovery. Upon written request to the other party, made prior to the Hearing and within 15 days after service of the Notice by the Judiciary Committee or within 10 days after service of any amended or supplemental complaint, any party is entitled to: (i) obtain the names and addresses of witnesses to the extent known to the other party and (ii) inspect and make a copy of any statements, writings or investigative reports relevant to the subject matter of the Hearing. Nothing in this section, however, shall authorize the inspection or copying of any writing or item which by law is privileged from disclosure or is otherwise made confidential or protected. Any party claiming his request for discovery has not been complied with shall submit a petition to request discovery by the Board of Governors. The Board of Governors shall make a determination and issue a written order stating the matters or parts thereof which the petitioner is entitled to discover.

f. Statements. At any time 10 or more days prior to a Hearing or a continued Hearing, any party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce in evidence. Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the statement's author, his right to cross-examine such author is waived and the sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to cross-examine the statement's author is not afforded after request is made as

indicated in this Section, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

6. The Hearing.

a. The Hearing Panel and Hearing Officer. The Hearing Panel will consist of three members of the Judiciary Committee or its alternates who will hear and consider the matter and render a decision. Alternates may be invited to attend Hearings as non-participating members. The Judiciary Committee shall select a person to serve as Hearing Officer and preside over the Hearing. Such Hearing Officer need not be a Member of the Club or of the Judiciary Committee. At the beginning of the Hearing, the Hearing Officer shall explain the rules and procedures by which the Hearing is to be conducted. The Judiciary Committee may determine the manner in which the Hearing will be conducted, so long as the rights set forth in this section are protected. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding. Counsel for the Club may be present at Hearings and may serve as Hearing Officer.

b. Community Manager. The Community Manager will represent the Club and serve as the Complainant.

c. Rights of the Parties. It is not necessary for the parties to be in attendance at the Hearing. At the request of either party, the Judiciary Committee may conduct the Hearing in their absence. Each party shall have the right to do the following, but may waive any or all of these rights:

- (i) make an opening statement;
- (ii) introduce evidence, testimony, and witnesses;
- (iii) cross-examine opposing witnesses;
- (iv) rebut evidence and testimony;
- (v) make a closing statement.

Even if a party does not testify in his own behalf, he may still be called and questioned. The Hearing Panel may also request the presence and possible testimony of the Community Manager and/or other persons.

Whenever the Hearing Panel of the Judiciary Committee has commenced to hear the matter and a member of the Panel withdraws prior to a final determination, the Committee Chair shall appoint an alternate(s), provided the alternate has heard all testimony, so there shall be three members on the Panel.

Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer.

7. The Decision of the Judiciary Committee.

a. To be effective a decision of the Judiciary Committee shall be by a majority vote. The written decision shall normally be issued within 45 days of the conclusion of the Hearing. The decision shall be written and accompanied by both the majority and minority opinions, if any. Copies of the decision shall be distributed to the party(ies) and to the Board of Governors and Community Manager.

b. If the charges in the complaint were upheld at the Hearing, the Committee shall have the power to recommend to the Board of Governors that the costs of the Hearing in an amount not to exceed Two Hundred Fifty (\$250.00) Dollars and an accumulated fine in an amount not to exceed the maximum amount permitted by law, plus penalties and costs of restoration, if applicable, shall be assessed to the Respondent (or to all Respondents in the event there are more than one) in such proportions as the Committee deems appropriate. The Board of Governors, at a regular meeting, or special meeting called for that purpose, may follow said recommendation or alter them (provided such power to fine and impose penalties is authorized by applicable law) as the Governors deem appropriate except that the Governors may not increase the amounts of costs or penalties recommended by the Committee.

8. Appeal of a Judiciary Committee Decision to the Board of Governors.

a. (i) a decision of the Judiciary Committee may be appealed to the Board by the Respondent. The Community Manager cannot appeal a decision of the Judiciary Committee. A written Appeal shall be submitted to the Board of Governors within 25 days of the written decision of the Judiciary Committee. The right of appeal shall not be based upon a claim that the decision contains or is based upon an erroneous or otherwise inappropriate factual determination, but must be based upon one or more of the following claims: (i) that a member of the Judiciary Committee who heard the matter failed to be disqualified in accord with the standards described in Section G.1.; (ii) that the Judiciary Committee failed substantially to comply with the procedure described herein; or (iii) the Judiciary Committee based its determination on a misinterpretation of the Governing Documents.

