



Phillips Lytle LLP

Thomas Enscoe
The Cabot Group
130 Linden Oaks Drive
Suite A
Rochester, NY 14625

February 6, 2012

Re: Allens Creek Valley Homeowners Association

Dear Mr. Enscoe:

Enclosed is a copy of the Amended Restated Declaration, which was recorded in the Monroe County Clerk's Office on February 3, 2012.

Very truly yours,

Phillips Lytle LLP

By *Ronald S. Shubert*

Ronald S. Shubert

OOLa

Enclosure

Doc # 01-2544450.3

Ues

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**AMENDED
RESTATED
DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS - ALLENS CREEK VALLEY
HOMEOWNERS' ASSOCIATION, INC.
(THE ALLENS CREEK VALLEY DECLARATION)**

DATED: January 27, 2012

**RONALD S. SHUBERT, ESQ.
PHILLIPS LYTTLE LLP
3400 HSBC Center
Buffalo, New York 14203
716-847-5491**

NOTE: THIS DOCUMENT STAYS WITH THE HOME.

**AMENDED RESTATED DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS - ALLENS CREEK VALLEY
(ALLENS CREEK VALLEY DECLARATION)**

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**AMENDED RESTATED DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS - ALLENS CREEK VALLEY
(ALLENS CREEK VALLEY DECLARATION)**

THIS AMENDED RESTATED DECLARATION, made this 27th day of January, 2012, by the Owners in the Allens Creek Valley Homeowners' Association, Inc., Penfield, New York, being referred to hereinafter as "the Owners."

WITNESSETH

WHEREAS, the undersigned Owners are the owners of homes located on subdivision lots located within the real property described in Article II of this Restated Declaration, which real property is known as "Allens Creek Valley"; and

WHEREAS, a Declaration of Protective Covenants, Conditions and Restrictions ("The Allens Creek Valley Declaration") was recorded in the Monroe County Clerk's Office in Liber 6664 of Deeds at page 244; and

WHEREAS, the Owners wish to amend and restate such Declaration of Protective Covenants, Conditions and Restrictions - Allens Creek Valley; and

WHEREAS, pursuant to the aforementioned Declaration, Article XI (as amended), the Declaration may be amended or rescinded by an instrument signed by more than 67% of the Owners; and

WHEREAS, the consenting Owners represent more than the required number of votes of the Owners; and

WHEREAS, the Owners desire to provide for the preservation of the values and amenities in said community; and, to this end, desire to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Owners have deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the ALLENS CREEK VALLEY HOMEOWNERS' ASSOCIATION, INC., has been incorporated under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions; and

WHEREAS, this Amended and Restated Declaration is being recorded to add the full text of Article XII, Section 12.03 and Section 12.04 which was approved, but not included in the Restated Declaration and recorded January 4, 2012 in the Monroe County Clerk's Office in Liber 11079 of Deeds, Page 7.

NOW THEREFORE, the Owners, for themselves, their successors and assigns, declare that the real property described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

- (A) "Association" shall mean and refer to the Allens Creek Valley Homeowners' Association, Inc.
- (B) "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.
- (C) "Building" shall mean and refer to each of the 58 Buildings containing, 202 Homes.
- (D) "Common Utilities" shall mean and refer to any common sanitary sewer line and common storm sewer line servicing Allens Creek Valley.
- (E) "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Allens Creek Valley (The Allens Creek Valley Declaration) as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- (F) "Home" Each of 202 single family residences as constructed within one of the Buildings, including the garage.
- (G) "Institutional First Mortgage Lender" shall mean and refer to a bank, savings and loan association, life insurance company, pension trust, trust company, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or any lender approved by Fannie Mae or Freddie Mac which holds a first mortgage on a Home.

- (H) “Lot” shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Penfield; and (ii) shown as a separate lot upon any recorded or filed subdivision map, upon which a Home has been constructed.
- (I) “Owner” shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Home, whether or not such holder actually resides in such Home or on such Lot.
- (J) “Property” shall mean and refer to all properties as are subject to this Declaration, as defined in Section 2.01 following.
- (K) “Recording Office” shall mean and refer to the official office for the recording of land documents in the County in which the “Property” is located.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Penfield, County of Monroe and State of New York, all of which property shall be hereinafter referred to as the “Property”. The real property subject to this Declaration is known and described in Schedule A attached hereto.

