

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KENOZA LAKE DEVELOPMENT, LLC**

**Kenoza Lake Estates** RECEIVED Sullivan County Clerk  
Mar 27, 2008 12:54P  
to those previously recorded in (i) Liber 3168 of Land Records  
at Page 262 and (ii) Liber 3330 at Page 246 <sup>247</sup> MD

**KENOZA LAKE DEVELOPMENT, LLC**, ("Grantor") a New York Limited Liability Company, whose address is 5729 Route 52, P.O. Box 185, Kenoza Lake, New York 12750, hereby states that in order to preserve the natural beauty of the land, to provide for the ownership, care and maintenance of commons lands, and to insure that all construction thereon is in harmony with existing and/or proposed construction and improvements, the following covenants, conditions and restrictions shall bind the lands owned by Kenoza Lake Development, LLC, provided, that such covenants, conditions and restrictions shall bind only those lands owned by Kenoza Lake Development, LLC, its successors and assigns, as shown on a certain subdivision plat entitled "*AMENDED PLAN OF LOT #3 FINAL PLAT KENOZA LAKE ESTATES PHASE I TOWN OF DELAWARE, SULLIVAN COUNTY, NY*", dated November 11, 2004, prepared by Jeff Roberts, L.S., and certified by him on May 11, 2006, as approved by the Planning Board of the Town of Delaware on May 25, 2006, and filed in Plat Cabinet 10, Map No. 204 (Vol. 10, p. 204) in the Office of the Clerk of the County of Sullivan on June 1, 2006, as amended by Amended Subdivision Plan of Lot #3 Final Plat Kenoza Lake Estates Subdivision Phase I Town of Delaware, Sullivan County, NY", prepared by Jeffrey H. Roberts, L.S. and last revised and certified by him on April 11, 2007, as approved by the Planning Board of the Town of Delaware on April 11, 2007 and filed in Plat Cabinet 11, Map No. 68 (Vol. 11, p. 68) in the Office of the Clerk of the County of Sullivan on April 16, 2007, and being the same premises described in the following three (3) Deeds and Boundary Line Agreement: (a) Deed dated March 26, 2004, from Barryville Investors, as Grantor, to Kenoza Lake Development, LLC, as Grantee, and recorded in the Office of the Clerk of the County of Sullivan on April 5, 2004 in Liber 2743 of Land Records at Page 590; (b) Deed dated October 11, 2004, from Carl F. Esselman & Teresa Esselman, as Grantors, to Kenoza Lake Development, LLC, as Grantee, and recorded in the Sullivan County Clerk's Office on October 26, 2004 in Liber 2856 of Land Records at Page 186; (c) Quitclaim Deed dated May 31, 2006 from Barryville Investors, as Grantor, to Kenoza Lake Development, LLC, as Grantee, and recorded in the Office of the Clerk of the County of Sullivan on June 1, 2006 in Liber 3167 of Land Records at page 499, and; (d) Boundary Line Agreement dated May 31, 2006 between Barryville Investors and Kenoza Lake Development, LLC and recorded in the Office of the Clerk of the County of Sullivan on June 1, 2006 in Liber 3167 of Land Records at page 494, and shall be covenants running with the land and shall be binding upon the Grantor's successors and assigns. These Declarations of Covenants, Conditions and Restrictions for Kenoza Lake Development, LLC are additionally imposed upon the lands of Grantor described in a Deed dated September 3, 2004 from Barryville Investors, as Grantor, to Kenoza Lake Development, LLC, as Grantee, and recorded in the Office of the Clerk of the County of Sullivan on October 4, 2004 in Liber 2845 of Land Records at Page 410. The Grantor expressly reserves the right to impose or not to impose any or all of the covenants, conditions and restrictions on the remaining lands and/or future subdivision

lands owned by the Grantor, and no doctrine of equitable estoppel or imposition shall apply to give effect to these covenants, conditions and restrictions on such remaining lands and/or subdivision sections, unless they are specifically imposed in whole or in part. These Declaration of Covenants, Conditions and Restrictions shall be binding upon all lands, or portions thereof, referred to herein, whether or not it shall be expressed or referred to in any Deed or other conveyance of any such property or portion thereof.

**WHEREAS**, this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Kenoza Lake Development, LLC, Kenoza Lake Estates, supercedes and replaces, in its entirety, (i) the Declaration of Covenants, Conditions and Restrictions of Kenoza Lake Development, LLC, Kenoza Lake Estates, which were recorded in the Sullivan County Clerk's Office on June 2, 2006 in Liber 3168 of Land Records at Page 262 and (ii) the Amended Declaration of Covenants, Conditions and Restrictions of Kenoza Lake Development, LLC, Kenoza Lake Estates, which were recorded in the Sullivan County Clerk's Office on May 8, 2007 in Liber 3330 of Land Records at Page 246.

**1. ZONING.** Subject to Zoning, Building, Environmental and Health laws and regulations of all governmental agencies having jurisdiction thereof; and to covenants, restrictions and easements of record and to any state of facts an accurate survey may show; provided the same do not render title unmarketable or prohibit the use of said premises for a single family dwelling.

