SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COLUMBIA

In the Matter of the Application of

SUMMIT LAKE CONSERVATION GROUP, LLC, PETER FENIELLO, ESTHER LUCIA ARIAS, JULIA SEDLOCK, SALLY BAKER, JOSEPH R. MIRANDA, EILEEN ORDU, KAREN SCHOEMER, CAROLYN STERN, KATE MARTINO, JOHN GOURLAY, and MARK FIELDING,

Petitioners,

For a Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules

-against-

VILLAGE OF PHILMONT, VILLAGE OF PHILMONT PLANNING BOARD, and CLOVER REACH PARTNERS LLC,

Respondents.

VERIFIED PETITION

Index No.:

Petitioners Summit Lake Conservation Group, LLC (the "Group"), Peter Feniello, Esther Lucia Arias, Julia Sedlock, Sally Baker, Joseph R. Miranda, Eileen Ordu, Karen Schoemer, Carolyn Stern, Kate Martino, John Gourlay, and Mark Fielding, (hereinafter referred to as "Petitioners") by and through their Attorneys, Whiteman Osterman & Hanna LLP, by and for their Verified Petition allege as follows:

PRELIMINARY STATEMENT

1. This CPLR Article 78 proceeding seeks to annul a determination by Respondent, the Planning Board of the Village of Philmont (the "Planning Board") granting preliminary subdivision approval in connection with the Woods Subdivision development (the "Project"), located at Summit Street, Village of Philmont, Columbia County, New York and further, pursuant

to Town Law § 282, to enjoin Respondents from undertaking any further efforts to review or grant approvals or permits with regard to the Project pending judicial resolution.

2. Respondent Planning Board's determination to grant preliminary subdivision approval (the "Approval") to Clover Reach Partners LLC ("Clover Reach" or "Applicant") was made in violation of both the procedural and substantive mandates of the State Environmental Quality Review Act ("SEQRA") and its implementing regulations at 6 NYCRR Part 617, as well as the NYS Fire Code, NYS Village Law and Village of Philmont Laws.

3. This Approval was granted was approved at the Planning Board's April 18, 2023 meeting. The minutes from the Planning Board's April 18, 2023 meeting were filed with the Village Clerk on April 24, 2022. A written Resolution memorializing the Approval was filed with the Village Clerk on April 26, 2023. The 12-page Resolution was not actually adopted by the Planning Board, rather it is an after-the-fact product.

4. The Approval came following the annulment of a previous approval and SEQRA Negative Declaration by this Court resulting from the Village's failure to follow statutorily mandated procedural requirements in a prior special proceeding brought by the Group and Petitioners (the "Prior Proceeding"). (see NYSCEF Docket No. E12022018817; Document No. 57).

5. Respondent's new determination to grant the Approval for the Project was arbitrary and capricious, illegal and not supported by substantial evidence as more fully set forth herein and failed to even include a fresh SEQRA determination. For the following reasons, the Court should annul the Resolution.

THE PARTIES

6. Petitioner Summit Lake Conservation Group, LLC is a domestic limited liability company duly organized and existing under the laws of the State of New York with a mailing address of P.O. Box 436, Philmont, New York, 12565.

7. According to its bylaws, The Group was formed for the purpose of advocating for the protection of the environment in the Village of Philmont generally, and the area in and around Summit Lake in particular, including but not limited to the vision and goals of the adopted Brownfields Opportunity Area plan (the "BOA"). A copy of the organization's bylaws is attached as Exhibit A to Petitioners' first Article 78 Verified Petition (*see* NYSCEF Docket No. E12022018817; Document No. 3).[1].

8. Petitioners Peter Feniello and Esther Lucia Arias are natural persons and own property immediately abutting the Woods Subdivision located and known as lots 113.14-1-1, 113.18-1-2, 113.18-1-3, & 123.-1-9 in the Village of Philmont, and adjoining Town of Claverack, Columbia County, New York. As such, they are property owners and taxpayers directly adjacent to the proposed Project.

9. Petitioners Feniello and Arias own and operate a working farm with hay fields. Petitioners Feniello and Arias are concerned that the Woods Subdivision access road is too narrow, in violation of the NYS Fire Code, with steep grades. These violations will impair and/or inhibit emergency service providers access to the Woods Subdivision. Accordingly, Petitioners Feniello and Arias have grave concern that if the Project is allowed to proceed it will result in fire damage

[1] To avoid the duplication of prior filings, when referencing documents filed on NYSCEF in Petitioners' prior Article 78 special proceeding, this petition will identify those documents by their document number from that prior proceeding. Petitioners would be happy to re-produce those documents in this docket should the Court so request.

and/or destruction to their adjoining property. Petitioners Feniello and Arias are also members of the Group.

10. Petitioner Julia Sedlock is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 9 Ark Street (Tax Map No. 113.9-2-72) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer residing within close proximity to the proposed development project. Ms. Sedlock is a member of the Group.

11. Petitioner Sally Baker is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 6 Band Street, Stop 2, (Tax Map No. 113.9-3-77.2) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer residing within close proximity to the proposed development project. In addition, Ms. Baker is a member of the Group and on the Board of Directors of PBInc.[2]

12. Petitioner Joseph R. Miranda is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 6 Lake Side Drive, (Tax Map No. 113.13-2-19) in the Village of Philmont, Columbia County, New York. As such, he is a property owner and taxpayer with residing within close proximity to the proposed development project. Joseph R. Miranda is a member of the Group.

13. Petitioner Eileen Ordu is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 7 Summit Street, (Tax Map No. 113.13-1-41) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. Eileen Ordu is a member of the Group.

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[2] PBInc. Is an organization that assisted the Village in the preparation of the BOA, and therefore is intimately familiar with its terms, goals and objectives.

14. Petitioner Karen Schoemer is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 11 Prospect Street, (Tax Map No. 113.9-1-68) in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. Karen Schoemer is a member of the Group.

15. Petitioner Carolyn Stern is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 133 Main Street, in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Ms. Stern is a member of the Group and on the Board of Directors of PBInc.

16. Petitioner Kate Martino is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 19 Eagle Street, in the Village of Philmont, Columbia County, New York. As such, she is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Ms. Martino is a member of the Group and on the Board of Directors of PBInc.

17. Petitioner John Gourlay is a natural person and is a member of the Group and on the Board of Directors of PBInc.

18. Petitioner Mark Fielding is a natural person and owns property in the immediate vicinity of the Woods Subdivision located and known as 3 Lake Side Drive, (Tax Map No. 113.13-2-29) in the Village of Philmont, Columbia County, New York. As such, he is a property owner and taxpayer with residing within close proximity to the proposed development project. In addition, Mr. Fielding is a member of the Group.