ARTICLE III

THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Association was formed to own, operate, and maintain the Association Property, if any, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members Owners. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership.

Section 3.03. Voting; Mortgagee's Control of Votes. Each Owner shall be entitled to only one (1) vote, no matter how many Lots or Homes are owned. If an institutional first mortgage lender whose name appears on the records of the Association: (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee; and (ii) notifies the Association prior to the date or initial date of the canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Assigning Right to Vote. Any Owner shall be entitled to assign such Owner's right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association.

Section 3.05. Selection, Powers and Duties of Directors. The nomination, election, powers and duties of the Board of Directors and the filling of vacancies on the Board of Directors shall be governed as set forth in the By-Laws of the Association.

Section 3.06. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that: (i) the acts of the director or officer were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated; or (ii) such director or officer (or a member of such director's or officer's family) personally gained a financial profit or other advantage to which such beneficiary was not legally entitled; provided, that in the event of a settlement or other nonadjudicated disposition, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. Funds to cover the above expenses, including fees of counsel, may be advanced by the Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that: (i) the recipient is not entitled to indemnification; or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Common Utilities. The common utilities, if any, shall be owned by the Association, unless owned by a Municipal Agency, and subject to the provisions of this Declaration, for the use and enjoyment of the Owners.

Section 4.02. Rights and Easements of Owners. Subject to the rights and easements of the Association set forth in Sections 4.03 and 4.04 below, each Owner (and such Owner's guests, licensees, tenants and invitees) shall have the right and easements to use, maintain, repair and replace any pipes, wires, cables, conduits, drainage areas, and other utility lines servicing such Owner's Lot (Home) but located on another Lot or in another Home. Entry to a Home shall require reasonable 24-hour notice to the Home Owner, unless an emergency exists.

All of such rights and easements shall be appurtenant to and shall pass with the interest of a Lot Owner as defined in Article I, Section 1.01 of this Declaration.

Section 4.03. Rights of Association. In accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the following rights:

- a. Adopt Rules and Regulations - to adopt rules and regulations relating to the use, operation and maintenance of the Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Owners;
- b. Grant Easements to Utility Companies and Governmental Entities - to grant easements or rights of way, with or without consideration to any public or private utility corporation, cable television company, governmental agency or political subdivision;
- c. Transfer, Lease, Sell, Exchange or Encumber Association Property or Acquire or Lease Real Property - to dedicate, sell, transfer, donate, lease, abandon, partition, encumber or otherwise dispose of, all or any part of the Association Property which the Association owns or to acquire or lease other real property for such purposes and subject to such conditions as may be agreed to by the Association and the transferee or transferor. Such action (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Owners) shall require a "Hearing" as described in Section 4.06 below and the consent of Owners of not less than 75% of all Lots who shall vote by written ballot which shall, not less than 10 days nor

more than 60 days in advance of the date or initial date of the canvass thereof, be sent to all Owners and to those lending institution first mortgagees of Lots whose names appear as such on the books or records of the Association. No such conveyance shall be made if lending institution first mortgagees of 51% or more of the Lots, whose names appear as such on the books or records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable; and

- d. Enter into Agreements for Performance of Duties - to enter into agreements for the performance of its various duties and functions including agreements with other homeowners' associations, condominiums and cooperatives for common maintenance, management and other services, materials and supplies.

Section 4.04. Easements of Association. The Association (and its employees, contractors and agents) shall have the following easements over each Lot:

- a. Utility Line Maintenance - for the use, installation, maintenance, repair and replacement of any pipes, wires, cables, conduits, drainage areas, light standards and other utility lines located on such Lot and servicing the Lots;
- b. Utility Banks and Telephone Pedestals - for installation, maintenance, repair and replacement of utility banks, cable pedestals, and telephone pedestals free standing or on the exterior walls of Buildings;
- c. Other Maintenance on Lots - for the installation, maintenance, repair and replacement of any improvements on the Lots, including walkways, fencing, walls, retaining walls, community gardens, signage areas, landscaping, lawns, driveways, roadways and Building exteriors, and for snow removal, to the extent the Association is obligated to undertake such installation, maintenance, snow removal, repair and replacement under this Declaration;
- d. In Conjunction with Maintenance - to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvements constructed on the Lots or comply with any maintenance obligations set forth in this Declaration; and
- e. Water for Watering of Lawns - to tie into and use water from any Home for the watering of any signage areas, garden areas, or other maintenance which the Association is obligated to perform.

