

**AMENDMENT NO. 1 TO THE
DECLARATION AND COVENANTS FOR
MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION PHASE II,
INC.**

The developer's original Declaration of Covenants for Morgan Street Birch Run Homeowners Association Phase II, Inc. is recorded in Official Record Book 1222 at Page 709 dated August 25, 1982 in the Public Records of the County Clerk, County of Saratoga County, New York.

Amendment No. 1: Item 1: Article VII, Section 1 (b): Maintenance of Lots of the original Declaration of Covenants for Morgan Street Birch Run Homeowners Association Phase II, Inc. shall be deleted in its entirety and replaced as follows:

Section 1 (b-1) Association and Owner Maintenance on the Lots

- 1) The Association shall provide for:
 - a) Snow removal on driveways and walkways.
 - b) Spring and fall cleanups.
 - c) Lawn mowing, treatment and weeding.
 - d) Trimming of shrubs on the private Lots.
 - e) Removal and replacement of any dead, dying or diseased *street* trees that are defined as trees closest to the edge of street pavements within Birch Run and on the berm along Seward Street.
 - f) Maintenance of storm sewers, water mains and sewer pipes, and storm water catch basins that primarily serve drainage from streets of the Birch Run Special District whether they lie on or in Common property of the Association or the privately owned Lots.
- 2) Homeowners shall be responsible for:
 - a) Maintenance and repair of driveways, (to the edge of the street pavement).
 - b) Walkways.
 - c) Storm drains, water pipes, sewage pipes connecting their home to the point of connection with the storm sewers, water mains and sewer pipes of the Birch Run Special District.
 - d) Power lines, telephone lines, TV cables to the point of connection with the utility owned facilities.
 - e) Removal and replacement of any dead, dying or diseased trees and shrubs that lie on the Lot and the extension of the Lot to the edge of the street pavement or the back Lot line except street trees as defined above and trees on the berm along Seward Street which solely shall be the responsibility of the Association.
 - f) Where privacy screens of trees and/or shrubs are located on the boundary line between Lots, the Lot owners will share equally in the expense for tree and/or shrub removal and replacement.

- g) Where privacy screens of trees and/or shrub are located on the boundary line between Lots and the lands of the Association the Lot owners and the Association will share equally in the expense for tree and/or shrub removal and replacement.
- 3) Miscellaneous Provisions
 - a) All maintenance shall be to the same standards as apply to maintenance of the Common Areas performed by the Association so as to be consistent with the overall purpose of this Declaration.
 - b) The Board of Directors or the Architectural Control Committee of the Board of Directors shall require any homeowner to perform any of the maintenance for which the homeowner is responsible. If the homeowner refuses the Board of Directors shall have the maintenance performed and assess the homeowner for the full cost of the maintenance plus 10% service fee.
 - c) Homeowners may plant additional new trees on their Lots or the Common Areas with the advance written approval of the Architectural Control Committee of the Board of Directors which shall not be unreasonably withheld.
 - d) Each homeowner shall be responsible for the maintenance and repairs of the interior and exterior of the home including: structure, siding, roofs, foundations, windows and doors and further shall be responsible for the maintenance, repairs and replacement of any exterior damage caused by the neglect or willful conduct of the Lot owner or Lot owners', tenant, guest or invitee.
 - e) On request of the owner(s), the Board of Directors or the Architectural Control Committee will arrange for the Managing Agent to assist with the above and other maintenance on the Lot by obtaining bids from qualified contractors, reviewing specifications and costs in advance and assess the expense to the owner(s) plus a ten percent (10%) service fee. The contractor will be fully reimbursed on successful completion of the work. As used herein the term "maintenance" means preservation, repairing and keeping in good condition the items referred to herein, and replacement of any item which is deemed reasonably necessary by the Directors of the Association.

Section 1. (b-2) Painting. To preserve the distinctive appearance of the property, the Association shall arrange for painting and/or staining the homes in their original colors as needed, or at least once every five (5) to seven (7) years, including the painting and/or staining of the exterior surfaces of all walls and fences and the painting of exterior trim, door surfaces and chimney caps in the original colors. The Board of Directors will levy special assessments on a pro rata basis in a given year for the actual painting expense for each home in the building(s) scheduled for painting in that year. Painting of the building shall commence as soon as all assessments for the building have been paid.

Homeowners may request a change in the schedule for their building or a change in the color of paint or stain used for their building by submitting a written request to the Architectural Control Committee, signed by all owners in the building, by May of the year preceding the scheduled date, with the understanding that changing a building's color may require an additional coat of paint/or stain and a correspondingly higher painting assessment.

Notwithstanding other provisions and/or references to maintenance on the Common Areas and the Lots, painting of homes, special assessments, driveways, walkways, trees, shrubs and the landscaping that may appear elsewhere in the developer's original Declaration of Covenants, the provisions of this Amendment shall apply and supersede other such provisions and references.

PROPOSAL ITEM 2: The Association Board of Directors believes it is in the interest of all homeowners to conform the Declaration of Covenants to Local Law No. 4 of 1996 adopted by the City Council of Saratoga Springs NY.

Amendment No. 1 Item 2: Article VII, Section 1, (a): Common Area Maintenance of the original Declaration of Covenants for Morgan Street Birch Run Homeowners Association Phase II, Inc. shall be deleted in its entirety and replaced as follows:

Section 1. (a) Common Area Maintenance. Under the provisions of Local Law No. 4 of 1996 adopted by the City Council of Saratoga Springs NY on April 16, 1996, the Morgan Street Birch Run Special District has the responsibility and authority for maintaining the Common Areas originally maintained by the Morgan Street Birch Run Homeowners Association Phase II, Inc., including but not limited to, maintenance of roadways, sewer pumping station, sewers & water mains, drainage systems, streetlights, lawns, trees, shrubbery and landscaping located on Common Areas and snow removal on all Common Area roadways, and assessing the expenses to residents within the Special District. The Special District's Board of Directors also serves the Morgan Street Birch Run Homeowners Association Phase II, Inc.

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