**2. UTILITY EASEMENTS.** Subject to any agreement made or to be made by Grantor, its successors or predecessors in title, with any agency, entity, corporation or authority for the supply of gas, electric, water, sewage, telephone, telegraph, cable, drainage of similar facilities and services, together with all appurtenant installations, lines, pipes, culverts, conduits, poles, wires and the like, whether overhead, surface or underground; easements and rights-of-way for the same being expressly reserved along a ten (10') foot wide strip on the street front of said premises, and along a ten (10') foot wide strip on the side and rear lines thereof, provided, however, that all utility and other lines shall be installed to each individual residence by undergrounding the same from the existing overhead line. All utilities from the road (from pole or pedestal) to any house or structure are required to be underground.

**3. STORM WATER MAINTENANCE.** Notwithstanding that title is or may be conveyed to any land lying in the bed or any street or road in front of or adjoining a subdivision lot or encompassing or leading to or from a gatehouse or gate, as more particularly shown on the subdivision plan, or upon a future subdivision plan of real property of the Grantor, the Grantor reserves unto itself, its successors and assigns, including a Type-A Not-for-Profit Corporation to be formed for the purposes as shall be defined in the Not-for-Profit Corporation Law, and whose members shall be limited to the lot owners in the subdivision, as well as any other subdivision(s) which the Grantor may develop out of the real property herein above referred to, an easement with respect to "Drainage Facilities" which include but are not limited to swales, pipes, catch basins, drainage aprons, detention basins, drainage courses, culverts and the like, whether man made or naturally utilized for the conveyance, collection or management of storm water

to the extent necessary to have access to said Drainage Facilities by entering on the premises of any owner for the purpose of repair, reconstruction, cleaning, removal of debris and maintenance of the Drainage Facility; said easement and right of way will extend ten (10) feet beyond the improvement (e.g. 10 feet beyond the top of banks for swales or ditches, 10 feet beyond the bottom of a slope where embankments are constructed, etc.), together with the right and authority to enter, exit and maintain the drainage facilities. The Grantor, its successors and assigns, including the aforesaid Type A Not-for-Profit Corporation, upon completion of performance of said maintenance or repair shall take such actions as are necessary to reasonably restore any area disturbed during the maintenance or repair to its original condition.

**4. ROADS, GATES, COMMON AREAS and LAKE.** Notwithstanding that title is or may be conveyed to any land lying in the bed of any street or road in front of or adjoining a subdivision lot, or encompassing or leading to or from a Gatehouse or Gate, as more particularly shown on the subdivision plans, or upon a future subdivision plan of real property of the Grantor, each and every lot owner shall have, for the purpose of ingress and egress, an unobstructed and unrestricted right of free and reasonable travel (but not for parking, except where designated) over the road or street as shown on said subdivision plan as and when the same are open to general use. Such travel shall be at the risk of the lot owner, his heirs, invitees, successors and assigns, without any liability to the Grantor. The right to change, alter, widen or extend the lines of any road or street shown on said subdivision plan, or to cut new streets or roads through the tract, is expressly reserved to the Grantor and its successors and/or assigns, provided such change or changes shall not unreasonably interfere with or impede the lot owner's access for ingress and egress or alter the size of the premises herein conveyed. No trucks and no commercial type vehicles shall be stored or parked on any street or road except while engaged in service to the lot owner. The Grantor reserves unto itself, its successors and/or assigns, the exclusive right to dedicate the roads or streets depicted on the said subdivision plan or hereafter constructed to public or private use without the joinder, release or consent of the lot owner, to which dedication the lot owner consents by accepting delivery of a Deed subject to these Covenants without claim for damages of any kind whatsoever. The Grantor further reserves unto itself, its successors and/or assigns, the option to transfer ownership of all or a portion of the lands (above or below the high water mark of the Lake) and/or streets within the subdivision, at no cost, to a Type A Not-For-Profit Corporation to be formed for such purposes as shall be defined in Not-For-Profit Corporation Law Article 2, and whose membership shall be limited to the lot owners in the subdivision, as well as lot owners in any other subdivision(s) which the Grantor may develop out of the real property hereinabove referred to; including those who acquire lands of the Grantor which are transferred and conveyed and made part of a lot line improvement to include lands which are not owned by the Grantor but which are thereupon and as a condition of the lot improvement required to be subject to these Declarations of Covenants, Conditions and Restrictions for Kenoza Lake Development, LLC, together with the right to collect the annual road maintenance and lake maintenance fees as hereinafter provided. Such Not-For-Profit Corporation may include the owners of more parcels and lands than are set forth on the subdivision plat hereinabove referred to. The owner of each lot shall be required to and shall be a member of such Not-For-Profit Corporation. Subject to this paragraph "4", road

maintenance and lake maintenance costs shall be shared by all lot owners (including those who acquired a portion of the Grantors lands as part of a lot improvement) in accordance with Paragraphs "5" and "6", if the annual maintenance fee is insufficient.