To the extent reasonably appropriate any such entry onto a Lot (i) shall be on reasonable notice to the Owner of the Lot to be entered, except that, in an emergency, such entry may be without notice, and (ii) may include entry to any improvement on such Lot.

Section 4.05. Damage Resulting from Use of Easement. Subject to rights of recovery under law or pursuant to other provisions of this Declaration, any damage to any Lot or other portion of the Property or to any improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement or other right granted or reserved herein, shall be promptly repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, to the condition in which it existed immediately prior to the damage.

Section 4.06. Hearing Procedures. Where the Board of Directors is required, in accordance with the provisions of this Declaration, to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.06 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 10 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Owners in accordance with any provisions of this Declaration relating to the giving of notice. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The Hearing will be held at a reasonably convenient time and location for the Owners. All Owners shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a Proposal, a Hearing is required pursuant to more than one section of this Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Owner, by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- a. annual assessments or charges for the maintenance and operation of the Property (“Annual Assessments”);
- b. special assessments for capital improvements, unbudgeted or extraordinary expenses or underfunded reserves (“Special Assessments”);

together hereinafter being referred to as “Assessments”.

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due. Upon a transfer of title to a Lot, Assessments shall be adjusted as provided in Section 5.12 below.

Section 5.02. Purpose of Annual Assessment. The purpose of the Annual Assessment shall be to fund: (i) the maintenance, preservation, operation and improvement of the Property and the promotion of the recreation, safety and welfare of the Members, including but not limited to, the payment for any utility services to the Property which are commonly metered or billed (including electricity for the commonly metered lighting of the common private roadway), all casualty, liability and other insurance obtained pursuant to Article IX of this Declaration; (ii) the maintenance, repair and replacement of all facilities as required in Article VI of this Declaration; (iii) the cost of labor, equipment, materials, management and supervision for all of the above; (iv) such other maintenance responsibilities as the Association elects to undertake pursuant to Section 6.01 of this Declaration; and (v) such other needs as may arise.

Section 5.03. Basis for Annual Assessment. The Annual Assessment chargeable to each Lot assessed shall be the same for all Lots, so that the Annual Assessment for each Lot shall be determined each year by dividing the number of Lots liable for the payment of Assessments pursuant to Section 5.01 into the total amount that the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained), and any debts incurred by the Association.

Section 5.04. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and the Lots, or any of them, including fixtures and personal property related thereto, provided that any such assessment shall have the Consent of 67% of the votes of the Members.

Section 5.05. Notice of Assessments. Assessments provided for herein shall be on a full year basis. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial Annual Assessments as long as said Assessments are established at least 30 days before due. Written notice of the Annual Assessments shall be sent to every Lot Owner subject thereto.

Section 5.06. Assessments for Specific Lots. The Owner of each Lot subject to this Declaration shall be liable for the payment of full Annual Assessments and Special Assessments, if any, attributable to each such Lot.

Section 5.07. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.05 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. A notice of lien may be filed by the Association in the Recording Office providing notice that: (i) delinquent Assessments are outstanding with respect to a specified Lot; and (ii) such delinquent Assessments and any future Assessments due are a continuing lien until paid, but such filing shall not be necessary to perfect or establish the priority of such continuing lien. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within 10 days after the due date the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 20% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date: (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner; and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the Lot of such Owner, and the cost of such proceedings, including actual attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

Section 5.08. Notice of Default. The Board of Directors, when giving notice to an Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Association's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of such Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written demand of the Owner, the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate: (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, or title insurer of, or lender, on the Lot on which such certificate has been furnished.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Lot from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.12. Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Lot, Assessments and any Special Assessments which: (i) may be payable in installments; or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in the adoption of the Special Assessment: (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installation due dates; and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the Lot on the date which such Assessment is initially due.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors of the Association, upon the consent of not less than 67% of the Owners, for any amount in excess of 3% of the annual budget.

Section 5.14. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Assessments hereunder;
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) assess the Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.03 hereunder, to assess the same at a particular rate or rates;
 - (2) establish sinking funds and/or other security deposits;
 - (3) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;

- (4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
- (5) provide for the custody and safeguarding of all funds received by it.