19. Individual Petitioners have standing in this action/proceeding as property owners that are directly and uniquely impacted by Respondents' unlawful determinations to approve the Project in a manner that is distinct from other Village of Philmont residents.

20. These Individual Petitioners also have an interest in preserving the BOA, Summit Lake and the distinctive viewshed that will be irreparably destroyed by the Woods Subdivision, distinct from that of the public at large. A copy of the BOA plan is attached to Petitioners' first Article 78 Petition. (*See* NYSCEF Docket No. E12022018817; Document No. 4).

21. Further, as individuals who reside in close proximity to the Project, individual Petitioners are directly impacted by Respondents' unlawful determinations as the owners of property in the immediate vicinity of the Project whose residences may be at risk of damage and/or destruction of their property as a result of a fire.

22. The Group further has standing as an organization devoted specifically to the protection of the environment in the Village of Philmont generally, and in the area in and around Summit Lake in particular, including but not limited to the vision and goals of the BOA plan.

23. Petitioners' interests are further within the zone of interests intended to be protected by SEQRA, namely, that the environmental impacts of a government action—in this case the arbitrary noncompliance with SEQRA and the premature and substantively deficient grant of a preliminary plat application— are fully considered, weighed, and balanced with social, economic, and other considerations. See Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 414-415 (1986). See also Matter of Reed v Village of Philmont Planning Bd., 34 AD3d 1034, 1036 (3d Dept 2006) (upholding standing for petitioners "immediately adjacent to the subdivision property").

24. Respondent Village of Philmont (the "Village") is a municipal corporation of the State of New York with offices at 124 Main Street, Philmont, New York.

25. Respondent Planning Board of the Village of Philmont (the "Planning Board") is a board of the Village of Philmont duly constituted and existing pursuant to the Village Law of the State of New York.

26. Respondent Clover Reach Partners LLC ("Clover Reach" or the "Applicant") is a foreign limited liability company registered in the State of Georgia with a business address of 41 Bender Boulevard, Ghent, New York which transacts business within the State of New York.

27. Respondent Clover Reach Partners LLC is the identified owner and developer of certain parcel of real property located and known as the Woods Subdivision in the Village of Philmont (the "Site" or "Project Site") and the Applicant before the Planning Board for subdivision approval related to the development of the Project Site.

28. Petitioners brings this action because as abutting and adjacent property owners and neighbors to the proposed subdivision, their use and enjoyment of their residential home will be severely and adversely affected, injured and damaged by the construction and operation of the 16-lot residential subdivision located on a bucolic forested hillside overlooking Summit Lake, a significant cultural resource. Further, as members of an organization specifically devoted to advocating for the protection of the environment, including but not limited to the vision and goals of the BOA, Petitioners interests in such advocacy will be harmed by the Planning Board's unlawful actions that are inconsistent with those goals.

29. Respondent Planning Board's failure to comply with the law when it issued the Approval for the Project threatens to deprive Petitioners of their right to fully use and enjoy their residential property and has and will damage and injure the Petitioners' legal, economic,

environmental, and public health rights that will be compromised by the construction of and future use of the proposed subdivision.

30. Petitioners with properties located on Lake Side Drive and Band Street represent a tightknit community that supports the lake as a natural resource for all Philmont residents and visitors. Petitioners tend a community garden, loan out kayaks and canoes, teach neighborhood teens how to fish and maintain the community center and playground as a spot for families, all on a volunteer basis.

31. The area surrounding the proposed Project, including Petitioners' homes and farms is environmentally sensitive. Bald eagles, osprey, kingfishers, great blue herons, green herons, and a variety of songbirds can be regularly seen here. Fish are plentiful in the lake, including bass and pickerel. Several species of environmental concern make their home in the woodlands above the lake Petitioners enjoy Summit Lake and the area surrounding the proposed Project on a daily basis. Views from the Lake and Lake Side Drive to the forested adjoining hillside are spectacular and have been this way forever.

32. If the Approval remains in effect, Petitioners will be negatively impacted, including through decreased property values, diminished views, increased traffic around their properties, permanent changes to their views, changes the character of the neighborhood (into a commercialized resort community), and harm to the functioning of wetlands in and around their Properties.

33. Some of the Individual Petitioners own property and have resided for decades on the southeast side of Summit Lake and have enjoyed the natural beauty and views of the pristine forested hill surrounding the Lake. If the Approval remains in effect, Petitioners viewshed will be

negatively changed forever. As a result, their property values will be decreased, and the character of the neighborhood will be negatively impacted.

34. Attached as Exhibit C to the Petition in the Prior Proceeding is a map which shows the Petitioners properties that abut and/or are in close proximity to the Woods Subdivision. (*see* NYSCEF Docket No. E12022018817; Document No. 5).[3]

STATEMENT OF FACTS

a. The Prior Approvals

35. On or about November 1, 2021, the Applicant applied to the Village of Philmont for a Major Subdivision called the Woods Subdivision involving a 20.27-acre site of vacant and forested land (the "Site") for the development of sixteen (16) residential lots and associated roads and infrastructure that would cause 3.23 acres of physical disturbance.

36. The Site is located on a pristine, forested hill overlooking Summit Lake, a publicly owned and maintained recreational parkland with public trails that traverse to and from it. Views from the Lake and property abutting the Lake of the beautiful hillside are part of the community character and would be forever altered by the subdivision.

37. The Site is bounded by residential lots and farmland to the south and west (many of which are owned by the Petitioners), Summit Lake and wooded Village-owned land to the north, and undeveloped wooded land to the east.

38. Access to the Project would be provided via a two-way road from Summit Street, cut through the pristine forest, which then converts to a one-way loop road along and cut into the hillside. The road, according to the subdivision plans, will have varying steep grades up to 9.15%

[3] This property map includes the lands of George Brehm, Jr., a petitioner in the September 2022 Article 78 special proceeding who has since passed away.

uphill and 9.9% downhill. It is noted that the revised site plans provide said road grades to be in excess of 10% at 11% "downward slope" and "uphill slope" at 10.2%

39. Because the proposed homes would be located on the hillside, the grades for the driveways are even steeper than the proposed road and violate the Zoning Law as described below.

40. The Applicant appeared before the Planning Board on January 18, 2022 and the Planning Board determined to act as SEQRA lead agency.