The Grantor reserves to itself, its successors and/or assigns the right to convey title and/or a right-of-way upon any land lying in the bed of any street or road in front of or adjoining a future subdivision of the lands of Grantor, together with the rights and privileges hereby granted, to the lot owners of the existing subdivisions.

**5. MAINTENANCE COSTS FOR LOT OWNERS IN THE SUBDIVISION.** The owner of each lot in the subdivision shall pay as and for a maintenance fee the sum of *EIGHT HUNDRED AND 00/100 (\$800.00) DOLLARS*, said sum to be paid to the Grantor or the Not-For-Profit Corporation, whichever is applicable, on June 1<sup>st</sup> of each year, for the purpose of maintaining the street or road leading to, in front of and adjoining the subdivision lot, the Gates, the Lake Common Areas (together with Tier II Maintenance Fees) and the entry area to the subdivision. At the initial closing with Kenoza Lake Development, LLC, the Purchaser shall be responsible for payment of the initial year's Maintenance Fees, Tier I, which shall be apportioned as of midnight before the day of Closing. In the event the maintenance fee collected from each owner is insufficient to maintain the street or road leading to, in front of and adjoining the subdivision lot, the Gates, the Lake Common Areas, or the entry area to the subdivision, any deficiency will be made up by the Grantor for a period determined by the earlier happening of the following: June 1, 2008 or the conveyance of the fiftieth (50<sup>th</sup>) lot of any subdivided lands of Kenoza Lake Development, LLC which obtains access to a subdivision along a street or road obtaining access from the Gates and providing ingress and egress to the aforesaid subdivision. Except as heretofore provided, upon formation of said Not-For-Profit Corporation and the transfer of ownership as hereinabove provided, the said Not-For-Profit Corporation shall assume the obligation to maintain the roads within the subdivision(s), the Gates, Lake Common Areas and roads providing ingress and egress to the subdivision(s), the entry area to the subdivision(s), and such other maintenance and obligations which the Members thereof agree to assume. The annual maintenance charge for each lot shall be billed in advance on or before June 1<sup>st</sup> of each year, and shall be paid within sixty (60) days thereof. In the event same is not paid within said sixty (60) day period, the maintenance charge shall be deemed delinquent and, together with interest thereon and the cost of collection thereof (including but not limited to reasonable attorneys' fees and disbursements), shall be and constitute a lien on the lot which shall bind said lot as a lien running with the land and may be foreclosed in the same manner as a mortgage. In the event that there shall be established common areas and/or facilities by the Grantor or the Not-For-Profit Corporation, the failure to pay the annual maintenance charge shall automatically suspend the lot owner's right to use the said common areas and all facilities during the period which any such maintenance charge shall remain unpaid, but in no event shall any such suspension preclude ingress and egress by the owner to and from the owner's dwelling or lot.

**6. MAINTENANCE COSTS FOR LOT OWNERS WHO ARE SUBJECT TO THESE DECLARATIONS IN ACCORDANCE WITH A LOT LINE IMPROVEMENT.** The owner of each lot which becomes subject to these Declaration of Covenants, Conditions and Restrictions, or any amendment thereof, for Kenoza Lake Development, LLC, by

reason of acquiring lands of the Grantor as part of a lot line improvement, shall have lake rights for the purpose of fishing, swimming and boating, shall pay as and for a Maintenance Fee for Lake Maintenance (Tier II) and improvements the sum of *FOUR HUNDRED AND 00/100 (\$400.00) DOLLARS*, said sum to be paid to the Grantor or the Not-For-Profit Corporation on June 1<sup>st</sup> of each year. At the closing with Kenoza Lake Development, LLC, the Purchaser shall be responsible for payment of the initial year's Tier II Maintenance Fee, which shall be apportioned as of midnight before the day of Closing. Tier II Members shall not have access to the subdivision along any street or road obtaining access from the Gates and providing ingress and egress for the aforesaid subdivision. Tier II Members' rights shall be limited to entry into the Lake from the property of Tier II Members, which property was conveyed as part of a lot line improvement. Except as heretofore provided, upon the formation of said Not-For-Profit Corporation and the transfer of ownership as hereinabove provided, the Not-For-Profit Corporation shall assume the obligation with respect to Tier II Members to maintain the Lake and such other maintenance obligations which Members thereof agree to assume. The annual maintenance charge for each lot shall be billed in advance on or before June 1<sup>st</sup> of each year, and shall be paid within sixty (60) days thereof. In the event same is not paid within said sixty (60) period, the maintenance charge shall be deemed delinquent and together with interest thereon and the cost of collection thereof (including but not limited to reasonable attorneys' fees and disbursements), shall be and constitute a lien on the lot which shall bind said lot as a lien running with the land and may be foreclosed in the same manner as a mortgage. In the event that the Tier II Member fails to pay the Grantor or the Not-For-Profit Corporation the annual maintenance charge on or before its due date, the failure to pay the annual maintenance charge shall automatically suspend the Tier II Member lot owner's right to enter or use the Lake for boating, swimming, fishing or for any other purpose whatsoever during the period of ownership which any such maintenance charge shall remain unpaid; such suspension shall preclude ingress and egress by the owner, his or its guests, invitees, successors and assigns to enter upon the waters of Kenoza Lake for boating, fishing, swimming or for any other purpose whatsoever during the period of the suspension.