ARTICLE VI

MAINTENANCE RESPONSIBILITY

Section 6.01. Maintenance and Repair Responsibilities.

Attached to this Declaration, and marked as Schedule B, is a matrix specifying the responsibilities of maintenance repair/replacement by the Association and the Owners.

The Association shall not have the responsibility to maintain, repair or replace exterior modifications made by or at the direction of any Owner or Home occupants.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Assessments.

The Association shall have an easement and right of access for maintenance and repair as set forth in Schedule 4.03 and 4.04 of this Declaration.

Section 6.02. Maintenance Occasioned by a Negligent or Willful Act or Omission. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of an Owner, the tenant of such Owner, their families or invitees or contractor or employee compensated or hired by the 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 shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Owner's Annual Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for

maintenance, repair and replacement of Property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s), have the right to enter upon any portion of the Property and into and upon any Home at any reasonable hour to carry out its functions as provided for in this Article, except that, in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Home to make necessary repairs or to prevent damage to any Home or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. Enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to the exterior of any Home or other improvement on said Lot or other portion of the Property, visible from the exterior, shall be the responsibility of the Association, acting through the Board of Directors.

Section 7.02. Submission of a Request for a Variance to Board of Directors. No exterior addition, modification or alteration, including change of color or style, shall be made on or to such Home, Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Board of Directors requires, have been submitted to, and reviewed and approved by, the Board of Directors. The Board of Directors may charge and collect a reasonable fee for costs that are incurred in the examination of plans submitted for approval and discuss the estimated cost with the Owner prior to making any expenditure.

Section 7.03. Basis for Disapproval of a Variance Request by Board of Directors. The Board of Directors may disapprove any variance request submitted pursuant to Section 7.02 above for any of the following reasons:

- a. failure of such variance request to comply with any protective covenants, conditions and restrictions, including those contained in this Declaration, and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such variance request as requested;

- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Board of Directors would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity or is not consistent with the approved architecture, materials and colors utilized throughout the Allens Creek Valley Townhouse Development and is not of comparable quality;
- g. any variance requiring a building permit or other official document according to local/state/federal law will require conditional approval; such variance will be granted only when the above documentation has been obtained from the appropriate authority and presented to the Board.

Section 7.04. Approval of Board of Directors. Upon approval or qualified approval by the Board of Directors of any plans submitted pursuant to Section 7.02 above, the Board of Directors shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in this Declaration which benefit or encumber the Lot or portion of the Property, and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property. Unless stated otherwise, the Owner will be responsible

for any future maintenance issues associated with the approved variance. This responsibility is passed on to all future Owners of the Lot or Home for which the variance was approved.

Section 7.05. Written Notification of Disapproval. In any case where the Board of Directors disapproves any plans submitted hereunder, the Board of Directors shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based as set forth in Section 7.03 above.

Section 7.06. Failure of Board of Directors to Act. If an applicant has not received notice from the Board of Directors within 60 days of a "confirmed" submission of plans, as required by Section 7.02 above, the plans shall be deemed approved.

Section 7.07. Board of Director's Right to Make Rules and Regulations. The Board of Directors may make rules and regulations governing the design of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Board of Directors to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.08. Delegation of Functions. The Board of Directors may authorize an architectural committee to perform any or all of the functions of the Board as long as the number and identity of such architectural committee, and their function and scope of authority have been established by a resolution of the entire Board of Directors. The approval or disapproval of plans by the architectural committee will be subject, however, to the reasonable review of the Board of Directors, in accordance with procedures to be established by the Board.

Section 7.09. Records of Meetings; Regulations. The Board of Directors shall keep minutes of its meetings and maintain records of all votes taken at its Meetings. The Board of Directors shall make such records and current copies of its rules and regulations available at a reasonable place and at reasonable times for inspection by all persons.

Section 7.10. Liability of Board of Directors. No action taken by the Board of Directors or any member, committee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or Home or other portion of the Property. Every person or other entity submitting plans to the Board of Directors agrees, by submission of such plans, that no action or suit will be brought against the Association or the Board of Directors (or any member, committee, employee or agent thereof) in connection with such submission.

