

**Clarification of HOA vs Homeowner Responsibilities in the
Declaration of Covenants, Conditions, Easements and Restrictions**
Adopted by the Board of Directors on 12/14/2020
Revision 1 Adopted by Board of Directors on 12/27/2021
Revision 2 Adopted by Board of Directors on 6/12/2023

The maintenance responsibilities of the HOA and the homeowner are defined in the Declaration, predominantly in Article VI. The purpose of this document is to offer a guideline to clarify the responsibilities regarding maintenance of common area, lots and building components. The intent of this guideline is **not** to change any meaning or language in the Declaration but rather to clarify statements where clarity is lacking, so as to ensure fair, equitable and consistent treatment of all homeowners in decisions by this and future boards. Accordingly, these guidelines include an explanation of the basis for the decision reached as well as the decision itself.

It is the Board's intent that this guideline be used to make all future decisions regarding the maintenance responsibilities of the HOA¹. It is recognized that in rare cases, there may be extraordinary or extenuating circumstances which cannot be predicted in advance. In such cases the Board reserves the right to stray from these guidelines if, in its sole opinion, it would be in the best interests of the HOA to do so. However, such exceptions shall not be considered precedent for future decisions unless this guideline is modified accordingly.

Excerpts of Relevant Articles of the Declaration: [For reference only, *emphasis added*]

Article VI, Section 1- Common Area Maintenance states in part:

“The Association, as deemed necessary in the exercise of its reasonable judgement, shall keep in good repair and shall maintain the Common Area, the *building roofs* and *building exteriors*, and all *landscaped areas* in good repair, and shall repair and replace the gas pipelines within the interior walls of units.

“...The Association shall also be responsible for proper maintenance of all shrubbery, trees and other plantings installed by the Association within the Common Area.

“No plantings or alterations may be made to the Common Area by an individual Owner, including cutting or pruning of trees or shrubs in such Common area (even if branches or roots overhang or enter upon an Owner's Lot), except with the express written consent of the Board of Directors of the Association.”

Article VI, Section 2 - Repairs and Maintenance Which Are Not the Responsibility of the Association states in part:

“Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property but which is occasioned by a *negligent or willful act or omission* of an Owner...shall be made at the cost and expense of such Owner...If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but rather shall be considered an expense attributed to the specific Lot and such cost shall be added to that Owner's

¹ Maintenance by the HOA shall include any maintenance performed by a Director, Property Manager, Contractor, or other persons retained by the HOA.

assessment and constitute a lien on the Lot to secure the payment thereof. Maintenance of the *Lot* and the interior of the unit, *including all plumbing and HVAC mechanicals*, shall not be provided by the Association, and shall be the responsibility of the Lot Owner, and shall be performed by each Owner in a prudent manner so as not to cause damage to adjacent units.”

Article VIII, Section 4 – Plantings, Screenings and Fences states in part:

“Any plantings, fence enclosures or walls initially developed on a Lot...shall not be removed, replaced or repainted or altered as to color with other than a similar type of planting, fence or wall except with the permission of the Board. ...no...planting outside of the foundation of a unit, except for the existing fenced backyard which lies outside of the foundation, of any kind shall be planted...unless approved by the Board of Directors...”

Article I, Definitions, Section 2 states in part:

“Common Area shall mean all real property owned by the Association...shall consist of all the Property but excluding the Lots.”

Article I, Definitions, Section 5 states:

“Lot(s) shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, with the exception of the Common Area. The Lot to be owned by each Owner shall be the area shown on the subdivision map.”

Article I, Definitions, Section 6 states in part:

“Property shall mean and refer to that certain real property described in Schedule “A”...”
Schedule “A” describes the perimeter boundary of each phase which includes the Common Area and the Lots.

Article III, Section 1 – Easements for Utilities states in part:

“An Easement is hereby granted to the Association and to all utility companies *over and through the Lots for the purpose of maintaining, repairing and replacing gas lines, electric, and cable TV and telephone wires which connect and **pass through Units** and which connect to boiler rooms and gas meters...*”

Article IX, Section 1 – Fire and Casualty Insurance states in part:

“The Association will obtain...a policy of fire and other casualty insurance...with coverage adequate to cover the full replacement cost of any repair or reconstruction work on all the buildings on the Property...”