**7. BUILDINGS & STRUCTURES.** No structure shall be erected on the premises other than one (1) single family dwelling house of a minimum enclosed living area of not less than 1,500 square feet nor greater than 7,500 square feet, exclusive of garages, porches, breezeways, patios and other appurtenant structures. Such dwelling house shall be suitable for the use of, and shall be used by a single family only, with one (1) private one (1) to four (4) car garage attached to or detached from the dwelling house and to be used only by the occupants of such dwelling house. There shall also be permitted a guest house, caretaker's residence, utility building, bath house and tool shed. The combined square footage with the dwelling structures, shall not exceed an aggregate total of 10,000 square feet. Notwithstanding the foregoing, the Grantor or Architectural Committee may, but shall not be required to, permit the erection on the premises of a one (1) family dwelling of greater than 7,500 square feet, but no more than 12,000 square feet, exclusive of garages, porches, breezeways, patios and other appurtenant structures, which such dwelling shall be suitable for the use of, and to be used by, a single family only, with one (1) private one (1) to four (4) car garage attached or detached from the dwelling and to be used only by the occupants of such dwelling

house, so long as in the opinion of the Grantor or Architectural Committee, after consideration of the relationship of the lot size, lot configuration, set backs, topography, and foundation foot print, permission to increase the square foot size of the dwelling house shall not adversely affect the natural beauty of the land and the structure's harmony with existing and/or proposed construction and improvements. There shall further continue to be permitted a guest house, caretaker's residence, utility building, bath house and tool shed. The combined square footage with the dwelling structures, shall not exceed an aggregate total of 13,500 square foot. The maximum construction area shall not exceed a total of one (1) acre and shall be limited to the area referred to in Note 1 on the Revised Amended Plan, as acceptable to the Town of Delaware Building Inspector as being in compliance with Town of Delaware Subdivision Regulation Section 403.2H (hereinafter the "buildable area"). No structure shall be erected outside of the buildable area without the approval of the Architectural Committee and the Planning Board having jurisdiction over the original subdivision map or plat or any amendment thereto. Lot development clearing activities within the subdivided lot shall not exceed one (1) acre and shall be limited to the confines of the buildable area; the maximum amount of clear-cutting on any lot, excluding driveways, under all circumstances shall be limited to one (1) acre. If the Grantor, or any party subject to these Covenants, propose to develop beyond these boundaries, the Town of Delaware Planning Board approval is required. In the event the original building permit does not contain plans and specifications including sewage plans and specifications for anticipated construction of a guest house then, and in that event, the owner shall be required to obtain approval of sewer and water upgrades as may be necessary in order to comply with building codes then existing as required by State or municipal codes and regulations as part of the Architectural Committee approval process. All of the above restrictions shall not be deemed to prevent the installation of a swimming pool, tennis court, basketball court, tree houses, accessory buildings, etc., and other outdoor amenities such as hot tubs, etc., with due consideration to proper screening and setbacks and subject to approval by the Architectural Committee. These amenities should be designed to complement the residential structure and to be placed so as to minimize impacts on adjacent lots. Permits for gazebos, tree houses, accessory buildings, tennis/basketball courts, etc. may require other regulatory approval as required by law.

**8. SWIMMING, FISHING, BOATING, BOAT DOCKS, BOAT HOUSES and BOATS.** The owners of Lots "14" through "28" shall have the right to swim, fish and boat in Kenoza Lake in accordance with these Declarations. In the event that the owner of Lot "14" through "28" inclusive, or any owner of a lot which becomes subject to these Declarations of Covenants, Conditions and Restrictions in accordance with paragraph "6" hereof, which is contiguous to or fronts or whose lot extends below the high water mark (in the case of a boat house) of a body of water seeks to construct a boat dock or boat house, and in order to ensure that all boat docks and boat houses constructed and/or situated, if permissible, on, in or about any waters do not interfere with the neighboring property or the ability of the Grantor to sell, market or lease its property, each of said lot owners before commencing construction of or alteration or improvement of any boat dock or boat house of whatsoever kind or nature or to relocate the same, must obtain the approval of the Grantor or Architectural Committee (or in the event that the Grantor or Architectural Committee is not ready, willing or able, by the Homeowner's