(ii) the Board may, on its own motion, review any action, ruling or decision of the Judiciary Committee and a vote of a majority of the fully authorized membership of the Board may modify or reverse any action, ruling or decision in accordance with Article XII, Section 1(c) of the Amended Bylaws.

b. Appeals petitions must be legibly written and be submitted to the Board in substantially the following form:

“(I/We), hereby petition the Board of Governors to hear an appeal of the decision of Judiciary Committee (Application) (Case) No. ____.

(I/We) further understand that within the Club the decision of the Board of Governors on this issue is final.”

c. Notice of Hearing shall be as in Section E.5 of this procedure except that it is served by the Board of Governors.

d. All of the rights and procedures enabled in Section E.6 of this procedure (The Hearing) shall apply to appeals considered by the Board with the substitution of the words “Board of Governors” wherever the words “Judiciary Committee” appears.

e. A final decision of the Board must be made within 60 days of receipt of Appeal. The Board must take action in closed session at one of its regularly scheduled meetings or at a special meeting scheduled for such purpose. The Board may uphold the Judiciary Committee’s decision in its entirety, modify, or reverse such decision.

F. Alleged Violations Not Pursued by Community Manager

1. Complainant Agreement to be Named

The provisions of Section II(F) will apply if (i) a Club member notifies the Community Manager of an alleged Violation; and (ii) the Community Manager cannot verify the alleged violation and does not pursue the matter; and (iii) the member agrees to be named as the Complainant in the matter, submit a written complaint and appear at a Hearing, if necessary.

2. Informal Notice by Community Manager.

The Community Manager shall, except in extraordinary circumstances, attempt to resolve the matter through informal notice which may consist of telephone, written or in-person communication. The informal notice need not state the name of the complainant.

3. Written Complaint to the Judiciary Committee.

If the matter involving an alleged Violation is not resolved within a reasonable time (taking into account the severity of the violation) by informal notice and negotiation, the Complainant shall file a written complaint, in duplicate, to the Judiciary Committee at the address of the Club’s management office using the “Judiciary Committee Complaint Form” approved by the Board. The complaint shall contain the acts or omissions with which the Respondent is charged and the specific Governing Document(s) that is (are) being violated. It should be as specific as possible as to time(s), date(s), place(s) and person(s) involved.

4. Preliminary Investigation and Response by Judiciary Committee.

Upon receipt and consideration of the written Complaint, the Judiciary Committee may request the Community Manager or a member of the Judiciary Committee to make a preliminary investigation as to the validity of the complaint and promptly report the findings to the Judiciary Committee.

The Committee may determine:

a. that the matter does not involve a Violation and therefore should not involve the Committee. In that case the Committee will dismiss the complaint.

b. that the conditions have been corrected since the complaint was made, or the complaint is for any other reason no longer valid. In that case the Judiciary Committee will determine the appropriate disposition of the matter.

c. that the matter is appropriate for a Hearing by the Committee. If the Committee decides to hold a Hearing, a written Notice of Hearing will be sent to the alleged violator as set forth below.

The Judiciary Committee will notify the Complainant in writing of which of the above options it has selected within 30 days of receipt of the complaint.

5. Service of Complaint.

If the preliminary investigation indicates further action is necessary, the Judiciary Committee will serve a copy of the complaint on the Respondent by either personal service or by certified mail, return receipt requested, at the address appearing on the books of the Club. If mailed, service will be deemed to have been received five days after mailing in a regular depository of the United States mail. The complaint will be accompanied by a Notice of Hearing and Notice of Defense as described in Section F.7 below. A copy will also be provided to the Community Manager and the Board of Governors.

6. Cease and Desist Request.

All of the rights and procedures enabled in Section II(E)(4) (Cease and Desist Request) shall apply to this section.