41. At the March 16, 2022 Planning Board meeting, the Planning Board prematurely and contrary to the NYS Village Law as described below, made a motion to deem the application complete and scheduled a public hearing for April 2022.

42. A more fulsome account of the initial approval process is contained in Petitioners' September 2022 Verified Petition challenging those initial approvals. Copies of the relevant Planning Board minutes and the resulting Resolution granting preliminary subdivision approval are attached as Exhibits D and E respectively to the petition in the Prior Proceeding. (*see* NYSCEF Docket No. E12022018817; Document Nos. 6 and 7).

43. Petitioners sought to annul the prior September 2022 Planning Board Resolution granting the Approval and the simultaneously granted SEQRA Negative Declaration because such action was contrary to provisions of the Philmont Village Code, NYS Village Law and such action is contrary to duties enjoined upon it by law, in excess of jurisdiction, in violation of lawful procedure, arbitrary and capricious and an abuse of discretion.

44. During the public hearings, Petitioners raised numerous specific land use and environmental claims relative to significant resulting adverse impacts of the Woods Subdivision on wildlife, traffic, visual impacts, community character, significantly, including violation of the terms of the BOA, among others.

45. Pursuant to the BOA, the Village has received over $700,000 to date that has been used for the preparation of the BOA Nomination (completed in March 2018 with 1st round of competitive DOS funding), followed by a 2nd round of competitive DOS funding received December 2019. This includes funds for BOA Predevelopment Activities for sites located on the Summit Lake waterfront owned by the Village, and a Work Plan that includes "the preparation of an intermunicipal Watershed Management Plan as a Local Waterfront Revitalization Program inclusive of Summit Lake and its approx. 14,656 acres (22.9 square miles) of the Agawamuck Creek watershed feeding Summit Lake in a partnership with the Towns of Claverack, Hillsdale, Ghent, and Austerlitz located in the watershed. The intent is to develop management recommendations for improving water quality and restoring critical natural resources throughout the watershed, identify measures to address invasive species, and incorporate information identified in the watershed analysis (e.g. waterways, stormwater runoff, invasive species, onsite wastewater treatment systems, road weather management best practices, watershed data compilation and baseline monitoring.)" A copy of the LWRP Work Plan was attached as Exhibit F to the Petition in the Prior Proceeding. (*see* NYSCEF Docket No. E12022018817; Document No. 8).

46. "As part of the plan, the community will prepare watershed characteristics, produce a watershed map, analyze local laws, provide recommendations, and prepare an implementation plan to improve water quality throughout the Agawamuck Creek watershed and enhance the revitalization of Summit Lake, waterfront, and the village downtown." (See Exhibit F to the Petition in the Prior Proceeding at 1).

47. The BOA finds Summit Lake to be a "critical public amenity" and a central catalyst for the plan. The planning process enabled the Village of Philmont—with high levels of

community participation—to articulate a clear vision, goals, and strategies for redevelopment of Brownfield sites and broader community revitalization. (See Exhibit B at 10).

48. Regarding the Woods Subdivision land, the BOA provides that the "southeast quadrant of the study area is principally defined by the steep sloped areas that border Summit Lake. **This area was incorporated for both its special visual character and the need to protect the hillside from deforestation**." (Exhibit B to the Petition in the Prior Proceeding at 31).

49. The Woods Subdivision's adjacency to the Summit Lake conservation area implicates it in several areas of concern that are addressed by currently funded BOA activities, specifically the protection of the water quality of Summit Lake and the Agawamuck Watershed via the creation of a LWRP Watershed Management Plan (to include a Lake Protection Ordinance informed by DOS coastal policy; see https://dos.ny.gov/state-coastal-management-program), and the establishment of the Village of Philmont Historic District, which includes Summit Lake **and its historic viewshed** (see PARKS Resource Evaluation https://www.dec.ny.gov/docs/permits_ej_operations_pdf/visualpolicydep002.pdf. (describing the historic significance of Summit Lake, and the DEC Policy on Visual and Aesthetic Impacts)). Both areas of concern would be considered as part of the zoning reassessment that is included in the current village contract with the state.

50. The BOA is in essence akin to the Village's Comprehensive Plan. Unlike other BOA locations, the intent of the Philmont BOA is the revitalization of the *entire* village, while also identifying specific areas of greatest potential impact to focus investment, and calling for reassessment of all Village Zoning Districts, including Hamlet II (where the Woods property is located).

51. The subdivision is contrary to the BOA, particularly when considering adverse impacts on community character, and adverse visual impacts of the development in relation to the BOA and the "historic viewshed," which are enormous and community changing.

52. The Planning Board denied and arbitrarily disregarded the community comments and signed community petitions submitted regarding the plain and obvious adverse impacts on community character. It also disregarded the BOA community plan. This plan had previously been adopted under SEQRA following thorough review and consideration accompanied by substantial community participation including over 600 public comments.

b. **The Prior Special Proceeding**

53. Petitioners brought a special proceeding in this court challenging the prior subdivision approval and SEQRA Negative Declaration on September 9, 2022. (*see generally* NYSCEF Docket No. E012022018817).

54. By a decision dated January 13, 2023, this Court annulled the prior subdivision approval holding that the Planning Board:

> conflated its SEQRA determination with the preliminary plat approval, failing first to ensure a complete preliminary plat. Indeed, Part III of the FEAF, **instead of elaborating on the reasons supporting its SEQRA determination**,[4] states "See Resolution of Approved Subdivision" which had not yet issued, and "See Project submissions as submitted in the PB file and Record". Further despite the PB's stated intent to oblige compliance with covenants and restrictions, there is no writing incorporating the specific language of the covenants in either the Resolution to the FEAF. Consequently, remittal for a hearing on the complete preliminary plat is required... Accordingly, the petition is granted to the extent of annulling the Resolution approving the preliminary plat and remanding this matter to the PB for a hearing on the complete preliminary plat, including the specific language of the restrictive covenants.

(*See* NYSCEF Docket No. E12022018817; Document No. 57).

[4] Curiously, in the prior Decision, the Court appears to inconsistently dismiss Petitioners' SEQRA claim by determining that the Planning Board's SEQRA determination was somehow rationally based. It is respectfully submitted that the Court was correct finding that there was no reasoned elaboration provided by the Planning Board requiring reversal of the SEQRA determination as it was therefore, by definition, arbitrary and capricious.

c. **The New Approvals**

55. On February 7, 2023, the Developer Respondent submitted to the Planning Board a letter from its engineer and revised subdivision plans. No new or revised environmental assessment form was provided to address the changes to the project.