Association in existence at that time) in writing of the aesthetic appearance and location, relocation, alteration or improvement of such improvement. Once the owner constructs, situates and locates such boat dock or boat house, such improvement cannot be relocated in any direction more than twenty-five (25) feet from the location originally approved by the Grantor or Architectural Committee (or in the event that the Grantor or Architectural Committee is not ready, willing or able, by the Homeowner's Association in existence at that time). The owner shall submit a detailed plan in duplicate to the Grantor or Architectural Committee (or in the event that the Grantor or Architectural Committee is not ready, willing or able to the Homeowner's Association in existence at that time) showing the proposed location of the boat dock or boat house. It shall be the owner's responsibility, at his own cost and expense, to obtain any necessary permits, if any, or certificates from the Town of Delaware or any other governmental authority having jurisdiction thereof. Grantor or Architectural Committee (or the Homeowner's Association) shall not unreasonably withhold its approval so long as the proposed location of the boat dock or boat house does not interfere with adjoining lots, the aesthetic harmony of the subdivision, or impair Grantor's ability to market, sell or lease its property. Permits for permanent or floating docks or boat houses, etc. may require other regulatory approval, as required by law. The following boats and vehicles are prohibited from the body of water known as Kenoza Lake: gasoline and diesel powered vehicles including, but not limited to, motor boats, jet skis, pontoon boats and party boats. Notwithstanding the foregoing, boats, pontoon boats, party boats or other vehicles powered by electric motors, wind power or human power are permitted upon the body of water known as Kenoza Lake. Prior to any owner of any lot that is contiguous to, runs with or whose lot extends below the high water mark into the Lake, constructs or places upon the waters of the Lake a boat dock (floating or permanent), boat house or boat, said Grantee lot owner shall obtain such insurance as is required from time to time by the Grantor or the Not-For-Profit Corporation to be formed, or any amendment or supplemental requirements thereto, and shall maintain such insurance in a minimum amount of *ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS* combined single limit for personal injury, death and property damage to one or more persons, containing such endorsements and riders as are necessary to insure the said boat dock, boat house and boats, and shall name the Grantor and the Not-For-Profit Corporation to be formed as additional insureds. The insurance naming the Grantor as an additional insured shall be required to be maintained so long as the Grantor owns any lot, piece or parcel of land which extends into the Lake below the high water mark.

**9. SWIMMING, FISHING AND BOATING.** The owners of off-water lots "1" through "13" shall have the right to fish, swim and boat upon the waters of Kenoza Lake, entering the lake from the common area No. 1 as depicted in the Final Subdivision Map. At the time of the construction and identification of a common boat launch area, a boat may be placed into the waters of Kenoza Lake for the period of dawn to dusk. The boat shall not be located or maintained in the waters of Kenoza Lake or within the common area between dusk and dawn. The following boats and vehicles are prohibited from the body of water known as Kenoza Lake: gasoline and diesel powered vehicles including, but not limited to, motor boats, jet skis, pontoon boats and party boats. Notwithstanding the foregoing, boats, pontoon boats, party boats or other vehicles powered by electric motors, wind power or human power are permitted upon the body

of water known as Kenoza Lake. Prior to any owner of any off-water lot placing a boat into the waters of the lake, said obtain insurance as is required from time to time by the Grantor or the Not-For-Profit Corporation to be formed, or any amendment or supplemental requirements thereto, and shall maintain such insurance in a minimum amount of *ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS* combined single limit for personal injury, death and property damage to one or more persons, containing such endorsements and riders as are necessary to insure the said boat dock, boat house and boats, and shall name the Grantor and the Not-For-Profit Corporation to be formed as additional insureds. The insurance naming the Grantor as an additional insured shall be required to be maintained so long as the Grantor owns any lot, piece or parcel of land which extends into the Lake below the high water mark.

**10. DISCLOSURE PURSUANT TO REAL PROPERTY LAW §333-c.** Grantor provides the following Disclosure Notice:

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective owner that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective owners are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances."

**11. FRESHWATER WETLANDS NOTICE.** For any of the lots in the subdivision containing portions of fresh water or wetlands, LH-13 or the 100 foot adjacent area, the Deed for such property shall contain a Notice as hereinafter set forth:

"This property contains State regulated freshwater wetlands and/or regulated 100 foot adjacent area. For as long as any portion of the property described in this Deed is subject to regulation under Article 24 (the Freshwater Wetlands Act) of the Environmental Conservation Law (ECL) of the State of New York, there shall be no construction, grading, filling, excavating, clearing or other regulated activity as defined by Article 24 of the ECL on this property within the wetland area or 100 foot adjacent areas as shown on the Final Subdivision Plat at any time without having first secured the necessary permission and permit required pursuant to the above noted Article 24 from the NYS Department of Environmental Conservation (DEC). This restriction shall bind the Grantees, their successors and assigns and shall be expressly set forth in all subsequent Deeds to this property."