“In the event of damage or destruction by fire or other casualty insured against to any unit...the Association shall receive the proceeds of such insurance, and make such proceeds available to the Owner for repair or replacement of the Owner’s unit...If the Owner refuses or fails to repair or rebuild the *exterior* of the unit within 30 days, the Association may repair or rebuild such exterior, paying for the same from the insurance proceeds, and shall deliver to the Owner any excess insurance proceeds.

“If the insurance proceeds are insufficient to complete the repairs, the Owner is required to reimburse the Association for the cost of such repair or reconstruction...”

General Provisions:

- 1) Any maintenance, which the HOA is **not** required to perform as defined herein, is the responsibility of the respective homeowner. If any such maintenance, which, **in the sole judgement of the HOA**, is necessary to preserve the appearance and value of the Property or to lower HOA’s expenses, is not completed by the homeowner in a reasonable time after notification, it shall be considered a willful act or omission by such homeowner and **may** be performed by the HOA with the cost assessed to the homeowner².
 - a) This provision includes, but is not limited to, the fenced in backyards and any other portions of the Lot which are visible from any point on the common area and applies to any repair, maintenance, cleaning or removal of trash or other visible items, etc., which, **in the sole judgement of the HOA**, are detracting from the “appearance and value of the Property.”
- 2) New homeowners are subject to these guidelines even if a former owner was responsible for an existing condition.
- 3) If a tree, planting or any other item **located on a Homeowner’s Lot or installed by a homeowner in or on a unit or on the common area, with or without HOA approval**, is contributing to the cost of, or interfering with, HOA maintenance of the roofs, building exteriors fences, or any other element the HOA is required to maintain, the HOA may, **at its sole discretion**, require the homeowner to either remove, relocate or trim the item or planting or to pay any extra cost of the maintenance incurred by the HOA caused by the presence of such items.³
- 4) If a homeowner maintains or replaces an item which the HOA is required to maintain, the HOA shall not be required to contribute to the cost of such maintenance or replacement.⁴

Specific questions addressed in this document.

- 1) What constitutes the HOA’s responsibility to maintain the building “roof”?
- 2) What constitutes the HOA’s responsibility to maintain the “building exterior”?
- 3) What is the limit of the homeowner’s lot?
- 4) What constitutes the HOA’s responsibility to maintain “landscaped areas”?
- 5) Who is responsible for the maintenance, repair, or replacement of utility systems such as water, sewer, electricity, etc.?
- 6) Who is responsible for maintaining and replacing backyard fences?
- 7) Who is responsible for damage due to a failure of any items required to be maintained by the HOA?
- 8) How is other damage to items required to be maintained by the HOA handled?
- 9) What is the required timing of maintenance performed by the HOA?
- 10) Can a homeowner do work on items that are the maintenance responsibility of the HOA?

² Declaration Article VI Section 2

³ Ibid.

⁴ The duty of the HOA is to maintain existing facilities at the lowest cost. If a new item is installed, the maintenance duty of the HOA is satisfied.

1. Roof. For the purposes of Article VI Section 1, the roof shall be defined as the shingles or other top covering, fascia, soffit, flashing, caulking, and other roofing materials (e.g., ice and water barrier, building paper, ridge vents, boots, etc.) needed to enable the roof to perform its intended function of protecting the building structure from the elements. This definition is based on and consistent with the NYS Uniform Building Code of 2015.⁵ Maintenance of the *structure* which includes the sheathing, rafters, trusses, and other framing members is the responsibility of the unit owner except as defined in paragraph 7, Damage Due to Failure to Maintain on page 8 below.

Vents, pipes, solar tubes, roof windows, skylights, and other additions to and penetrations of a roof shall **not** be the maintenance responsibility of the HOA, except for flashing and waterproofing installed in conjunction with a *later* roof replacement.

The HOA **may** perform any acts which, **in its sole judgement**, are necessary to maintain the roofs in a cost-effective manner. Such acts **may** include clearing the roof shingles of debris such as leaves or pine needles, removing moss or other organisms, spraying or treating the surfaces with appropriate coatings, trimming or removing overhanging or nearby trees on common area, etc.