56. On February 21, 2023, the Planning Board conducted a meeting, determined that the application was complete and scheduled a public hearing for March 20, 2023.

57. No comments from the public were allowed at the meeting. However, prior to the Planning Board's meeting, counsel for the petitioners submitted a letter expressing several significant procedural and substantive concerns with the Planning Board's process and record. A copy of counsel's letter is attached hereto as **Exhibit A**.

58. On March 15, 2023, Developer Respondent's counsel submitted a letter erroneously concluding "No further SEQRA review is necessary or appropriate for this application."

59. On March 17, 2023, counsel for the Petitioners filed another letter prior to the public hearing with additional procedural and substantive concerns with the Planning Board's process and record. A copy of counsel's March 17, 2023 letter is attached hereto as **Exhibit B.**

60. On March 20, 2023, the applicant's engineer submitted a letter that contained several staggering exaggerations with respect to wildlife, such as:

> With respect to the bald eagle, no agency, or conservation group has identified bald eagle nests on the site. Furthermore, no bald eagle habitats have been observed by the applicants on the site despite numerous trips through the project site by the applicants, and their surveyors and environmental engineers. Should a bald eagle nest encounter occur, the Applicant will take all steps dictated by the NYSDEC.

61. The record is replete with comments from the public at the public hearing regarding threatened and endangered species stating that they have personally witnessed Bald Eagles on and in the immediate vicinity of the site.

62. For instance, the Planning Board was informed by Dr. Sue Senecah of the Alan Devoe Bird Club that the bird club has recorded regular sightings of bald eagles hunting and perching at the lake, including the area to be developed, for ten years. The continuous presence of multiple generations of adult and immature eagles is behavioral indication that they nest close by. She urged the Planning Board not to allow development to "disturb or intimidate them as to force them to leave their breeding and feeding grounds." A copy of Dr. Sue Senecah March 20, 2023 letter is attached hereto as **Exhibit C.**

63. A Biological Report for Summit Lake and Adjacent Areas," prepared in 2020-2021 as part of the BOA and published on the Village's website, documents hundreds of native species of plants, trees, wildflowers, butterflies, dragonflies and birds, including many of regional and national conservation concern such as wood thrush, scarlet tanager, black-throated blue warbler, red-shouldered hawk, osprey, and woodcock. Because the Developer Respondent has failed to conduct a single environment survey or assessment on the property, nor provided any ecological report on any of such species, and the Planning Board failed to require any, it is unknown which of these species may be using the land in question.

64. Nor has the Developer Respondent or the Planning Board accounted for ways in which the development could imperil or pressure native species on adjacent land, such as the village conservation buffer along the lake shore, by disturbing and fragmenting the overall, complex, interrelated habitats of the lake.

65. The Mid-Hudson Group of the Sierra Club testified at the public hearing and submitted a letter to the Planning Board about the richness of wildlife around the lake and the danger the development posed to the ecological balance of the area that the project poses. A copy of Sierra Club's March 15, 2023 letter is attached hereto as **Exhibit D.** All of this evidences the lack of the SEQRA required "hard look" as noted in the Second Cause of Action, infra.

66. Moreover, Developer Respondent, in the most disingenuous terms, asserts that "surveyors and environmental engineers" have not observed Bald Eagles habitat. There are no such reports from the Developer Respondent's surveyors or environmental engineers in the record to this effect.

67. It appears that the only reference to an environmental report concerns wetlands and the Developer Respondent's consultant was not, upon information and belief, even looking for wildlife. In the Developer Respondent's January 2022 submission to the Planning Board asserts: "During the [wetland] delineation, Quenzer [a wetland consultant] did not identify any abnormal ecological conditions or rare habitats."

68. It appears that from this "analysis" the Developer Respondent has jumped to the conclusion, and the Planning Board has arbitrarily rubber-stamped it as well, that this non-responsive ecologic review somehow suffices for the SEQRA hard look analysis of adverse impacts on threatened and endangered species which may be on this subdivision site, and their habitat negatively impacted as a result of this project. The Planning Board, as lead agency, has not taken a hard look at potential significant adverse environmental impacts on threatened and endangered species, particularly in the face of the numerous comments from the public regarding sightings of such species on or in the vicinity of the site.

69. On April 18, 2023, the Planning Board conducted a meeting, and approved the subdivision. The Planning Board failed to issue the required SEQRA determination of significance prior to issuance of subdivision approval. A copy of the minutes of the April 18, 2023 meeting, filed with the Town Clerk's office on April 24, 2023, is attached hereto as **Exhibit E.**

AS AND FOR A FIRST CAUSE OF ACTION

RESPONDENTS FAILED AGAIN TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF SEQRA FOLLOWING THE ANNULMENT OF THE PRIOR APPROVALS

70. This Court's prior Decision annulled the Planning Board's prior determination granting preliminary subdivision approval. The Decision states:

> [T]he petition is granted to the extent of annulling the Resolution approving the preliminary plat and remanding this matter to the PB for a hearing on the complete preliminary plat, including the specific language of the restrictive covenants.

71. As indicated above, on February 7, 2023, the Developer Respondent submitted a letter from its engineer together with revised subdivision plans to the Planning Board. No required environmental assessment form was submitted in connection with this submission to properly allow the Planning Board and the public to evaluate the changes to the plat as required under SEQRA as proposed by the Developer Respondent.

72. On February 21, 2023, the Board accepted this information and declared the preliminary plat "complete" and scheduled and conducted a public hearing on March 20, 2023 without any consideration SEQRA.

73. Pursuant to the NYSDEC Handbook at P. 89:

> A negative declaration cannot be rescinded after the lead agency has issued its final decision on the action. **However, should the final decision be revoked or overturned, a new determination of significance would be needed for any reconsideration of the action**. (Emphasis added).

74. Because the Planning Board's final decision was overturned, a new determination of significance is required and mandated pursuant to SEQRA. In order to issue a new determination of significance, the Developer Respondent was obligated to prepare a new or revised, environmental assessment form, one that, at minimum, addresses the changes that were admittedly made to the subdivision, and allow the public an opportunity to review and comment upon it.

75. Rather than properly perform the necessary and required review pursuant to SEQRA, the Planning Board approved a new Resolution which erroneously states that "the SEQRA process had been concluded" and purports to retrace the rational for its old and outdated prior review concerning "Impact on Plants and Animals", "Impact on Historic Resources", and "Impacts on Aesthetics". However, the Planning Board utterly failed to consider any of the new information provided by the public on important environmental topics, which mandated additional review pursuant to SEQRA. See Petition Second Cause of Action infra. A copy of the Planning Board's Resolution, filed with the Town Clerk on April 26, 2023, is attached hereto as **Exhibit F**. This feigned, after-the-fact attempt at compliance with SEQRA is unavailing and without procedural effect and arbitrary and capricious.