7. The Notice of Hearing.

Along with the Service of Complaint, the Judiciary Committee will send the Notice of Hearing and Notice of Defense to the Respondent, the Complainant, with a copy to the Board of Governors and the Community Manager.

All of the rights and procedures enabled in Section II(E)(5) (Service of Notice of Hearing, Response, Amended or Supplemental Complaints, Discovery, Statements) shall apply to this section with the exception of the "Contents" and "Notice of Defense" included herein.

Contents. The Notice will set forth the time, date, and place of the Hearing and will include a copy of the formal Complaint. The Notice will specify the Governing Documents that are alleged to have been violated and will include any other information available to the Committee that may be pertinent to the matter.

The Notice will advise the Respondent that: (i) he may be represented at the Hearing by counsel, if he so desires; (ii) he is entitled to request the appearance of witnesses; (iii) he is entitled to cross-examine any witnesses appearing against him; (iv) he may request the production of Club books or records by notice to the Board not less than five days prior to the Hearing; and (v) he may request that the Judiciary Committee conduct a Hearing in his absence.

Notice of Defense. The Notice of Defense shall state that the respondent may: (i) object to the complaint on the grounds that it does not state the acts or omissions upon which the Judiciary Committee may proceed; or (ii) object to the form of the complaint on the grounds that it is so indefinite or uncertain that the Respondent cannot identify the violating behavior or prepare proper defense. Any objections to the form or substance of the complaint shall be considered by the Judiciary Committee. The Committee shall make a determination concerning the form and substance of the complaint and notify all parties within 30 days of its receipt of the objection.

8. The Hearing.

All of the rights and procedures enabled in Section II(E)(6) (The Hearing Panel and Hearing Officer and Rights of the Parties) shall apply in this section except that the Community Manager will not represent the Club and serve as Complainant. The Hearing Panel, however, may request the presence and possibly the testimony of the Community Manager and/or other persons, if it determines such individuals have relevant information concerning the alleged violation that will assist the Hearing Panel in rendering its decision.

9. The Decision of the Judiciary Committee.

All of the rights and procedures enabled in Section II(E)(7) (The Decision) shall apply to this section.

10. Appeal of a Judiciary Committee Decision to the Board of Governors.

All of the rights and procedures enabled in Section II E. 8. (Appeal) shall apply in this section to the Respondent, Complainant and Board of Governors.

G. Other Matters

1. Constraints on the Judiciary Committee and the Board of Governors as a Hearing Panel.

It shall be incumbent upon each member of the Judiciary Committee or the Board of Governors (in the case of hearing an appeal) to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the other members and shall become inactive during the proceedings and have it so recorded in the minutes. Any member of the Judiciary Committee or the Board of Governors has the right to challenge any other member who is unable to function on a Hearing Panel in a disinterested and

objective manner. No member of a Hearing Panel shall participate in any proceeding if he (a) is by blood or marriage related to any party to the proceeding or to any attorney appearing in the proceeding on behalf of a party; (b) has a direct financial interest in the proceeding; (c) is involved in the dispute before the Judiciary Committee; or (d) feels he is personally involved and unable to act in a non-biased manner. If one or more members are ineligible to participate in a Hearing according to a-d above, the number of remaining members participating in the Hearing shall not be less than three for the Judiciary Committee and not less than the majority of the Board members for hearing an appeal.

Prior to a Hearing by the Judiciary Committee, the Respondent may challenge any member of the Judiciary Committee for cause. In the event of such a challenge, the Board of Governors shall meet within 15 days to determine the sufficiency of the challenge. If the Board sustains the challenge, the Board shall at that time appoint a replacement for the challenged member from the pool of Committee alternates. All decisions of the Board in this regard shall be final.

2. Further Action/Alternative Dispute Resolution.

A Lot Owner is encouraged to pursue all available remedies of the Club, as prescribed by these procedures, before resorting to a court of law. A Lot Owner may also request alternative dispute resolution (ADR) and the Club, through the Board of Governors, will provide ADR, pursuant to Article XXI of the Amended Bylaws, as required by law, as an alternative to litigation.

