

AMENDED DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

BY WENDY LUISA WYNBERG

FOR SKY HILL ROAD,

TOWN OF WINDHAM, GREENE COUNTY

THIS DECLARATION, made this 10<sup>th</sup> day of September 1987, by Wendy Luisa Wynberg, residing at Box 164, Blodgett Road, Windham, New York 12496, hereinafter referred to as "DECLARANT".

W I T N E S S E T H:

WHEREAS, by DECLARATION dated the 6<sup>th</sup> day of August, 1987, and filed in the Greene County Clerk's Office on August 10, 1987, DECLARANT established certain covenants, restrictions, and easements for Sky Hill Road; and

WHEREAS, certain corrections and revisions have been necessary in the original survey referred to in the said DECLARATION, and a revised survey has now been filed; and

WHEREAS, DECLARANT desires to make certain other amendments and changes in the original DECLARATION; and

WHEREAS, no sales or transfers of any parcels of real property affected by the original DECLARATION have been affected, and DECLARANT remains the owner of all the lands shown on the survey and affected by this DECLARATION; and

WHEREAS, DECLARANT is thus authorized to amend the original Declaration under the provisions of Article XII of the original Declaration; and

WHEREAS, DECLARANT is the owner of records of certain real property located in the Town of Windham, Greene County, New York, being a portion of lands conveyed by Leroy Tompkins and others to Ward L. Mackey by deed dated October 21, 1918, and recorded in the Greene County Clerk's office in Book 207 of Deeds, at Page 185, and thereafter conveyed by George Wynberg to George Wynberg and Wendy Luisa Wynberg, his wife, by deed dated October 7, 1977, and recorded in the Greene County Clerk's Office on December 1, 1977, in Book 490 of Deeds, at Page 184, and being set out as Parcels Nos. I, II, III, and IV in a final judgement of partition in an action between Wendy Luisa Wynberg, Plaintiff, against George Wynberg, New York State Tax Commission and Green County Savings Bank, defendants, entered under Index No. 13,264, on the 11<sup>th</sup> day of January 1983, and recorded in the Greene County Clerk's Office on February 17, 1983, in Book 526 of Deeds at Page 36, the said Parcels Nos. I and II having been set aside to Wendy Luisa Wynberg by the aforesaid judgment, and the said Parcel No. IV having

thereafter been conveyed by the said George Wynberg to Wendy Luisa Wynberg by deed dated the 5<sup>th</sup> day of March, 1985, and recorded in the Greene County Clerk's office on March 11, 1987, in Book 571 of Deeds at page 225, and the said Parcel No. III having been conveyed to Wendy Luisa Wynberg by deed dated the 13<sup>th</sup> day of February 1987 and recorded in the Greene County Clerk's Office on April 3, 1987, in book 636 of Deeds at Page 303, and

WHEREAS, DECLARANT has developed the said lands into a sub-division known as Sky Hill, as shown on the "Survey"; and

WHEREAS, DECLARANT has laid out and constructed a private road known as Sky Hill Road, serving the lots of the said subdivision; and

WHEREAS the said road is not presently eligible for operation or maintenance by the Town of Windham, or by any other municipal government; and

WHEREAS, adequate provision must be made for the operation and maintenance of the said road until such time as the road may be accepted and dedicated as a public highway or Town Road of the Town of Windham.

NOW, THEREFORE, in order to provide for the operation and maintenance of the said private road, for the common use and enjoyment of the owner of the lots served thereby, the DECLARANT, Wendy Luisa Wynberg, does hereby declare that the lots served by the said private road, as shown on the said survey, together with any lots which may be created upon the further subdivision of any lot or lots shown on the said survey as served by Sky Hill Road, or which may hereafter otherwise be brought within the coverage and provisions of this Declaration be hereinafter provided, shall be subject to and protected by the following covenants, restrictions, and easements which shall run with the land forever, and which shall replace and supersede in their entirety the covenants, restrictions, and easements set forth in the Declaration dated August 6, 1987, which are hereby REPEALED, and shall be of no further force or effect;