Section 7.11. Architectural Certificate. Title to a Home may not be transferred until an Architectural Certificate has been issued by the Board indicating that the Home is in compliance with the Declaration, Bylaws and Rules and Regulations of the Association. Upon

written request of any Owner, (or any prospective Owner, mortgagee, or title insurer) of a Home or other portion of the Property, the Board of Directors shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a certificate in writing (“Architectural Certificate”) signed by a member of the Board of Directors or the Managing Agent stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Certificate. Any such Architectural Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.12. Restrictions on Change of Architectural Controls, Rules or Regulations. The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than 67% of the total votes of all Owners voting in person or by proxy, written notice of which change shall be sent to all Owners and lending institution first mortgagees whose names appear on the records of the Association, at least 30 days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions, which together are first mortgagees of 51% or more of the Homes, advise the Association in writing, prior to the date or initial date set for voting on the proposed charge, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE VIII

PARTY WALLS

Section 8.01. Party Walls. A wall shall be considered a party wall where all of the following conditions are met:

- a. the wall is built as part of the original construction of the Homes; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two (2) adjoining Homes, whether or not the wall is on the dividing line between such Homes.

Section 8.02. Maintenance of Party Walls. Each Owner whose Home contains a party wall shall have an easement to enter upon the Lot and within the Home with which the party wall is shared to effect necessary repairs or maintenance of such party wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner’s respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the

cost of such repairing or rebuilding shall be borne equally by the Owners of the two (2) Homes which share such wall.

In any event where it is necessary for an Owner (or said Owner's authorized employees, contractors or agents) to enter upon a Lot or within a Home owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Owner, shall be limited to reasonable times, and shall be exercised so as not to unreasonably impair the right of the adjacent Owner to the use and quiet enjoyment of said adjacent Home.

Section 8.03. Exposure of Wall. An Owner who, by negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials and construction as the original wall.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Home which used the wall may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half (1/2) the cost of such restoration) from the Owner of the other Home which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of either Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

ARTICLE IX

INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain (and review at least once each year), with such deductible amounts as the Board of Directors shall deem appropriate: (1) fire and casualty insurance; (2) liability insurance for occurrences on the Association Property (if any); (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association; and (4) fidelity bond covering those who handle Association funds, as follows:

1. Fire and Casualty. The policy shall cover the interests of the Association, the Board of Directors and all Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value, if available, (without deduction for depreciation) with an Agreed Amount Endorsement (if available), and, at the option of the Board of Directors, improvements and betterments (including upgrading of appliances, kitchen

cabinets, carpeting, and lighting fixtures, etc. (if available) made by present or prior Lot or Home Owners or occupants, excluding (i) the land, and (ii) the personal property of Home Owners and occupants.

The policy shall be written on an ALL RISK Basis and include as a minimum the following provisions, endorsement and coverages: (i) extended coverage, including interior sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; (ii) coverage for loss of assessments from Owners forced to vacate because of fire or other insured against casualty; (iii) that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Owners or mortgagees; (iv) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control; (v) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least 60 days prior written notice to all of the insureds, (10 days notice for non-payment of premium), including all mortgagees of Homes reported to the insurance carrier or its agent; and (vi) a provision that adjustment of loss shall be made by the Board of Directors and, at the option of the Board of Directors Inflation Guard coverage and/or Terrorist Act of 2002 coverage.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an estimate as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The proceeds of all policies of physical damage insurance shall be payable to the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 9.02 of this Declaration.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Board of Directors. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The Association, each Owner and such Owner's known mortgagee shall be acknowledged on the policy, as their interests may appear. Each Owner and such Owner's known mortgagee shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Duplicate originals of the policy, all renewals thereof, and any certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished by the Board of Directors to all mortgagees of Lots requesting the same, for a reasonable charge.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners as their interests may appear, but not the liability of Owners arising from occurrences within such Owner's Home or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability including bodily injury, property damage and personal injury, (libel, slander, false arrest and invasion of privacy), (ii) medical payments, (iii) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured, (iv) "severability of interest" precluding the insurer from denying coverage to an Owner because of negligent acts of the Association or any other Owner, (v) contractual liability, and (vi) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least 30 days' prior written notice to the insureds (10 days for non-payment of premium), including all known mortgagees of Homes or Lots as shown on the records of the Association. The Board of Directors shall review such coverage at least once each year.