**12. RESALE RESTRICTION.**

A. No part of any subdivided lot shall be further subdivided, conveyed, or transferred apart from the whole thereof.

B. Notwithstanding the foregoing, the parcel of land identified as (#1) Lands to Remain 60.81 acre parcel as shown upon the "AMENDED PLAN OF LOT #3 FINAL PLAT KENOZA LAKE ESTATES PHASE I TOWN OF DELAWARE, SULLIVAN COUNTY, NY", dated November 11, 2004, prepared by Jeff Roberts, L.S., and certified by him on May 11, 2006, as approved by the Planning Board of the Town of Delaware on May 25, 2006, and filed in Plat Cabinet 10, Map No. 204 (Vol. 10, p. 204) in the Office of the Clerk of the County of Sullivan on June 1, 2006, as amended by Amended Subdivision Plan of Lot #3 Final Plat Kenoza Lake Estates Subdivision Phase I Town of Delaware, Sullivan County, NY", prepared by Jeffrey H. Roberts, L.S. and last revised and certified by him on April 11, 2007, as approved by the Planning Board of the Town of Delaware on April 11, 2007 and filed in Plat Cabinet 11, Map No. 68 (Vol. 11, p. 68) in the Office of the Clerk of the County of Sullivan on April 16, 2007, may be resubdivided in the future into no more than twelve (12) parcels, each of which shall be no less than five (5) acres. That upon the future subdivision of the said 60.81 acre parcel, or any portion thereof, no part of any subdivided lot shall be further subdivided, conveyed or transferred apart from the whole. Each subdivided parcel shall own to the middle of the road, as depicted on the filed subdivision map as their means for ingress and egress.

**13. EXCAVATION & GRADING & SELECTIVE CLEARING.** No excavation shall be made on any tract except for the purpose of building thereon and not until the time when building operations are commenced. No earth or sand shall be removed from the said premises except as part of the said excavation. Once building operations are commenced, the exterior shall be completed within six (6) months from the date of the commencement of the building construction. The finished grade of any parcel after construction shall be such as to conform with any drainage plan approved by the Grantor, and all drainage swales or ditches required by the aforesaid drainage plan shall be kept free and clear of spoil, debris or other material by the owner and any landscaping carried out by the owner shall not interfere with or alter in any way the drainage plan. Notwithstanding the foregoing, the Grantor reserves to itself and its successors and/or assigns the right to perform selective thinning of trees, shrubs and brush on any lot, prior to its sale by the Grantor, as permitted by law for the purpose of enhancing in the opinion of the Grantor the appropriate development of the land owned by Kenoza Lake Development, LLC.

**14. USE & OCCUPANCY.** Except as hereinafter provided, no structure erected on any parcel shall be used for any purpose other than that of a private residence for the use as a one (1) family home, and guest residence only and garage, together with the other improvements referred to in paragraph "7" hereof for the use of the occupants thereof, nor shall any parcel without a structure be so used, nor shall anything be done on any parcel or in any structure thereon which may be an annoyance or nuisance to the

owners or occupants of the neighboring lands. No trailer, tent, recreational vehicle or other temporary or transportable structure shall be erected on any lot and no basement or garage shall at any time be used as a residence, either temporarily or permanently, and no house shall be occupied prior to completion. Except for a parcel or building and/or other improvements erected thereon owned by the Grantor, a parcel or any building thereon erected, or any part thereof, shall not be used or occupied as a club, profit or non-profit, or for the carrying on of any public trade or business. Except for Lots "1", "2" and "3", no horse shall be kept or bred or raised upon the tract or in any building thereon erected, or any part thereof. No poultry, cattle or any livestock, whatsoever, shall be kept or bred or raised upon the tract or in any building thereon erected, or any part thereof. Oil and gas wells shall not be drilled on any parcel or on any part thereof.

**15. SEWAGE.** Before occupancy of any dwelling, a sewage disposal system of a standard design designed by a licensed engineer shall be installed by the owner and such system shall comply with the requirements of all local and state sanitary codes. The effluent from such disposal system shall not be permitted to discharge into any storm water, sewer, open ditch, drain, stream, pond or lake, but shall not be disposed of except in accordance with law. No sewage disposal system or seepage pit, drainage field, etc., nor any part thereof, shall be located within 100 feet of the highwater mark of any lake, pond or stream. No outhouse, privy, or chemical toilet shall be erected or installed on any parcel.

**16. PROPERTY MAINTENANCE.** The exterior of all structures shall be maintained in good repair and shall be structurally sound. Except as is reasonably necessary in construction of the improvements upon the residence, driveway, swimming pools, tennis courts, basketball courts, tree houses, and other outdoor amenities, no trees in excess of 4" caliper or any shrubbery may be removed within the area between any building set back lines and the exterior property lines of any tract. Proper screening shall be maintained between adjoining lots so that the residence, driveways, swimming pools, tennis courts, basketball courts, tree houses, and other outdoor amenities are in harmony with the subdivision and do not impair the Grantor's ability to market, sell or lease its property. The owner shall cut dead and/or fallen trees or branches on the tract and cause the removal of same. The owner shall maintain the lot in a neat condition. Every parcel shall be kept in a sanitary condition. All garbage and refuse shall be immediately taken or carried away. Dumping of garbage or refuse on other lands is prohibited. No outdoor storage or disposal of garbage or refuse is permitted, except for temporary storage in screened and enclosed receptacles. The storage of any appliances, junk, furniture or vehicles not in running condition outside of any permanent structure is prohibited. No flammable materials of any nature whatsoever shall be burned on any tract or part thereof except that the owner may burn picnic fires in any permanent outdoor fireplace. No pesticides, herbicides or other chemical treatment for land, vegetation or animals may be used unless its use is safe for humans and will not contaminate any source of drinking water.