76. Once again, the Planning Board failed to complete the SEQRA process by failing to first issue any determination of significance to address the changes to the subdivision plan and public comments prior to declaring the application to be complete and then conducting a public hearing on the incomplete application.

77. Here, all changes to the plat, including plat changes to driveway grades that the Developer Respondent has indicated will cause additional tree clearing and grading (and therefore related visual impacts and impacts on threatened and endangered species) should have

been properly addressed in a new environmental assessment form with new and accurate visual simulations and environmental reports addressing such new impacts. It would provide the answer to the amount of new grading, physical disturbance (previously per the original FEAF the project would cause 3.23 acres of physical disturbance; it is unknown now) and clear cutting for public review.

78. The motion made by the Planning Board to deem the application "complete" at its February 21, 2023 meeting, was without effect, illegal, null and void and arbitrary and capricious because the application could not be deemed complete until the SEQRA review process was properly completed. A copy of the February 21, 2023 meeting minutes are attached hereto as **Exhibit G.**

79. In failing to actually complete the SEQRA process prior to holding such a proper public hearing Respondent Planning Board failed to perform the duties required of it under Village Law 7-728(5)(d)(i)(1), which requires that a public hearing be held within sixty-two days *after* the issuance of a negative declaration and *before* granting Preliminary Plat approval.

80. That being the case, there was no legal authority or jurisdiction to approve the subdivision plat and issue the Resolution on April 26, 2023 granting Preliminary subdivision approval. The Resolution is thus null and void.

81. The Planning Board's Resolution granting preliminary approval for the Woods Subdivision is contrary to Philmont Code, and in taking such action the Planning Board failed to perform duties and obligations required of it by the Philmont Code and NYS Village Law. In taking such action, therefore, the Planning Board failed to perform a duty enjoined upon it by law, proceeded without or in excess of jurisdiction, acted in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or abused its discretion in granting the

preliminary subdivision approval. The Court should therefore declare such action null and void pursuant to Article 78 of the CPLR.

82. The Planning Board was required to conduct the public hearing after it issued a determination of significance and failed to do so. See Matter of Kittredge v Planning Bd. of Town of Liberty, 57 AD3d 1336, 1339-1340 (3d Dept 2008).

83. The Planning Board failed to comply with the procedural requirements of the Village Law when it issued subdivision approval therefore, its determination to grant subdivision approval in violation of the procedural requirement of the Village Law is arbitrary, capricious and illegal and should be annulled.

AS AND FOR A SECOND CAUSE OF ACTION

RESPONDENTS FAILED TO TAKE A "HARD LOOK" AT NEWLY PRODUCED EVIDENCE OF THE ENVIRONMENTAL IMPACTS OF THE PROJECT

84. In granting preliminary subdivision approval to the Project here without complying with SEQRA, Respondent Planning Board failed to take the "hard look" required by SEQRA on a number of fronts identified throughout this approval process.

85. Whether it is inclined to grant or reject a proposed project presented to it, the Planning Board, or indeed any SEQRA lead agency, must "take a sufficiently "hard look" at the proposal before making its final determination and must set forth a reasoned elaboration for its determination." See WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd, 79 NY2d 373 (1992); Apkan v Koch, 75 NY2d 561 (1990); Jackson v New York State Urban Development Corp., 67 NY2d 400 (1986).

86. Courts have held that "[a]n agency's compliance with its substantive SEQRA obligations is governed by a rule of reason and the extent to which particular environmental factors

are to be considered varies in accordance with the circumstances and nature of particular proposals" Apkan, 75 NY2d at 570.

87. Here, Respondent Planning Board failed to take a hard look at several areas of environmental concern which fall within the ambit of SEQRA that were raised by the community during the most recent approval process.

88. The revisions include a Revised Grading & Drainage Plan C-201 showing all driveways less than 15%, which the Developer Respondent readily admits, will increase the amount of tree clear cutting throughout the site, that will in turn impact the viewshed/visual resources, community character, historic resources, inconsistency with the BOA, and threatened and endangered species previously identified as being on or in the immediate vicinity of this subdivision and never examined during the prior review process. Yet, the Planning Board did not look at any of these issues.

89. First, Respondent Planning Board failed to take into account issues identified by the community that would result from additional tree cutting on the property proposed as part of Respondent Clover Reach's revised subdivision plan.

90. Among the changes which Respondent Clover Reach made to their subdivision plan in attempting to respond to deficiencies identified in the Prior Proceeding was to alter the grade and length of certain driveways, necessitating additional tree cutting on the properties. Further, proposed changes to the road right-of-way would necessitate still additional tree cutting.

91. In light of these changes, and especially given concerns regarding the viewscape around the scenic Summit Lake which have been expressed throughout this approval process, it would have been reasonable to expect Respondent Clover Reach to provide—and for Respondent Planning Board to demand—additional visual simulations be produced which would show the

effect these revised plans would have on the viewscape. But no such updated visual simulations were provided or requested.

92. Stemming from those concerns regarding additional tree cutting, the Planning Board further failed to consider the impacts that such activity would have on the habitats on the Northern Long Eared Bat, which was recently re-classified as an endangered species in March 2023. In attempting to address this issue in its' submission to the Planning Board, Respondent Clover Reach proposed to avoid tree clearing activities between April 1 and October 31. This precaution, which would have been appropriate for a merely "threatened" species, is not sufficient, however, for an "endangered" one. This deficiency further applies to Respondents' consideration of the similarly endangered Indiana Bat.

93. The Planning Board further failed to take a "hard look" under SEQRA in addressing concerns raised regarding the presence of Bald Eagles on the site. As noted in Petitioners Counsel's February 21, 2023 letter to the Planning Board, Bald Eagles are protected by the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.) and project affecting these species may require the development of an "eagle conservation plan."

94. The presence of Bald Eagles has been documented by a Biological Survey Study prepared in 2021 by Hawthorne Farmscape Ecology Program, attached hereto as **Exhibit H**. This study documents the presence of Bald Eagles among a total of ninety-three bird species in the area. Bald Eagles and their fledglings are sighted in the area on a regular basis along with their fledglings. Nevertheless, no "eagle conservation plan" was developed here.