## ARTICLE I

### DEFINITIONS

As used in this Declaration of Covenants, Restrictions, and Easements, the following words shall have the meanings hereinafter specified, unless the context clearly requires a different meaning;

"Association" means the private association, to be known as the SKY HILL ROAD ASSOCIATION, created under the provisions of Article V hereof, to operate and maintain the private road until dedication of such road to the Town, except that any reference to the

Association in the Declaration shall be deemed to refer instead to the Corporation, if any, hereafter created under the provisions of Article V hereof;

“Corporation” means any corporation created under the provisions of Article V hereof, to operate and maintain the private road in the place and stead of the Association until dedication of such road to the Town;

“Declarant” means Wendy Luisa Wynberg and her agents, servants, and/or employees;

“Declarant’s Address” means DECLARANTS address as set forth at the beginning of this declaration, Box 164, Blodgett Road, Windham, New York, 12496;

“Lot” means a lot having frontage on Sky Hill Road, being Lot 1 through 14 inclusive as shown on the Survey, or a lot hereafter created by the further subdivision of any such lot, with or without, such frontage but having access to Sky Hill Road by means of a private driveway right of way or otherwise, or any other lot hereafter permitted access to or on Sky Hill Road as provided in this Declaration;

“Notice to Declarant” means written notice sent postage prepaid by first class mail directed to the DECLARANTS address, or written notice actually delivered to the DECLARANT or to the individual or entity, if any, the DECLARANT has designated as ROAD MANAGER;

“Notice to Lot Owner” means written notice sent postage prepaid by first class mail directed to the owner’s address, or written notice actually delivered to the owner, FURTHER PROVIDED that if there is more than one owner of record for any lot, notice to the lot owner shall be deemed sufficient upon such mailings or delivery to any one of such owners;

“Owner” means any person or entity having an ownership interest of record in any lot or lots;

“Owner’s Address” means the lot owner’s address maintained for tax billing purposes in the records of the Tax Collector of the Town, or a different address of which the owner has given the ROAD MANAGER at least thirty (30) days written notice;

“Road Manager” means the person or entity, if any, designated as Road Manager under the provisions of this Declaration, or if no such designation has been made, then the Declarant;

“Road Operation and Maintenance” means routine, customary, and necessary road inspection and maintenance such as upkeep and repair, and snowplowing, sanding and/or salting, necessary or appropriate to maintain the roadway in a safe and passable condition,

as well as the regulation of traffic flow, the establishment and enforcement of speed limits and the establishment and enforcement of parking regulations, including, in the discretion of the ROAD MANAGER, the removal of any authorized or unauthorized vehicle or any other obstruction impairing or impeding passage upon, across, or along the roadway, or impairing or impeding road operation and maintenance, together with any similar or related activity or service necessary and appropriate to carry out the foregoing operations;

“Sky Hill Road” means the private road laid out and constructed within a right-of-way fifty (50’) feet in width as shown on the Survey, and more particularly described in Schedule A hereto annexed and hereby made a part hereof;

“Subdivision” means the Sky Hill subdivision as laid out in the Survey;

“Survey” means the survey of “Sky Hill, Lands of Wendy Luisa Wynberg”, dated August 3, 1987, and revised August 19, 1987, by Vanucchi Associates, Larry V. Vanucchi, L.L.S, and filed in the Greene County Clerk’s Office on August 24, 1987; in Drawer No. 209, as Kap No. 103 (Revision Note: The survey revisions affect only lot sizes, and do not affect the location or description of Sky Hill Road);

“Town” means the Town of Windham

“Town Road” means a public highway owned, operated, and maintained by the Town.