2. Building Exterior. For the purposes of Article VI Section 1, the *building exterior* shall be defined as the siding, trim, exterior posts, windows and exterior doors, (see paragraph 2a. and 2b below for limits on HOA window and door maintenance), visible portions of foundation walls⁶, flashing, caulking and other components needed to preserve the visual appearance of the buildings and protect the building interior and building structure from the elements. This definition is based on and consistent with the NYS Uniform Building Code of 2015⁷. Maintenance of the *structure* which includes sheathing, studs, supports, headers, slabs, concrete walls, and other framing components, is the responsibility of the unit owner except as defined in paragraph 7, Damage Due to Failure to Maintain on page 8 below.

The HOA **may** perform any acts which, **in its sole judgement**, are necessary to maintain the building exterior in a cost-effective manner. Such acts **may** include cleaning by any means, treating the surfaces with appropriate coatings, trimming or removing overhanging or nearby trees or plantings on common area, etc.

- a. The maintenance duty of the HOA regarding windows shall be defined as follows:
 - i. The HOA shall maintain only the external components of windows. These shall include exterior window trim, external frame and sill (portion outside the sash), flashing and caulking, only if, **in the sole judgement of the HOA**, such maintenance is needed to “preserve the appearance and value” of the building. All other parts of windows are the maintenance responsibility of the homeowner, including interior components, hardware,

⁵ NYS Uniform Construction Code, 2015, Chapter 2, Section 202 – Definitions. “Roof Assembly.”

⁶ A foundation shall be any concrete or other structure beneath an external building wall or component. The HOA shall maintain only the visible vertical surface of such foundations.

⁷ NYS Uniform Building Code, 2015, Chapter 2, Section 202 – Definitions. “Exterior Wall Envelope.”

- weather-stripping, thermopane sashes and seals⁸, screens and other components or attachments.
 - ii. **The HOA shall not be required to replace any complete window** except as defined in paragraph 7, Damage Due to Failure to Maintain on page 8 below.⁹
 - iii. Windows installed by homeowners (with HOA approval) in new locations will be maintained by the HOA in accordance with the above.
 - iv. The HOA shall not be required to clean any portion of any window.
 - b. The maintenance duty of the HOA regarding exterior doors shall be defined as follows:
 - i. The HOA shall maintain only the external portions of exterior doors, including garage doors. This includes painting or replacement of deteriorated components such as door panels, exterior frame and trim, flashing and caulking, only if, **in the sole judgement of the HOA**, such maintenance is needed to “preserve the appearance and value” of the building. All other parts of exterior doors are the maintenance responsibility of the homeowner including interior surfaces, hardware, operators, weather-stripping, thermopane sashes and seals, storm doors and other components or attachments.
 - ii. **The HOA shall not be required to replace any complete door** except as defined in paragraph 7, Damage Due to Failure to Maintain on page 8 below.¹⁰
 - iii. The HOA shall not be required to clean any portion of any door.
 - c. Gutters and downspouts shall not be considered part of the roof or the building exterior but are defined, for the purposes of this document, as *attachments* to same. Therefore, the Homeowner is responsible to maintain these items including cleaning, sealing, re-attaching¹¹, etc. Trees on the common area that are requested by a homeowner to be removed because they are contributing to maintenance costs of gutters and downspouts, but are otherwise judged, **in the sole opinion of the HOA**, to be desirable or cost-effective to remain, may be considered nuisance trees and handled in accordance with the current HOA policy for same.
3. Homeowner’s Lot. Each homeowner owns his/her Lot and everything that is upon it, including the roof and building exterior, even though certain elements of these are the maintenance responsibility of the HOA. Generally, a “meets and bounds” description of each Lot does not exist.

⁸ A thermopane seal can fail allowing air from either the interior or exterior to infiltrate between the panes of glass. If the exterior seal fails, it will usually not be visible. If the interior seal fails, warm moist interior air may migrate to the cold exterior pane and condense, causing the window to “fog” or streak with water. Since this is usually a failure of an interior component, it is the responsibility of the homeowner to repair.

⁹ In such cases, the HOA **may** install a replacement style window⁹ or a completely new window unit, **at its sole discretion**.

¹⁰ In such cases, the HOA **may** install a replacement slab or panel or a completely new door unit, **at its sole discretion**.

¹¹ This includes removing and re-installing as needed to facilitate HOA maintenance of the roof or building exterior.