**17. BUILDING LOCATION.** Unless otherwise provided in writing by Grantor, or on recorded subdivision plans, no part of any structure shall be erected closer than 50 feet to any side line of the tract with a combined total of not less than 100 feet for both side yards, nor closer than 100 feet to the property line adjoining the street on which the tract abuts, nor shall any part of any structure be erected closer than 25 feet from any other interior tract lines, provided that in the event that any boundary line of the tract adjoins any lake, no part of any structure shall be erected closer than 150 feet from the high water mark, except where permitted by the Grantor or Architectural Committee (or in the event Grantor or Architectural Committee is not ready, willing or able, by the Homeowner's Association in existence at that time) and the Town of Delaware, of such lake, pond, stream or water course. Grantor reserves the right to modify any distance based upon the configuration of a subdivision lot if such setback would obstruct views from other lots.

**18. VEHICLES.** No trucks and no commercial type vehicle shall be stored or parked on any residential street, except while engaged in service to the property owner. No trailer, camper, truck, bus or commercial vehicle may be kept or stored on any portion of a lot visible to the road except for a small tow trailer for boating or recreational purposes. No off-road vehicle, including snowmobiles, motor bikes or all-terrain vehicles, may be used except for maintenance patrol or emergency purposes. Off-road vehicles may not use the roads in the subdivision. All off-road vehicles must be housed in an enclosed covered building. Helicopter or fixed aircraft operation is prohibited. The Grantor may grant a license to the lot owners to use off-road vehicles, including snowmobiles, motor bikes or all-terrain vehicles, upon lands of the Grantor outside of the subdivided parcels, subject to rules and regulations imposed by the Grantor.

**19. FENCES AND SIGNS.** The premises herein conveyed may be fenced by lot owners in whole or in part provided that all fencing shall be 4-rail split rail fence or such other fencing as approved by Grantor or Architectural Committee (or in the event Grantor or Architectural Committee is not ready, willing or able, by the Homeowners Association in existence at the time), and further provided that no barbed wire or similar material, or any other fencing material upon which birds, animals, or persons may be impaled or injured, be used, and provided further that such fences shall not interfere with, obstruct or impede the free use by others of the streets and roads adjoining or fronting on said premises, or the free and reasonable access to utility lines, water, gas, and electric lines, required for the purpose of maintenance and operation thereof. Fences enclosing private swimming pools are permitted so long as they are constructed in full compliance with state and local laws and regulations. All signs are prohibited except for the use of a sign not to exceed three (3) square feet to designate the homeowner's name and street number, except for boulder signage designating the homeowner's name and street address to be located at the entrance of each lot owner's driveway as approved by the Grantor. Specifically prohibited are "for sale" signs of any type for any purpose.

**20. MISCELLANEOUS:**

A. No diversion or damming of springs or streams shall be permitted without the consent of the Grantor, and other regulatory approvals as required by law.

B. No pet shall be permitted which, by making noise or straying, disturbs occupants of another lot.

C. No kennel shall be permitted on any lot; no breeding of animals, domestic or otherwise, shall be permitted on any lot.

D. No tent or temporary shelter which is visible from another lot, the roads or trails of the subdivision shall be permitted. Notwithstanding anything set forth in paragraph "14" of this Declaration of Covenants, Conditions and Restrictions, a tent or temporary structure may be erected upon a lot for weddings, parties and similar occasions; however, no tent or temporary structure shall be visible from another lot, the roads or trails of the subdivision.

E. The roads and trails of the subdivision shall not be used for storage, repair or washing of any motor vehicle, boat, trailer or camper, or for parking, except in designated areas.

F. No clothesline or other outdoor device for drying laundry shall be permitted.

G. No lot or structure erected thereon may be leased for less than a ninety (90) day period, or more than two (2) times in any calendar year. For purposes of this restriction, change (by sub-lease or otherwise) in the party entitled to the use or possession of the property or a break in the continuity of such right of use or possession will be deemed a new lease. No guest house or room may be leased separately from the dwelling.

H. The discharge of firearms and/or any hunting (by firearm, bow, trap or otherwise) within the subdivision is prohibited.

I. The installation, maintenance or use of a satellite dish in the subdivision shall be permitted provided that it is not in excess of thirty-six (36") inches in diameter.