## ARTICLE II

### CONSTRUCTIONS OF ROADWAY AND FUTURE DEDICATIONS

1. DECLARANT has constructed the road base for a private road to be known as Sky Hill Road, as shown on the Survey and more fully described in Schedule A hereto annexed, to serve the lots fronting on the said Road, being lots 1 through 14 inclusive as shown on the Survey, and lots hereinafter created by further subdivision of any of the said lots, whether or not fronting on Sky Hill Road, but having access thereto by means of a private driveway, right of way, or otherwise. DECLARANT and any and all future owners of the lots served by the said Road shall cooperate to effect the dedication of the said private road to the Town as a Town road at any time that dedication to the Town may be permitted under the provisions of this Declaration.
2. Whenever Sky Hill road may be dedicated to the Town, DECLARANT shall properly and promptly execute and deliver all such deeds of conveyance, affidavits, releases, consents, or any other documents which may be required to effect such dedication. DECLARANT shall also promptly give notice to the lot owners of such

dedication and conveyance, and include therewith any documents which the various lot owners may respectively be required to execute in order to effect such dedication. If the owner is required to execute any documents, such document shall be delivered to the owner in person or sent to the owner's address by registered or certified mail.

3. In the event any lot owner fails to return any such required document duly executed and acknowledged within thirty (30) days after receipt, or in the event any such document is returned to DECLARANT as undeliverable, DECLARANT, or her agent hereafter authorized in written, is hereby authorized and empowered to execute any such document in the name of any lot owner who fails to execute such document or to whom such document cannot be delivered. Upon proof of the lot owner's receipt of such document and failure to timely execute, acknowledge and return the same, or proof of the return thereof as undeliverable, the execution of such document by DECLARANT, or her agent shall have the same force and effect as though the lot owner has executed such document.
4. To facilitate future dedication to the Town, DECLARANT has constructed the road base for the said Sky Hill Road according to Town Highway specifications in effect as of the date hereof, but has not applied the final stone and oil treatment required or dedication, which shall be capital improvement under Article VII of this declaration. Notwithstanding the manner of such construction, DECLARANT makes no representation that the Town is or will be willing to accept dedication of such road as a Town road now or at any other time.
5. Notwithstanding the manner in which DECLARANT has constructed the road base of Sky Hill Road, the said Sky Hill Road shall be and remain a private road, open only to the lot owners and their guests and invitees, unless and until the lot owners, by a two-thirds majority vote, elect to dedicate the said road to the Town, provided that no such dedication may be made without the express approval of DECLARANT as long as DECLARANT shall remain owner of record of any portion of the lands shown on the Survey, it being DECLARANT'S express intention to retain and preserve the privacy of the Sky Hill Subdivision for the mutual benefit and enjoyment of the lot owners.
6. Notwithstanding that portion of the roadway and the right of way of Sky Hill Road shall be conveyed as a portion of each of the Lots number 1 through 14 inclusive, nothing contained in this Article, nor any other provision of this Declaration, shall be construed as granting to any person, including the owner of any lot forming a portion of the subdivision, any right to impair, impede or interfere with the easement and right of way granted in common to the owners of all the lots of the said subdivision, over

and across the said Sky Hill Road. Any further interest in or to the said private road shall be granted only by a separate instrument expressly conveying such interest.

7. Notwithstanding that portions of the roadway and the right of way of Sky Hill Road shall be conveyed as a portion of each of the lot numbers 1 through 14, inclusive, DECLARANT hereby expressly retains and reserves the right, subject to the vote required under Paragraph 5 of this article, for long as DECLARANT remains owner of record of any portion of the lands shown on the Survey, to dedicate Sky Hill Road, including the entire fifty (50') foot width of the right of way thereof shown on the survey, to the Town as a public highway or Town Road, and upon DECLARANT'S disposition of her interest in or to all such lands, including the Homestead Lot, such right shall thereupon devolve upon and be conveyed to the Association, but DECLARANT shall nonetheless retain the right to effect such dedication on behalf of the Association. Upon any such dedication, the lot owners shall not be entitled, by any reason thereof, to any compensation from DECLARANT, from the Association, or from the Town, it being expressly understood and agreed that the release of the lot owners from any and all liability for the payment of future road maintenance charges and fees shall be, constitute, and be deemed to be full and adequate compensation for taking of any lands included in such dedication.