3. Emergencies.

In the event of an emergency, special emergency procedures will apply and will supercede the procedures established in this Resolution if the Community Manager or a Governor determines, in the exercise of its reasonable discretion, that a Violation constitutes a possible danger to health, safety or property. In such a case, the Community Manager or Governor may dispense with the procedures set forth in Section II above and may notify the alleged violator to cease and desist immediately under penalty of fine and/or other sanctions. If the Violation is not stopped immediately, the Community Manager or Governor may take whatever action they deem appropriate to immediately remediate the dangerous condition (including, but not limited to, immediate suspension of the use of Club facilities). The Community Manager or Governor may seek any appropriate police, fire or other municipal action or court order against the alleged violator.

In addition to the foregoing, the Club may charge any expenses or fines to, or impose any sanctions on, the alleged violator provided the procedures established in this Resolution are followed.

4. Interpretive Ruling by the Judiciary Committee.

Purpose of Rulings. Ruling of the Judiciary Committee may serve to: (i) clarify the intent of provisions of the Governing Documents, (ii) decide whether any provisions are

inconsistent with other provisions of the Governing Documents, or (iii) decide whether or not a rule or regulation was duly adopted. The purpose is not to amend, expand or limit the provisions of the Governing Documents, although the Committee may, in the statements accompanying the ruling, propose such amendments, expansions or limits.

Any Club Member, the Board, or the Community Manager may petition the Judiciary Committee for an interpretive ruling by filing a written petition to the Committee at the Club's management office clearly stating the issue in question.

A ruling must be submitted to the Board of Governors by the Committee within 45 days of such request, and the Board will have 60 days from its receipt to reject such ruling. If it is not rejected, the ruling shall become final.

5. Fines and Penalties.

Subject to the provisions of these procedures, the Community Manager is authorized in the case of a Violation Letter, and the Judiciary Committee is authorized in the case of a decision to (i) impose an obligation for the Lot Owner to pay damages or other expenses caused by the Violations, (ii) impose non-monetary penalties and other sanctions, including suspension of the right to use the Club's facilities by the Lot Owner, his family, guests and lessees, and (iii) impose fines not to exceed \$50 per day/occurrence for any one Violation, and not to exceed the maximum amount permitted by law for any one Violation. A fine schedule has been attached to the Amended Bylaws as Schedule "B." This schedule shall serve as a guideline only. The Judiciary Committee, in the exercise of its reasonable discretion, may recommend a higher or lower fine (within the limits established in this section) for a particular Violation if it believes the circumstances surrounding the Violation warrant a departure.

III. CONSTRUCTION.

This resolution shall be effective as of the date it is adopted by the Board of Governors.

This resolution replaces any prior resolutions governing the Judiciary Committee and the Procedure for Violations or other disputes.

The Judiciary Committee or the Board of Governors, as appropriate, may determine the specific manner in which the provisions of this resolution are to be implemented, provided that due process is protected.

Any inadvertent omission or failure to conduct a proceeding in exact conformity with this resolution shall not invalidate the results of such proceedings, so long as a prudent and reasonable attempt has been made to assure substantial compliance with the general steps set forth herein.

This resolution is intended to be gender neutral. Consequently, pronouns and terms used in this resolution will be substituted with the appropriate feminine pronoun and terms (and vice-versa) as the context indicates.

IV. NOTICE AND RECORDING.

The Club's Community Manager is directed to distribute a copy of this resolution to every Lot Owner. The Club also directs its legal counsel to arrange for recordation of a copy of this resolution with the Morris County Clerk's Office.

The Morris County Clerk is authorized, requested and directed to note a reference to this resolution in the margin of the Declaration (and/or any other appropriate place).

ATTEST:

THE SMOKE RISE CLUB, INC.

, Secretary

, President

#130221

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

I CERTIFY that on _____, 2005 _____
personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Secretary of Smoke Rise Club, Inc., a nonprofit corporation of the State of New Jersey, named in this document;

(b) this person signed this document as attesting witness for the proper corporation officer who is _____, the President of the corporation;

(c) this person knows the proper corporate seal of the corporation and the proper corporate seal was affixed;

(d) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Governors; and

(e) this person signed this acknowledgment to attest to the truth of these facts;

(f) this Resolution was duly introduced and was thereafter adopted at a regular scheduled meeting of the Board of Governors, at which a quorum was present, by vote of the members of the Board of Governors eligible to vote on this matter.