The primary policy for this public liability insurance shall be in a single limit of \$1,000,000.00, or a greater amount, covering all claims for bodily injury and property damage arising out of a single occurrence.

The Association shall also carry an Excess Liability policy that provides an additional \$1,000,000.00 or a greater amount covering all claims for bodily injury and property damages arising out of a single occurrence.

3. Directors' and Officers' Liability. The Association shall carry a primary Directors and Officers Liability with a limit of \$1,000,000.00 or a greater and an Excess Liability policy that provides an additional \$1,000,000.00 or a greater amount. Any directors' and officers' liability insurance obtained by the Board of Directors shall cover the "wrongful" acts (wrongful performance or failure to perform) of a director or officer of the Association. The policy shall be on a "claims made" and shall include all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each claim. The policy shall provide for "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as obligee and be in an amount not less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves

and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be cancelled or substantially modified except for cancellation for non-payment of premium, without at least 30 days' prior written notice to the Association and to all institutional first mortgagees of Lots whose names appear on the records of the Association. For cancellation for non-payment of premium at least 10 days prior written notice must be given to the fore mentioned entities.

Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

Deductible. With respect to property insurance, the deductible shall apply to each occurrence, not each item of damage. The Association may pay the portion for which an individual Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration. (See Section 9.02 regarding responsibility for payment of deductible.)

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Home or Homes, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Home or Homes as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Homes in a Building are destroyed or substantially damaged and the Owners of 75% or more of all Lots and of all Lots in the Building decide within 90 days after such damage or destruction not to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage (including demolition) to all the insured property, provided, however, that no payment shall be made to an Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Lot.

In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against the Owners

of the damaged property, which special assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property. If the Board of Directors cannot reasonably determine the allocation of damage among Homes and Association Property, the insufficiency of funds can be deemed a common expense.

In the event of damage or destruction of any Home or other improvements on the Property as a result of fire or other casualty covered by insurance obtained by or through the Association, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the property damaged is from improvements which the Association has the responsibility to maintain, the Association shall be responsible for the deductible amount, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount.
2. If the property damaged is from or within a Home or from any utility line or conduit which services such Home or other Homes, whether located within or without the Home, the Owner or Owners of such Home shall be responsible for the deductible amount.

The Association may, at its option, pay the deductible amounts for which an individual Owner is responsible, and the amounts so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Owner or any other party shall have priority to receive any portion of such surplus over such Owner's mortgagee.

Section 9.03. Insurance Carried by Owners. Each Owner must, at such Owner's expense, obtain insurance for such Owner's benefit, including: (1) fire, casualty and theft coverage for such Owner's personal property; (2) coverage for such Owner's personal liability within such Owner's Home and on such Owner's Lot (minimum coverage of \$300,000); and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Home or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

ARTICLE X

GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. No advertising, signage or awning shall be affixed to or placed upon the Lots, exterior walls or doors, roof or any part of the Homes including courtyard fence, or exposed on or at any window, unless approved by the Board.

Section 10.02. Animals, Birds and Insects. Unless a waiver is granted by the Board, Owners are allowed no more than two pets (dogs, cats or other domesticated household pets) in their Home. No pets may be kept, bred, or maintained for any commercial purpose. No reptiles or insects are allowed. The Board of Directors of the Association may: (i) impose reasonable rules and regulations setting forth the type and number of animals or birds; and (ii) prohibit certain types of animals or birds entirely. The Board of Directors of the Association shall have the right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal or bird, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal or bird is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled. Pets are to be leashed when off the Owner's Property. Owners are responsible for any costs or damages incurred by their pets and those of any other occupants, tenants, guests, or visitors associated with their Home/Unit.

Section 10.03. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate, outdoors on any portion of the Property. The Board of Directors may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All facilities for the storage or disposal of trash, shall be kept in a clean and sanitary condition.

Section 10.04. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that

may be or become a nuisance or annoyance in the area or to the residents thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled so as not to: (i) be detrimental to or endanger the public health, safety, comfort or welfare; (ii) be injurious to property, vegetation or animals; (iii) adversely affect property values or otherwise produce a public nuisance or hazard; or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 10.05. Dwelling in Other Than Residential Homes. No temporary structure, trailer, recreational vehicle, tent, shack, barn, outbuilding, shed, garage, or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property. No sheds are permitted.