### ARTICLE III

#### EASEMENTS AND DRAINAGE

1. Each lot owner is hereby granted an easement and right of way in common with DECLARANT and all other lot owners, over, across, and along Sky Hill Road for purposes of ingress and egress by motor vehicle or otherwise, provided that such use in no manner impairs, impedes or interferes with access to any other lot or lots, or with the operation and maintenance of the said road.
2. All lots shall be subject to an easement and right to drain or discharge water, ice, or snow, off the roadway or through culverts now or hereinafter installed by DECLARANT, by the Association or by the Town. The driveway on each lot shall be constructed with landing areas, crowns, and culverts, in such manner as may be required to prevent water, ice, and snow from being discharged onto the roadway.
3. DECLARANT shall retain the right and authority to grant public utility easements, including easements for water, sewer, gas, and electric services, and drainage easements, over, under, along, and across the said road, including over, under, along and across the portion of each of the lots fronting on or adjoining such road to a depth of thirty (30')

feet from and beyond the fifty (50') foot roadway right of way as shown on the Survey, to serve the subdivision and any extension or extensions thereof.

4. The said road shall not be extended, and no owner of any lot fronting thereon shall be permitted to extend such road, to provide access to any other lands whether or not adjoining on or fronting on said road, unless the owners of such other lands become a party to this Declaration, Such owners may become a party to this Declaration only with the DECLARANT'S written consent if DECLARANT should then still remain the owner of record of any portion of the lands shown on said Survey, including the Homestead lot, or if DECLARANT should not then retain ownership of any such lands, then only with the written consent of the owners of at least two-thirds (2/3) of the lots then subject to this Declaration

#### ARTICLE IV

##### RESPONSIBILITY FOR EXPENSES UPON DISPOSITION OF DECLARANTS LANDS, OR UPON DECLARANT'S DEFAULT

1. Except as otherwise specifically provided in this Declaration, DECLARANT shall be responsible to arrange for and oversee road operation and maintenance until the sale or disposition of DECLARANT'S interests as owner of record of all portions of the lands shown on said Survey, including the Homestead Lot. Upon such disposition, the lot owners shall be and become responsible to arrange for and oversee road operation and maintenance until the road is accepted by the Town as a Town road.
2. In the event of DECLARANT'S uncured default in her obligations hereunder, after reasonable notice and an opportunity to cure, the lot owners shall be and become responsible for the provision and oversight of such services as though DECLARANT has sold or disposed of all such interests, subject to such legal rights and remedies as such owners may have against DECLARANT. In no event shall the Town, or any of its officers, agents, or employees be responsible for providing or overseeing such services until the road has become a Town road, nor for bringing the road up to applicable highway requirements in the event of DECLARANT'S default.

#### ARTICLE V

##### ROAD ASSOCIATION

1. Creation: There is hereby created a private association, to be known as the Sky Hill Road Association, as follows:
  - a. The members of the Association are:
    - i. DECLARANT, as long as she shall remain the owner of record of any portion of the lands shown on the Survey, including the Homestead Lot;
    - ii. The owners of the lots adjoining Sky Hill Road, being lots 1 through 14 inclusive as shown on the Survey;
    - iii. The owners of any lots created by the further subdivision of any of the said lots 1 through 14;
    - iv. The owners of any additional lands hereafter joining the Declaration, as provided in Article III, paragraph 4, of this Declaration.
  - b. On any matter upon which the members of the Association are required or permitted to vote, the owners of each then existing lot shall have one vote, regardless of the number of individual owners thereof, provided that no secured lender which may become the record owner of any lot or lots shall be entitled to a vote.
  - c. Any reference hereinafter in this in this Article to "lots" or "lot owners" shall mean the then existing lots and their respective owners who are members of the Association as designated in subdivision (a) of this paragraph.
  - d. Each lot owner shall automatically become a member of the Association upon the recording of the conveyance to such owner of any ownership interest.
2. Power and Duties:
  - a. The Association shall appoint a ROAD MANAGER, with the powers and duties specified in this Declaration, to oversee and supervise the operation and maintenance of the roadway.
  - b. If, upon DECLARANT'S sale or disposition of her interests as an owner of record of all the lands shown on the Survey, including the Homestead Lot, the road has not been dedicated to the Town, DECLARANT shall transfer to the Association all of DECLARANTS interests in and responsibilities for or with respect to the road.
  - c. DECLARANT may transfer all or any portion of such interests and responsibilities to the association at such earlier time as DECLARANT, in her sole discretion, may determine provided that DECLARANT has sold at least eight (80%) percent of the lots served by the road.
  - d. Any matter requiring or permitting decision by vote of the lot owners shall be determined by simple majority vote except where a greater majority is specified in this Declaration. Any majority shall be of those lot owners actually voting thereon,
  - e. The association may incorporate itself, by decision of DECLARANT or, at any time after of the sale of at least eighty (80%) percent of DECLARANT'S lots served by Sky Hill Road, by majority vote of the lot owners. Any such corporation shall provide in it certificate of incorporation and/or by-laws, as the case may be,