95. In attempting to address public concerns regarding the presence of the Bald Eagle on the site, The Planning Board responds with a flat statement that "[t]he bald eagle is no longer an endangered species." Exhibit F at 6. That the bald eagle is no longer an endangered species

does not remedy this clear deficiency, as the bald eagle is not merely protected by the federal Endangered Species Act, but also, as Petitioners explain above, the federal Bald and Gold Eagle Protection Act.

96. The Planning Board further claims that "no evidence has been found that bald eagle nests were located or reported on the project site or were to be impacted." But this turns the normal requirements of SEQRA upside down. It is the duty of the Planning Board to take a "hard look" at environmental impacts, not the public. The public provided firsthand accounts of Bald Eagles at Summit Lake including the project site. See Paragraphs 61-65, infra. As noted above, after these concerns were raised, Respondent Clover Reach's sole response was, apparently, that no "abnormal ecological conditions or rare habitats" were identified by Respondent's wetland consultant in the course of delineating the wetlands conducted years ago.

97. In failing to address these myriad visual and environmental concerns, Respondent Planning Board clearly failed to take a "hard look" as required by SEQRA. As such the decision to grant subdivision approval is arbitrary, capricious and illegal and should be annulled.

<u>AS AND FOR A THIRD CAUSE OF ACTION</u>

THE "WAIVERS" APPROVED BY THE PLANNING BOARD FAIL TO MEET THE STANDARD FOR THE GRANTS OF SUCH WAIVERS

98. Pursuant to the Village of Philmont Subdivision Regulations §130-18(A)(3); and , §130-18(B)(1)(c)(4) subdivisions are required to comply with the provisions of the Zoning Law, and Chapter 127 Streets and Sidewalks. The proposed Project fails to comply with both, and the Planning Board's approval must therefore be annulled.

99. The Zoning Law regulates the grades for construction of new driveways and provides:

> §160-13(L) Driveways.
>
> (3) Driveway grades. (a) **The maximum grade for any new driveway accessory to a single-family dwelling and connecting its off-street parking area to a street shall be 10%**, except where it can be demonstrated to the satisfaction of the Planning Board that, because of practical difficulty or unreasonable hardship affecting a particular property, the construction of a driveway grade is the minimum increase required; provided, however, that in no case shall such driveway grade be permitted to exceed 15%.

100. Of the sixteen proposed driveways within the Woods Subdivision, only one complies with this 10% requirement. The Subdivision "Notes" provides that four lots are conspicuously at 14.9% grades and one at a 14.8% grade.

101. The grades for the proposed "loop" road are also in excess of 10% at 11% "downward slope" and "uphill slope" at 10.2%.

102. The applicant suggested that waivers were required to authorize steep driveway grades in excess of maximum 10% allowed under the Zoning Law. Specifically, the applicant and the Planning Board identified Section 130-24 of the Subdivision Regulations as the purported basis for relief, which provides:

> § 130-24. Waivers, modifications and review.
>
> B. Modification of specific requirements. Where the Planning Board finds that compliance with these regulations would cause unusual hardship or extraordinary difficulties because of exceptional and unique conditions of topography, access, location, shape, size, drainage or other physical features of the site, the minimum requirements of these regulations may be modified upon specific request and by specific resolution of the Planning Board to mitigate the hardship; provided that the public interest is protected and the development is in keeping with the general spirit and intent of these and other Village regulations.

103. The applicant provided zero proof or evidence that it could not comply with the Village's regulations, let alone that the regulations cause any unusual hardship or extraordinary difficulties upon the applicant. Planning Board's reliance on the applicant's bare statement that

"driveways of 10% or less are not possible without extensive grading and clearing" can only be described as the definition of arbitrary. How much extensive grading would be required for the driveways to comply, at what cost, what are the impacts on the development, etc? Moreover, the applicant's February 7, 2023 resubmittal of the subdivision plan indicated that it was able to reduce three driveways by an apparent stroke of a pen on the revised plat. What is stopping the applicant from full compliance?

104. The Planning Board's Resolution simply rubber stamps the bald assertions made, and jumps to the arbitrary conclusion that if the waiver is not granted, then it "would drastically increase[e] clearing and grading." There is absolutely no proof in the record that addresses or supports the Planning Board's finding of a "drastic increase". The only "proof" is the engineer's statement that decreasing the grade will require more tree clearing. No empirical evidence was provided, such as, obviously, how much more clearing would be actually be required, and how many trees would be impacted, and the related impacts it would cause.

105. Regarding the inadequate and steep sloped "loop" road, the Planning Board's decision does not draw a distinction between the inadequacy of width of the road or its grade so it is impossible to discern what specific waiver is being granted. The Planning Board failed to specify what waiver it was purportedly granting in violation of the Village Code requirement to provide a "specific resolution" for each waiver. See § 130-24, infra.

106. In any event, the applicant once again provided zero proof or evidence that it could not comply with the Village's regulations, let alone that the regulations cause any unusual hardship or extraordinary difficulties upon the applicant.

107. Moreover, as set forth in the Fifth Cause of Action the Planning Board has no jurisdiction or authority to grant a waiver to a NYS Fire Code compliant road width of 20 feet.

108. The Planning Board stated that it "expressly grants the waivers as requested by the applicant" [regarding] driveway grades and the subdivision road design." This finding is so ambiguous there is no telling what waiver the Planning Board approved.

109. The Planning Board's "express" approval of "requested waivers" is arbitrary and capricious. The Planning Board was required to specify what exactly was being waived and provide explicit findings. In Sabatino v. City of Albany Board of Zoning Appeals, 203 AD2d 781 (3rd Dept. 1994), the court disapproved items discussed at public hearings on the application became conditions of approval finding: "To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval". The same holds true for the Planning Board is granting waivers. It needs to clearly specify what the waiver request is and the rational for granting it.

110. Instead the applicant simply claims that a purported compliant 22' wide road would require additional clearing and grading. This is not proof of unusual hardship or extraordinary difficulties upon the applicant. There is no justification provided why full compliance is not possible.

111. The Planning Board's determination to grant preliminary subdivision approval with driveway grades in excess of the maximum authorized in the Zoning Law and an inadequate and steep sloped "loop" road (although it is unclear what the Planning Board did) is arbitrary, capricious and illegal and should be annulled.

AS AND FOR A FOURTH CAUSE OF ACTION

THE PLANNING BOARD FAILED TO PROPERLY CONDITION THE APPROVALS ON THE PROVISION OF A 50' RIGHT OF WAY

112. In seeking to comply with the concerns raised in the prior special proceeding, the Developer Respondent appears to have made certain representations to the Planning Board that it

will comply with Village Code requirement that all Village roads must have a 50-foot right of way.