- a. Article I, Section 5 defines a Lot as “...any plot of land shown upon *any* recorded subdivision map of the property...” Based on this definition, a Lot includes the fenced in backyards and the area described by the roof line of each unit.¹²

4. Landscaped Areas.

- a. Article VI Section 1 requires the HOA to maintain *all* landscaped areas without regard for location. Other items in the same sentence are located on Lots (roof, building exterior, etc.) suggesting that all items mentioned, including landscaped areas, are required to be maintained by the HOA even if they are on a Lot.
- b. Article VI Section 2 exempts the Lot from maintenance requirements of the HOA.
- c. Article VIII Section 4 exempts plantings in the fenced in backyard from the requirement for Board approval.¹³
- d. Therefore, for the purposes of HOA required maintenance, “landscaped area” shall be defined as any area that is either lawn, or intentionally planted with flowers, shrubs, bushes or trees, whether or not it is on the Common Area owned by the HOA, **except for** landscaping within the fenced in backyard which is not required to be maintained by, the HOA.¹⁴
- e. If the HOA grants written permission for a homeowner to install plantings of any kind on the common area pursuant to Article VI Section 1, they shall be considered as planted by the HOA, since it is done only with the express permission of the HOA, and once planted, they become part of the common area owned by the HOA. Said homeowner shall be required to follow any current policy for such plantings, which may, for example, include caring for the plantings for a prescribed period of time. Thereafter, said plantings become the maintenance responsibility of the HOA.
- f. The HOA’s duty to maintain landscaped areas shall not include maintenance of structures, hardscaping or other decorative accessories which have been placed on the common area or on a Lot by a homeowner, with or without an approved work request. These may be fences, decks, retaining walls, patios, slabs, pavers, flagstones or any other structure or accessory. If, **in the sole opinion of the HOA**, any such structures require maintenance, are detracting from the appearance and value of the property or are interfering with or contributing to the cost of maintenance of an element the HOA is required to maintain, the HOA may notify the *current* homeowner to perform such maintenance or to remove said structure at the homeowner’s expense. If such work is not performed in a timely fashion, the HOA, **at its sole discretion**, may perform such work, which may include removal with or without replacement, and charge the cost to the homeowner.¹⁵

5. Utility Maintenance.

- a. Plumbing.

¹² See Lake Country Village, Phase III Subdivision, Sheet S 4.1. CCC reference PL-C-32, filed 7/10/2003

¹³ Article VIII Section 4 does require approval for removal of “plantings initially developed on a Lot...” In a Handbook of Rules approved and published in October 2006, the Board defined this to mean any removal that “might have the potential to cause damage to other homes and/or landscaping.”

¹⁴ Declaration Articles VI and VIII.

¹⁵ Declaration Article VI, Section 2.

- i. The HOA is responsible for maintenance of the water service laterals from the City of Plattsburgh’s mains to the point such lateral enters the Lot.
 - ii. Article III Section 1 provides an easement to the Association for the purpose of maintaining certain utility systems which pass through units. This easement notably does not include plumbing lines.
 - iii. Article VI, Section 2 states that maintenance of *all plumbing* and HVAC mechanicals located on any Lot are the responsibility of the homeowner. The clear language in Article VI is corroborated by the missing easement to the HOA for plumbing facilities in Article III.
 - iv. Therefore, Article VI, Section 2 shall include plumbing pipes and components that traverse through one unit to serve another. It is possible to find water shut offs affecting one unit located in a different unit and even hot water supplied to a fixture in one unit from the hot water tank in another. These may require cooperation between homeowners in the same building when repairs or changes are necessary or desired. Water pipes physically located in a unit are the maintenance responsibility of the unit owner even if they supply other units.
 - v. Waste lines, once they exit the Lot become the maintenance responsibility of the HOA. However, in the course of maintenance of these lines, if it is discovered that, **in the sole opinion of the HOA**, inappropriate material introduced into the waste line by a homeowner has caused a problem, the maintenance cost shall be charged to the homeowner.¹⁶ Inappropriate material shall include any material that is not consistent with the typical intended function of a waste water system or is prohibited by the Public Works Department or governing Sanitary Code.
- b. Electrical.
- i. Electric service consists of a 120/240 volt¹⁷, underground service line from an MLD owned pole or ground mounted transformer to a meter “module” located at one end of each building. Each module contains the number of meters needed for the entire building along with appropriate service disconnect(s) and overcurrent protection. This equipment is rated 100 amperes per position. **An additional source side master disconnect exists which further limits the building’s electrical capacity**¹⁸. All of this equipment shall be maintained by the HOA.
 - ii. From the meter module, electric service entrance cables extend to each unit’s panel box which supplies the individual unit. This equipment is also rated for 100 amperes. In accordance with Article III Section 1, the HOA shall maintain these wires to the point they enter the panel box in the individual unit. The panel boxes themselves and all associated equipment shall be the responsibility of the homeowner.