that any determination which this DECLARATION requires be made by more than a simple majority vote shall require at least as great a vote unless such requirement has therefore been amended as provided in this DECLARATION, or after such corporation has been created then only by subsequent amendment of the charter or by-laws of such corporation.

- f. The determination of any special assessment, or of any change in the maximum annual assessment, shall be made at a meeting called for that purpose upon notice to the lot owners, by the prescribed majority of the lot owners present and voting.
- g. To the extent not in conflict with any provisions of this Declaration, the Association may establish and amend its by-laws, rules, regulations, and procedures by vote of the lot owners

3. Meetings:

- a. An annual meeting of the Association shall be held on the second Saturday of July in each year, or such date as may be scheduled by the lot owners at any annual meeting.
- b. A special meeting shall be held only on at least thirty (30) days prior written notice to the lot owners.
- c. A special meeting of the Association may be called either by notice signed by DECLARANT, as long as DECLARANT remains owner of record of any of the lands shown on Survey, including the Homestead Lot, or regardless of DECLARANT'S ownership by notice signed by the owners of at least ten (10%) percent of the lots.
- d. Meetings shall be held at the subdivision if practicable or otherwise at a public location in the Town.

4. Restrictions:

- a. DECLARANT shall direct the affairs of the Association until the earlier of the transfer and conveyance to the Association of DECLARANT'S interests in and responsibilities for or with respect to Sky Hill Road, or the dedication of Sky Hill Road to the Town.
- b. As long as DECLARANT is empowered to direct the affairs of the Association, DECLARANT shall designate the ROAD MANAGER, subject to disapproval by a majority of the lot owners. In the absence of any such designation, DECLARANT shall be the ROAD MANAGER.
- c. No amendment to these by-laws of the Association, nor to this Declaration, nor to the charter or by-laws of any corporation formed to operate and maintain Sky Hill Road, which purports in any way to amend, modify, or terminate the continuing easements in common in and to Sky Hill Road, shall be effective except upon the

unanimous written consent of each record owner of any interest, whether in fee or as mortgagee, of each lot served by Sky Hill Road.

5. Change of Ownership:

- a. Upon the sale of all or any portion of any lot served by Sky Hill Road, the purchaser thereof shall promptly, and in no event later than thirty (30) days after receipt of such conveyance, notify ROAD MANAGER of such conveyance, and the name and address of the new owner.
- b. No new owner shall be considered an owner for purpose of use of the private road until receipt by the Road Manager of such notice.

6. Duration and Termination:

- a. The Association shall terminate and be dissolved upon dedication of Sky Hill Road to the Town, or upon formation of a corporation to perform substantially the same function as the Association, and the transfer to such corporation of all of the Associations interests in and responsibilities for or with respect to Sky Hill Road.
- b. Upon termination and dissolution of the Association, any aspects of the Association shall be transferred to a successor corporation, if any, and if there is no successor corporation, shall be liquidated and distributed to the lot owners, an equal share to be apportioned to each lot.