**21. CONSTRUCTION COMPLIANCE.** The acceptance of a Deed constitutes an acknowledgment by the Grantee thereof that the Grantor, as an owner of property within the subdivision, has a substantial interest in insuring that the improvements within the subdivision enhance the natural beauty of the land, maintain the architectural and aesthetic harmony of the subdivision, and do not impair Grantor's ability to market, sell or lease its property. Accordingly, in order to assure a standard of construction for

all homes to be constructed within the subdivision, each property owner intending to erect a residence, together with the appurtenances thereto on a lot of the subdivision, before commencing construction of any improvement of whatsoever kind or nature or to make any alterations or additions thereto, must obtain the approval of the Grantor or Architectural Committee in writing of the plan and location of such improvement. The plans and specifications of any such improvement shall be in accordance with a design review process and architectural and construction guidelines prepared and maintained by the Grantor and provided to the owner. The construction or installation of any such improvement, alteration or addition shall be carried out in strict conformity with such approved plans and specifications. The owner shall submit detailed plans and specifications in duplicate to the Grantor or Grantor's designated representative. The owner must, at his own cost and expense, obtain any necessary permits or certificates from the Town of Delaware and any other governmental authority having jurisdiction thereof. In addition, the owner shall retain an Architectural/Design firm which, in addition to any other services provided to the owner, shall certify, upon completion, that any construction, alteration or addition fully and completely complies with the plans and specifications initially approved by the Grantor or Grantor's designated representative and with the covenants, conditions and restrictions herein set forth. In addition, the said owner's Architectural/Design firm shall also certify to the Town of Delaware, and any other appropriate governmental authority having jurisdiction over the issuance of any permit or certificate, a plan of the location of such improvements and the sewage system, as well as that the said construction complies with the plans and specifications submitted to the governmental authority at the time of the issuance of a permit. Grantor or Grantor's designated representative shall not unreasonably withhold its approval or the construction proposed by the owner, provided that the proposed construction conforms to the Grantor's design standards, and further provided that the Grantor and/or its designated representative may deny approval on purely aesthetic grounds.

**22. TERMS AND LIMITATIONS.** Nothing herein set forth shall be construed as imposing any restrictions, conditions, limitations or rights of any kind, or any Common Scheme or Plan of Development, which may in any way affect any other property owned or conveyed by the Grantor herein, contiguous to, adjoining, adjacent or near the premises herein described and sold, except that any residential development and subdivision of lands of the Grantor described herein or being contiguous to or adjoining the said lands shall in no event, both now and in the future, provide for residential building lots of less than five (5) acres per lot. Notwithstanding anything heretofore or hereinafter provided, the Grantor shall not now or in the future annul, waive, change, amend or modify the provision requiring all said residential building lots to be of a minimum of five (5) acres per lot. Failure to promptly enforce any of the above restrictions, conditions or covenants shall not be deemed as a waiver of the right to do so thereafter and the invalidation of any of the above covenants or restrictions by judgment of any competent Court shall in no way affect any of the other provisions which shall remain in full force and effect. The reservations, conditions, covenants, charges and agreements herein contained may be annulled, waived, changed, amended or modified by Grantor, its successors and/or assigns, as to any property owned by it, and as to any property subject to this declaration when in the opinion of the Grantor the said amendment shall not adversely affect the area being developed, provided, however,

that such amendment, change or modification shall not affect the character and integrity of the development, or create any noxious, dangerous or inappropriate use of a lot or area adjacent to that of a property owner. The Grantor, its successors and/or assigns reserves the right to amend any part of these covenants, conditions, restrictions and reservations at any time by filing such change in that place where the original hereof is recorded, provided, however, that such change shall not result in a reversion or forfeiture of title, nor provide for any right of re-entry by any party, and provided, however, that any amendment by the Grantor, its successors and/or assigns to these covenants, conditions and restrictions shall not substantially and materially impair, alter or void any right or specifications herein set forth which existed at the time that the Grantee became an owner of a lot in the subdivision nor be inconsistent with any prior subdivision approvals or restrictions or notes contained in approved and filed subdivision plans, restrictions of maximum amount of clearing on any lot as set forth in Section 7 or extend the right of the Grantor reserved to itself, its successors and assigns to perform selective thinning of trees, shrubs and brush on any lot as set forth in Section 13 hereof.

**23. DEFINITIONS & BINDING EFFECT.** Wherever the term "Grantor" is used, it shall mean Kenoza Lake Development, LLC, its successors and assigns, and wherever the term "Grantee" or "owner" is used, it shall mean the original Grantee, and his heirs, successors and assigns. All the covenants, conditions, restrictions and reservations contained herein shall be binding upon an inure to the benefit of the parties hereto and the respective heirs, executors, administrators, successors and assigns.

**KENOZA LAKE DEVELOPMENT, LLC**

By: \_\_\_\_\_

**MARC DUBROVSKY**  
Chief Executive Officer

STATE OF NEW YORK }  
                                      }ss:  
COUNTY OF SULLIVAN }

On the 27<sup>th</sup> day of March, 2008, before me, the undersigned, personally appeared **MARC DUBROVSKY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Pamela Jones*  
\_\_\_\_\_  
**NOTARY PUBLIC**

PAMELA JONES  
Notary Public, State of New York  
Sullivan County Clerk's #2214  
Commission Expires June 15, 2010