113. The Applicant has indicated in its March 20, 2023 letter that it intends to comply with such a requirement. However, the preliminary approval issued by the Planning Board contains no such condition, leaving the applicant free to ignore its prior representations.

114. The Planning Board's determination to grant preliminary subdivision approval without conditioning that the final plat shall include a 50-foot right or way is arbitrary, capricious and illegal and should be annulled.

AS AND FOR A FIFTH CAUSE OF ACTION

THE PLANNING BOARD FAILS TO TAKE A HARD LOOK AT CONCERNS REGARDING FIRE SAFETY ACCESS TO THE PROJECT

115. Pursuant the 2020 Fire Code of New York State, the definition of Fire Apparatus Access Road is:

> A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as a fire lane, public street, private street, parking lot lane and access roadway.

116. Section 503.2 Specifications, states: Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.8.

117. Section 503.2.1 provides that the dimensions "shall have an unobstructed width of **not less than 20 feet**…, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches…"

118. The Woods Subdivision will contain only a 12-foot-wide pavement width in violation of Section 503.2.1 of the Fire Code. The access road is in violation of the NYS Fire Code.

119. The violation of the NYS Fire Code was explicitly raised by a member of the Planning Board, who wrote a letter concerning this significant issue. See a copy of that letter attached as **Exhibit I** hereto.

120. No variance from the NYS Fire Code minimum safety provisions for access roads has been sought or obtained.

121. The Philmont Fire Chief issued a letter dated February 14, 2022 stating:

> The Woods Road one way loop illustrated on plan page C-101.1 shows good accessibility for fire apparatus and presents no known issues for emergency vehicle operations.

122. While the Fire Chief's February 14, 2022 opinion regarding "good accessibility" may be well meaning, the Fire Chief does not grant variances from the required minimum requirements of the NYS Fire Code.

123. Nor is it clear that the Fire Chief's assessment at the time was even based on the final road designs included in the preliminary subdivision application presented to the Planning Board on August 3, 2022 (12' paved and 2" either side gravel). Presumably, at the time the Fire Chief rendered his February 14, 2022 opinion, he was examining the **February 1, 2022** submission to the Planning Board, **which called for a 22-foot access road**. However, in the preliminary subdivision application approved by the Planning Board on August 3, 2022, the road was narrowed to a total of 16-feet (a 12-foot road with a two-foot shoulder on either side). The relevant plans were included as Exhibits K and I to the petition in the Prior Proceeding. <u>See</u> NYSCEF Docket No. E12022018817; Document Nos. 35 and 37).

124. Pursuant to 103.3 of the NYS Fire Code:

> An application for a variance or a modification of any provision or requirement of Uniform Code shall be in accordance with the provisions of Part 1205.

125. Section 1205.4(a) of the Uniform Code provides:

> Each regional board of review shall have the power to vary or modify, in whole or in part, any provision or requirement of the Uniform Code in cases where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted; provided, however, that any such variance or modification shall not substantially

> adversely affect provisions for health, safety, and security and that equally safe and proper alternatives may be prescribed. Each regional board of review shall also have the power to hear and decide appeals of any order or determination, or the failure within a reasonable time to make an order or determination, of an administrative official charged to enforce or purporting to enforce the Uniform Code.

126. Upon information and belief, the Applicant communicated with a New York State official via email to discuss this project and the applicability of the NYS Fire Code. It is unclear from the public record who this official was, what authority they had to communicate with the Applicant. In any event, the vague and conclusory email exchanges do not provide any justification for an inadequate fire access road and the Planning Board's reliance on it was arbitrary and capricious.

127. Per 503.2.2 of the Building Code, the Fire Chief "shall have the authority to require or permit modifications to the required access widths where they are inadequate for fire or rescue operations or where necessary to meet to the public safety objectives of the jurisdiction." This provision does not empower the local Fire Chief to *reduce* a State required 20' wide road to less than 20 feet that would make it less safe for emergency responders. Moreover, the email notes that because there are fire hydrants proposed at this subdivision, the road should be even wider—26 feet in width.

128. The email further states that under the Code, the local Fire Chief is enabled to "modify the [code's] minimum widths for fire apparatus access roads." In other words, the minimum 20' width can be required to be *wider* by the Fire Chief, where necessary, not narrower and less safe than the minimum requirements of the Code. The Planning Board was obligated to find out the answer to this significant issue and not reply on vague, misinterpretations made by the applicant regarding email correspondence prior to approving the subdivision. It not be easier to find out the answer to this simple, but significantly important public safety issue.

129. Upon information and belief, this New York State official made no determination nor issued any opinion that a variance under the NYS Fire Code was not required.

130. The Planning Board is not authorized to waive any requirement of the Fire Code.

131. The Planning Board's new Resolution once again re-asserts its reliance of the prior vague and conclusory email exchanges between the Developer Respondent and NYS code official.

132. The public provided insightful comments on this topic.

> The proposed road, which is the only access in and out of the development, is 12' (not including shoulders) instead of 20' (not including shoulders), which is what the NYS fire code requires. It includes a right of way of 35' instead of the required 50'. Why is the Philmont Planning Board not requiring the road to be built to code? Why are you not concerned about the safety of inhabitants and of our volunteer fire-fighters in the event of a fire emergency? The only public conversation the board has had on this topic references a computer-generated simulation of one fire truck making its way around the loop. The letter that Philmont Fire Chief, Mark Beaumont, wrote in approving this road only references the turning radius of the one vehicle in that same computer simulation. The letter does not mention the issue of multiple mutual aid vehicles or the problem of vehicles passing each other on that steep, narrow road with guardrails. How will multiple emergency vehicles work together to put out a fire in this situation? They can't. How will they be able to lay their hoses the proper distance from the hydrants? How will they get up the steep driveways to access the homes? Where is the computer-simulation that shows what really happens when a fire occurs?

133. The Fire Chief does not have any authority to grant variances from the NYS Fire Code and the Planning Board is not authorized to waive any Fire Code requirement. Therefore, because the proposed road violates the required minimum 20 feet width contained in the NYS Fire Code, the road and subdivision is in noncompliance and the subdivision approval should be annulled as arbitrary, capricious and illegal.

134. It was arbitrary and capricious for the Planning Board to not, at least, contact the Fire Code official to definitively learn what the ambiguous email exchanges with the Developer Respondent actual means, particularly on a topic of such public health, safety and welfare importance.