## ARTICLE VI

### ROAD MANAGER

1. Until dedication of Sky Hill Road as a Town Road, there shall be a ROAD MANGER.
2. At such time, however determined, as DECLARANT shall no longer be or designate the ROAD MANAGER, the ROAD MANAGER shall be elected by the Association, or its successor corporation, if one has been formed.
3. Preference for selection as the ROAD MANAGER shall be given to a full time resident of the subdivision.
4. The ROAD MANAGER shall either provide such services as may be required for the safe and reasonable operation and maintenance of the road, or contract for the provision of such services, and shall determine, levy, and collect the estimated annual cost thereof in accordance with the provisions of Article VII of this Declaration.
5. The ROAD MANAGER shall have all of the necessary and reasonable power and authority appropriate for the proper supervision, operation, and maintenance of the road, and for the protection and safety of persons using such road, including without limiting the generality of the foregoing:

- a. Authority to declare any portion or portions of the road closed to access and travel by reason of any man-made or natural disaster or emergency, or deterioration of the roadway, until such time as necessary repairs can be effected for the safe usage of the road;
  - b. Authority to contract for emergency repair necessary to provide access for public safety services, equipment and personnel, including specifically for fire and police protection.
  - c. Authority to close, temporarily or permanently, any unused portion of the road.
  - d. Authority to remove or cause to be removed any vehicle or other obstruction abandoned, left, or placed upon the roadway, whenever, in the exclusive judgment of the ROAD MANAGER, such vehicle or other obstruction is interfering with, impairing or impeding proper road operation and maintenance, including the passage of vehicle, road repair, and upkeep and/or snowplowing, provided that except in the case of emergency, no such vehicle shall be removed unless the owner is unknown, cannot reasonably be located, or refuses, within a reasonable period of time to remove such vehicle, and
  - e. Authority to restrict use and access to the road to the lot owners and their respective guests and invitees, and to remove or cause to be removed any person trespassing upon the roadway,
6. As compensation and overhead, the ROAD MANAGER shall be paid:
  - a. Twenty-five (25%) percent on all costs reasonably incurred for the provision of services, labor, and materials furnished for road operations, and maintenance, and repair, and
  - b. Ten (10%) percent on the costs of capital improvements, subject to a maximum of \$1,500.00 per project and \$5,000.00 total for all projects, unless increased by a two-thirds vote of the lot owners.

## ARTICLE VII

### ROAD MAINTENANCE ASSESSMENTS

1. Creation of obligation to Pay Assessments; Until acceptance of the road by the Town as a Town road; the lot owners shall be responsible for the payment of an annual assessment or charge for road operation and maintenance, and of any special assessment or charge for the road operation and maintenance, and of any special assessment required for major repair or capital improvement. DECLARANT shall be responsible for the payment of all such costs for the road until the sale of at least fifty (50%) percent of the lots served by the private road, and shall be solely responsible for the costs of the initial construction. No lot owner may waive, be relieved of, or otherwise avoid liability for payment of any annual assessment or special assessment by non-use or abandonment of any lot.
2. Use of Assessments:

- a. All assessments shall be paid into the Sky Hill Road maintenance fund, which shall be a trust fund, to be held in an interest bearing account, and administered by the ROAD MANAGER, to be applied solely to the uses and purposes specified in this Declaration, or otherwise established and approved by the Association.
  - b. The ROAD MANAGER shall furnish the lot owners with an annual itemized accounting of the receipts and expenditures of the fund, listing the date, amount and purpose of each payment, at least thirty (30) days prior to any special meeting, and shall furnish a supplemental accounting prior to any special meeting called to consider a special assessment.
  - c. The annual assessments shall be used exclusively for the road operation and maintenance, including, but not limited to, the cost of taxes as required, insurance and security services approved by the lot owners, maintenance, repair, restoration upkeep, snowplowing, sanding and/or salting, and compliance with any governmental regulations or requirements, including the provision of labor, equipment, and materials, and management, operations, maintenance, and the supervision thereof, or any professional or skilled services employed with respect thereto.
  - d. Special assessments shall be used for any major repairs or capital improvements to the road, or any other related purpose determined by the lot owners.
  - e. Any surplus remaining from year to year shall be applied to the following year's expenses, to reduce the sum which would otherwise be required to be raised through annual assessments; any surplus remaining upon termination of this Declaration shall be distributed as provided in Article V, paragraph 6, subdivision (b).
3. Maximum Annual Assessments: Except hereinafter provided, the annual assessment, excluding any special Assessment for optional improvements or repairs, shall in no event exceed \$200.00 per lot per annum. The maximum annual assessment may be increased only by a two-thirds vote of the lot owners, except that DECLARANT, as long as she shall be or designate the ROAD MANAGER, may increase the annual assessment by no more than fifty (50%) percent per year whenever there shall have been a deficiency in the annual operating budget in each of the two preceding fiscal years.
4. Supplemental Annual Assessments: the ROAD MANAGER may levy a supplemental annual assessment, not to exceed twenty-five (25%) percent of the regular annual assessment, to meet all or part of any deficiencies in a prior year's annual assessment occurring by reason of unanticipated expenses or the failure of the owner or owners to any lot or lots to timely pay the annual road assessment.
5. Special Assessments: Special assessments may be levied only by a two-thirds (2/3) vote of the lot owners.

6. Notice of meetings: The ROAD MANAGER shall provide at least thirty (30) days' notice to the lot owners of any meeting called for the purpose of considering an increase in the maximum annual assessment, or for the purpose of considering a special assessment.
7. Assessment Dates: Each annual and special assessment shall be due on a date fixed by the ROAD MANAGER, not less than thirty (30) nor more than sixty (60) days after the mailing of the notice of the Assessment to the lot owners. All assessments shall be made payable in advance, in full or in installments, as determined by the ROAD MANAGER, and set forth in the notice of assessment.
8. Fiscal year: The road maintenance fiscal year, for internal accounting purposes shall run from the first day of November each year through and including the thirty-first day of October of the following year, notwithstanding the ROAD MANAGER'S selection at any time, or from time to time, of any different fiscal year for any external purpose or purposes, including the reporting of income and/or the filing of tax reports or returns.

## ARTICLE VIII

### NON-PAYMENT OF ASSESSMENTS

1. Any payment for any assessment or installment not received or postmarked on or before the due date set forth in the assessment notice is delinquent. A delinquency charge of five (5%) percent, but not less than five (\$5.00) dollars per lot, shall be added to any delinquent assessment or installment paid within thirty (30) days after the due date. A delinquency charge of ten (10%) percent, but not less than ten (\$10.00) dollars per lot, shall be added to any delinquent assessment or installment paid between thirty one (31) and sixty (60) days after the due date.
2. Any assessment or installment not paid within sixty (60) days of the due date, together with the delinquency charges applicable thereto, shall bear interest at the then-legal rate, and may be secured by a mechanics' lien.
3. The delinquent owners shall also be chargeable with all the costs and fees associated with the collection of any delinquent assessment or installment, including court costs and reasonable attorney's fees.
4. The ROAD MANAGER may maintain all necessary or appropriate legal proceedings to secure the payment of any one or more such assessments or installments, including by seeking a monetary judgment or foreclosure of such mechanics' lien. Any such legal proceedings may be brought in any court of appropriate jurisdiction within the County of Greene, State of New York.

## ARTICLE IX

### MUTUAL WAIVER OF LIABILITY

To the greatest extent permitted by law, each lot owner shall, by acceptance of any interest in any lot served by Sky Hill Road, for himself, herself, or itself, as the case may be, and their

respective families, guests, invitees, agents, employees, heirs, successors and assigns, agree to hold harmless the DECLARANT and all other lot owners, and the Town, its officers, agents, and employees, from any claim for property damage or personal injury arising out of the condition of the road, or any act or omission relating thereto, including, but not limited to, its construction, and road operation and maintenance, over or with respect to the private road.

## ARTICLE X

### MORTGAGE SUBORDINATION

Any and all sums which may become due or assessable from any lot owner, including DECLARANT, shall be subject and subordinate to the lien of any first mortgage now or hereafter by any lending institution on any lot served by Sky Hill Road.