¹⁶ Declaration Article VI, Section 2

¹⁷ Some buildings are provided with 120/208-volt service rather than 120/240-volt service. This may affect the required rating of new major electrical appliances or apparatus. If you are not sure which service you have, contact a licensed electrician before purchasing and installing new electrical equipment.

¹⁸ This master circuit breaker for quads is rated 225 amps (Phases 1 and 2) and 200 amps (Phase 3); 150 amps for triplexes and 175 amps for duplexes. These limit the *effective capacity* per unit to between 50 and 87 amps depending on the building arrangement.

- iii. The duty of the HOA is to maintain (including replacement if needed) the **original** capacity facilities (100 Amperes)¹⁹ as defined above. Any increase in capacity of these facilities, including any required changes to the meter modules, necessary to supply new electrical appliances proposed by a homeowner, shall be the complete responsibility of the homeowner and may further be limited by requirements of the MLD. Homeowners should contact a qualified electrician before purchasing or installing new major electrical appliances or equipment to determine the adequacy of the existing service to supply the new load.
 - c. Telephone and CATV. Article III grants an easement to the Association *and all utility companies* for the purpose of maintaining these facilities up to the point they "...connect to boiler rooms..." It is the usual and customary policy of telephone and utility companies to maintain these facilities, sometimes for a fee. (These utility companies are also free to install new service lines directly to each unit without passing through adjoining units.) The HOA is not required to maintain any facilities of this type.
 - d. Gas. Gas pipes located within the interior walls²⁰ of a unit are specifically mentioned in Article VI Section 1 as being the maintenance responsibility of the HOA. Article III Section 1 of the Declaration grants an easement "to the Association...for the purpose of maintaining, repairing, and replacing gas lines...which connect to boiler rooms and gas meters." Therefore, the HOA shall be responsible for maintenance, repair, or replacement of gas lines only that run from the gas meter to the point of entry in the boiler room for the purpose of supplying the gas boiler. All other gas pipes are the responsibility of the respective homeowner to install and maintain.
 - e. HVAC. Per Article VI Section 2, individual Heating, Ventilation & Air Conditioning (HVAC) units are the maintenance responsibility of the homeowner. These include all static or forced air vents or fresh air supplies for gas fired appliances, kitchens, bathrooms, plumbing, attic or whole house fans, etc. The HOA shall maintain flashing, boots, caulking, etc., *which are installed by the HOA* as part its required maintenance of the surfaces such vents penetrate and shall maintain any static ridge or gable attic vents.
 - i. The HOA is **not** required remove foreign material from around such vents that may interfere with their operation, such as leaves, pine needles, snow, ice, or other debris. Homeowners are cautioned to take proper precautions to protect themselves from harm that may be caused by a blocked or impeded vent, including following all relevant safety codes.
6. Fences. Unit fences shall be maintained in accordance with the resolution of the Board dated October 3, 2017, or as subsequently modified.
 7. Damage Due to Failure to Maintain. Each claim of damage will be reviewed by the Board on a case-by-case basis to establish cause and resultant financial responsibility.

¹⁹ 200 amperes per position for the 5 newer "villas" on Maryland.

²⁰ "Within the interior walls" shall mean anywhere in the area confined by the walls and not only inside the wall cavity itself so as not to eliminate pipes running above the ceiling or outside the sheet rock.