AS AND FOR A SIXTH CAUSE OF ACTION

The Planning Board Failed to Take a Hard Look at Historic Resources Pursuant to SEQRA

135. Summit Lake is a significant cultural resource. See Resource Evaluation attached as **Exhibit J**. Summit Lake is a cultural resource included as such in the Village of Philmont Historic District. It connects the lake to the historic mills and watercourse.

136. Petitioners commented to the Planning Board that based on email communications received from the State Historic Preservation Office (SHPO) in response to a Freedom of Information Law request, it was apparent that the Developer Respondent had engaged in several communications with the SHPO between October 27, 2021 and October 31, 2022.

137. Initially, upon information and belief, these communications appear to indicate that SHPO was provided with a copy of the Covenants on October 31, 2022, eight months after communications with the Developer Respondent had concluded, and therefore lacked knowledge of the Developer Respondent's plans for the extensive clear cutting of trees at the subdivision. Specifically, the property owners would be able to cut down 100% of trees 12 inches in diameter and below and 50% of trees larger than 12 inches in diameter. In other words, SHPO, lacked essential information prior to its initial determination on April 24, 2022 thereby potentially changing the context of the SHPO "No Adverse Impact" notification dated January 31, 2022.

138. On April 3, 2023, the Petitioner alerted SHPO that subsequent to SHPO's no effect letter, the Covenants were released indicating that property owners would be allowed to clear cut all trees on their lots that were less than 12-inches in diameter, and 50% of the trees 12-inches and greater, which together with the significant changes to the subdivision grading plan required additional review. A copy of the April 3, 2023 letter is attached hereto as **Exhibit K.**

139. In response to Petitioners' letter, SHPO has communicated that it is continuing to review the subdivision and its potential impacts on the proposed historic district and has contacted the Developer Respondent and the Village of Philmont to receive updated information to the subdivision changes that occurred between January 31, 2022 and April 18, 2023 and changes to the visual buffer and visual simulations submitted to SHPO by the Developer Respondent in 2021. A copy of SHPO's communications is attached hereto as **Exhibit L.**

140. The Planning Board failed to even examine potential impact on historic resources and instead simply relied on old, outdated comments from SHPO that do not address resulting project changes, and did not require new visual simulations that incorporated such project changes. The Resolution, which includes references to SHPO's prior review of the subdivision, is outdated and such reliance and failure to properly address impacts on historic resources is arbitrary and capricious and should be annulled.

AS AND FOR A SEVENTH CAUSE OF ACTION

The Planning Board's Resolution Approving the Subdivision will Irretrievably Alter the Character of the Area and is Arbitrary and Capricious

141. As set forth throughout this petition, and borne out in the record, Summit Lake and its surrounds is unique ecologically, historically and a visual gem.

142. For instance, regarding the Woods Subdivision land, the BOA provides that the "southeast quadrant of the study area is principally defined by the steep sloped areas that border Summit Lake. **This area was incorporated for both its special visual character and the need to protect the hillside from deforestation**." This is the project site and meant for protection.

143. Views from the Lake and property abutting the Lake of the beautiful hillside, and the ecological devastation to the wildlife and historic resources are part of the community character that would be forever adversely altered by the subdivision.

144. It cannot be disputed that development of 16 lots on this hillside will create a different visual impression, than its current natural setting to which Petitioners are currently treated, not to mention tourists and users of Summit Lake itself of this historic viewshed. Such changes will be irreversible.

145. The Planning Board denied and arbitrarily disregarded the community comments and signed community petitions submitted regarding the significant adverse change in the community character. It also disregarded the BOA community plan. This plan had previously been adopted under SEQRA following thorough review and consideration as well as substantial community participation resulting in over 600 comments submitted in the BOA process which guided the preparation of the BOA.

146. The Woods Subdivision is within BOA and the BOA expressly found that this site possesses "special visual character" and in need of protection from deforestation. The Woods Subdivision is this property.

147. Regarding the project changes (i.e. grading changes) which the Developer Respondent readily admits will result in additional tree clearing, and with the additional tree clearing, impacting the "special visual character" of the area, the Planning Board once again simply rubber stamped the old, outdated visual simulations, which are not even relevant for purposes of the potential new visual impacts caused by the revised subdivision plan. The Planning Board's failure violates SEQRA.

148. The Planning Board's approval of the Wood's Subdivision and SEQRA negative declaration, failed to consider the community's adopted plans and goals, will destroy the character of the community, and is arbitrary and capricious and should be annulled.

WHEREFORE, Petitioners respectfully request an Order and Judgment of this Court as follows:

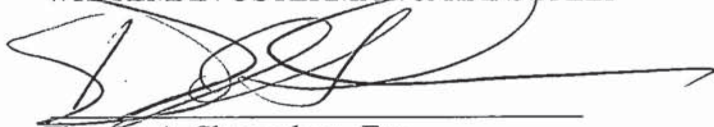
1. Annulling, vacating, and declaring void the Resolution of the Planning Board granting preliminary Subdivision approval for the Woods Subdivision, and alternatively remanding such determination back to the Planning Board for action consistent with this decision requiring Planning Board to act in accord with SEQRA and the Philmont Village Code forthwith;

2. Granting Petitioners' attorneys' fees and costs, and

3. Granting such other and further relief which this Court deems just and proper.

DATED: May 24, 2023
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP



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VERIFICATION

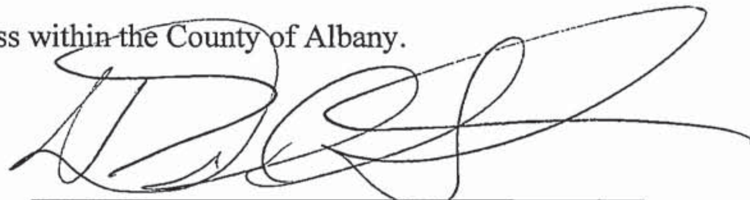
STATE OF NEW YORK)
: ss.
COUNTY OF ALBANY)

THOMAS A. SHEPARDSON, being duly sworn, deposes and says as follows:

1. I am a partner of Whiteman Osterman & Hanna LLP, attorneys for Petitioners in this matter.

2. I have read the foregoing Verified Petition and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and information provided by my clients.

3. The reason why this verification is made by me and not Petitioners is that Petitioners do not have their principal place of business within the County of Albany.



THOMAS A. SHEPARDSON

Sworn to before me this
24th day of May, 2023.

Notary Public

Theresa L. Powell
Notary Public, State of New York
Qualified in Rensselaer County
No. 01PO4931966
Commission Expires June 20, 20 26