## ARTICLE XI

### TERMINATION OF DECLARATION

This Declaration shall automatically terminate with respect to any lot and the lot owner when Sky Hill Road has been dedicated to and accepted by the Town as a public highway and Town road. If the road is dedicated in phases, this Declaration shall automatically terminate with respect to any lot and the lot owners in each respective phase upon dedication thereof. Notwithstanding the termination of this Declaration with respect to any lot, the lien for any unpaid or delinquent assessment or installment to the extent not refundable from any surplus, shall remain and be collectable by DECLARANT or any other entity to which owed, in any manner provided in this Declaration or otherwise permitted by law.

## ARTICLE XII

### AMENDMENT

This Declaration may be amended and modified from time to time. Such amendment or modification shall be made by written agreement only, executed by the owners of not less than two-thirds (2/3) of the lots served by Sky Hill Road at the time such amendment is recorded. Any such agreement shall become effective only upon being recorded in the Office of the Greene County Clerk.

## ARTICLE XIII

### POWER TO VOTE AND SIGN

1. Votes and Lot owners: When record title to any lot is held in the names of more than one person or entity, the first person or entity labeled on the records of the tax collector of

the Town shall be the person or entity authorized to cast any vote on behalf of the owners of such lot, unless such first person or entity or a majority of the owners shall authorize and designate a different person or entity, who must also be a record owner of an interest in such lot, to cast such vote. Such authorization and designation must be in writing and delivered to DECLARANT or the ROAD MANAGER. Upon delivery, such authorization shall be binding until delivery of a subsequent notice revoking or changing such authorization and designation.

2. Signatures: Any instrument requiring the signature of the owners of the lots affected by this Declaration, to be effective with respect to any lot, must be signed by each record owner of an interest therein, or on behalf of each such owner by such owner's representative authorized by a duly filed power of attorney, provided that such instrument may be signed by DECLARANT on behalf of such owners, but only to the extent DECLARANT is so authorized by the provisions of this Declaration.

#### ARTICLE XIV

##### BINDING EFFECT

This Declaration shall run with the land, and be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of DECLARANT and the various owners of the lots served by Sky Hill road during the period while the said Sky Hill Road remains a private road.

#### ARTICLE XV

##### ACCEPTANCE OF DECLARATION

Each person or entity, including any purchaser at a judicial sale, accepting or coming into any ownership interest or title, or status as a lien holder, including by operation of law or judicial decree, with respect to any lot affected by this Declaration shall be deemed to have accepted this Declaration, and to have agreed to be bound by all the terms and provisions thereof, whether or not any reference to this Declaration may be contained in any deed or other instrument effecting any such conveyance. No such person or entity may be exempted from any provisions of the operation of this Declaration except by the unanimous written consent of the owners of all the lots affected by this Declaration.

#### ARTICLE XVI

##### SEVERABILITY

In the event that any portion, provision, or term of this Declaration is finally determined by any Court of competent jurisdiction to be invalid or unenforceable, such determination shall be

limited to the article, paragraph, sentence or clauses determined invalid, and shall not effect or impair any other provisions of this Declaration, which shall otherwise remain in full force and affect and be construed as though such invalid provision had never been a part hereof. No such determination shall affect or impair any rights or obligations accrued or arising hereunder except between the parties to the specific cause of controversy in which such determination is made unless otherwise specifically determined by the Court.

## ARTICLE XVII

### CAPTIONS

The article and paragraph captions set forth in this Declaration are inserted for convenience only, and do not limit or affect the contents of this Declaration, or any article, paragraph, or provision thereof.

IN WITNESS WHEREOF, the DECLARANT has duly executed this Declaration as of the day and date first above written.

\_\_\_\_\_  
Wendy Luisa Wynberg

State of New York:

SS:

County of Albany:

On this \_\_\_\_ day of September, 1987, before me personally came Wendy Luisa Wynberg, to me known to be the same person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same, for the purpose herein set forth.

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