- a. If an element which the HOA is required to maintain fails to perform its intended function and, as a result, damage occurs to the structure or other building components, including interior building components, (but excluding interior improvements and personal property), the HOA shall be financially responsible **only if such damage is due to the negligence of the HOA to perform its maintenance responsibility.**²¹ **At the sole discretion of the HOA,** the homeowner may be required to arrange for such repairs and to present estimates of the cost in advance.
 - i. The HOA shall not be required to pay for *improvements* to the unit made in conjunction with the repair.
 - ii. The homeowner may be required to submit a claim to their insurance carrier to obtain whatever funds are payable under their policy before requesting funds from the HOA. If the damage is not covered fully by the homeowner's policy, the HOA will pay the difference, including any deductible up to \$500. The HOA may also submit a claim to *its* insurance carrier and may seek compensation under any relevant warranty.
 - iii. Damage repairs should generally be arranged and paid for initially by the homeowner. **At the sole discretion of the HOA,** the homeowner may be required to present estimates of the cost in advance.
 - iv. When submitting a claim for reimbursement to the HOA the following documents must be provided:
 1. Description of damaged components along with digital photographs accurately showing same. When possible, the HOA property manager should view the damage before repairs are made.
 2. Signed statement from a professional contractor, insurance inspector, building inspector, or similar qualified person attesting to the cause of the damage.
 3. Copies of receipts for labor and materials.
 4. Insurance company statement showing payments, if any.
 - b. Damage not covered by paragraph 7a. above shall be the financial responsibility of the homeowner.
 - i. If the damage is covered by the HOA's insurance policy, the HOA may submit a claim to its carrier for such damage and turn over proceeds from such claim to the homeowner.
 - ii. If the proceeds of such a claim are insufficient to cover the cost, the homeowner shall be responsible for the shortfall²², including any resulting from the deductible amount of the HOA policy.
8. Other Damage. If a repair to or replacement of any item required to be maintained by the HOA is needed due, **in the sole opinion of the HOA,** to damage caused by the action or

²¹ A failure of the building component due to other causes including, but not limited to, failure to make timely notification of a problem, failure to support the applied load, etc. and other causes beyond the control of the HOA is the financial responsibility of the homeowner who shall be required to pay for any shortfall in any insurance proceeds including any deductible amount on the HOA insurance policy. See Article IX Section 1 of the Declaration.

²² Declaration Article IX, Section 1.

inaction of anyone (other than an HOA director, employee or contractor²³) the current homeowner shall be financially responsible and will be required to make the repairs. If such repairs are not done in a timely fashion, the HOA may make the repairs and charge the cost to the homeowner.²⁴ These may include, among others:

- a. Physical impact damage to garage door, exterior doors, windows, trim, siding, fence, etc.
 - b. Damage due to the installation of or improper flashing or sealing around a wall or roof penetration arranged for or installed by a homeowner, whether or not by an approved work request.
 - c. Defacement of any property for which the HOA is responsible.
 - d. Damage to common area (landscaping, sidewalk, paving, recreation facilities, etc.)
9. Timing. Except as modified elsewhere in this guideline, any HOA required maintenance **may, at the sole discretion of the HOA**, consist of cleaning, repair, or replacement of listed components. All HOA required maintenance shall be arranged and paid for by the HOA in such time and manner which, **in its sole judgement**, is in the best interests of all homeowners. Due consideration will be given to individual homeowner needs as well as budgetary constraints, recognizing the fiduciary responsibility of the HOA to control homeowner assessment fees.
10. Work Performed by Homeowners. Homeowners may make changes, additions, installations, repairs or perform maintenance on any building item maintained by the HOA provided a Work Request is **submitted and approved** in accordance with any Board authorized procedure for same. The homeowner is the legal owner of the Lot and the entire unit upon it and has the legal right to perform such work, subject to the provisions of the Declaration. If such work is performed by the homeowner, the HOA is not required to contribute to any cost incurred by the Homeowner, for such work, whether done before or after the adoption of this policy.
- a. If an item maintained by the HOA is required to be replaced or temporarily removed in order for a homeowner to perform such work, the homeowner is responsible for its cost, the restoration must be completed to the satisfaction of the HOA and the homeowner is responsible for any damage caused by such work. A Work Request must be submitted and approved in these cases.

BD 3.02 6-12-2023

²³ Damage to the *common area* by unknown persons shall be considered on a case-by-case basis.

²⁴ Declaration Article VI, Section 2.