Secretary,

Signed and sworn to me on
_____, 2005

Record & Return To:
J. David Ramsey, Esq.
Ramsey Berman, P.C.
P.O. Box 2249
Morristown, NJ 07962-2249

#138326.v8

SCHEDULE B

SCHEDULE OF FINES

<u>Section</u>	<u>Level</u>	<u>Infraction</u>	<u>Amount/Day/Occurrence</u>
Property "WORK" construction/renovations A & V Approvals	D	Failure to obtain proper permits from A&V and/or Town when required	\$150
Common/ Limited Common Property	B	Making changes to the common or limited Common Property without prior approval of the Club, littering	\$50
Tree Removal	D	Removal without A&V approval	\$150
Lake & Environment	B	Violation of SR Fishing Permit rules, including fishing without permit	\$50
Garbage	A	Improper trash disposal, e.g. no lids, in plastic bags, cans outside during prohibited times, improper recycling procedures	\$25
Pets	A	Not curbing pets, allowing to roam, walking pets on beach	\$25
Noise/Noxious Activities	A	Noise that interferes unduly with the quiet enjoyment of others, e.g. chain saw use on Sunday	\$25
Signs	A	Posting of signs/ads without permission, "For Sale" signs on vehicles	\$25
Garage Sales	B	Unauthorized	\$50
Parking	B	Overnight street parking, inoperable vehicles, commercial vehicles improperly parked	\$50
Transponders	C	Misuse	\$100
Commercial businesses	C	commercial or business activities involving patients/clients, regular pick-ups/deliveries	\$100

Tarpaulins	A	Use of bright colors prohibited	\$25
*To be determined			

SCHEDULE C

PURPOSES OF INFRASTRUCTURE COMMITTEE

(a) Existing Assets. With respect to Existing Assets the Infrastructure Committee shall:

(i) Maintain a schedule of each physical asset owned by The Smoke Rise Club. The schedule will also include, in a separate section, assets that are not owned, but for which the Club has shared accountability or in connection with which the assets are of material importance to the interests of the Club such as the dam and the tower. The Schedule of Assets shall be updated as necessary and distributed to the Board at the end of each fiscal year. "Existing Assets" are defined as, and include the physical plan (buildings), equipment, vacant property and utilities. Assets such as roads, drainage systems, wells, septic, tools, motorized vehicles, furniture, fixtures and so forth shall be categorized by the Governor responsible for a particular area.

(ii) Inspect and perform periodic assessments of each asset to determine its functionality, state of repair and remaining useful life.

(iii) Recommend a maintenance program for each asset or asset type.

(iv) Recommend a plan for the repair and replacement of assets.

(b) New Assets. With respect to New Assets the Committee shall:

(i) Provide recommendation and oversight to the Governor of Strategic Planning. Work, ongoing, with the Governors of Strategic Planning, Infrastructure and Maintenance and the Treasurer in the preparation of the Annual Budget and the development of a Five-Year Capital Plan and report directly to the Governor of Infrastructure.

(ii) Review the individual asset acquisitions and projects as proposed to be contained in the Annual Capital Budget and Five-Year Capital Plan with respect to cost, feasibility, priority, functionality, and consistency, and make recommendations thereon.

(iii) Monitor approved asset acquisitions and projects and provide technical assistance as appropriate.

SCHEDULE D

LAKE AND ENVIRONMENTAL COMMITTEE PURPOSES

The Lake and Environmental Committee serves to protect Lake Kinnelon and the unique environment within Smoke Rise. In addition, the committee shall focus on Smoke Rise environmental issues related to forestry, wildlife, watershed and pest or game management. The committee shall focus upon and have responsibility for:

<u>Lake Management</u>	<u>Environmental Management</u>
Weed and Algae Control	Forest protection
Lake chemistry	Ecological concerns
Water quality	Deer control and protection
Fish stocking and fishing permits	Water fowl control and protection
Hydro raking to clean and deepen the lake	Pest control recommendations
Boat docks and canoe rack assignments	Shoreline oversights (buffer zone)