Section 10.06. Television and Communication Antennas. No outside television, radio, "C.B.", satellite dish or other communication antenna shall be erected on any Lot or other portion of the Property except with the consent of the Association's Board of Directors, or unless permitted pursuant to the Federal Communications Commission (FCC) adopted regulations (OTARD Rule), as amended. The Board of Directors will designate the location of the installation. (See Schedule B, #25 attached to this Declaration.) All radio, television or other electrical equipment of whatever kind or nature installed or used in any Home shall fully comply with all rules, regulations or requirements of the New York Board of Fire Underwriters and the public authorities having jurisdiction.

Section 10.07. Planting. Except in the individual courtyard and patio area adjacent to a Home, no permanent planting or gardening shall be done, and such planting as is done within the courtyard and patio areas shall be kept trimmed so as not to encroach on neighboring property. Plantings may be placed in the courtyard and within four (4) feet of the patios, decks, and property lines. However, once planted the maintenance of these is the responsibility of the homeowner.

Section 10.08. Residential Use Only. Except as provided in Section 10.09 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto, and in compliance with the laws of the Town of Penfield. No structure may be erected, altered, placed or permitted to remain on any Lot other than an attached single-family dwelling with an attached garage.

Section 10.09. Commercial and Professional Activity on Property. No wholesale or retail business shall be conducted in or on any Lot or other portion of the Property. Business in Allens Creek Valley is also subject to the Town of Penfield zoning laws.

Section 10.10. No Outdoor Repair Work. With respect to a Lot or other portion of the Property, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association's Board of Directors.

Section 10.11. No Oversized, Commercial, Recreational, or Unlicensed Vehicles, Camper Bodies, Boats or Trailers. Unless used in connection with the maintenance of the Property, or unless garaged or otherwise consented to by the Board of Directors of the Association, the following shall not be permitted to be parked on the Property:

- a. oversized vehicles (vehicles which will not fit into the garage);
- b. commercial vehicles i.e. (vehicles used for business purposes);
- c. recreational vehicles (parked for more than 72 hours);
- d. unlicensed motor vehicles of any type;
- e. camper bodies;
- f. boats or trailers;
- g. buses.
- h. outdoor storage

Section 10.12. Clotheslines and Window Air Conditioners. No outdoor drying or airing of any clothing or bedding shall be permitted within the Property. No window air conditioners are allowed.

Section 10.13. Protective Screening and Fences. No fence, wall or screen planting of any kind shall be planted, installed or erected upon any Lot or other portion of the Property unless approved by the Board of Directors. No fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.14. Use of Garages. Garages are to be used only for the parking of motor vehicles and the storage of personal property. Garages shall not be used as screened-in living or patio areas. Grilling is not permitted in garages, on driveways or in courtyards. Garage doors shall be kept shut except when in use to permit the entry or departure of a motor vehicle, for access for the storage of personal property or for performing routine maintenance on the garages or personal motor vehicles normally stored in the garage.

ARTICLE XI

ENFORCEMENT, AMENDMENT, DURATION AND INTERPRETATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the

Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability.

a. Actions at Law or Suits in Equity. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Association (being hereby deemed the agent for all of the Owners), and by any member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure momentarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or of the rules and regulations of the Association or any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against an Owner shall be deemed a Special Assessment against the Lot of such Owner or on which the Home occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Association (or any officer, director, employee, member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is: (1) the Owner; or (2) any family member, tenant, guest or

invitee of the Owner; or (3) a family member or guest or invitee of the tenant of the Owner; or (4) a guest or invitee of (i) any member of such Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot owned by such Owner.

Section 11.05. Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees. The Association shall be notified by each Owner or such Home Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Home. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.06. Amending Declaration. The Board of Directors shall hold a Hearing in accordance with Section 4.06 herein for the purpose of considering any proposed amendment, except that the Board of Directors may make amendments to this Declaration to correct omissions or errors, which amendments shall not substantially or adversely modify rights of any Owner without such Owner's written consent, or a Hearing.

The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners.

The affirmative vote of Owners of 67% or more of the total number of Lots shall be required for approval of a proposed amendment, except that no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Homes advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date or initial date set for voting on the proposed amendment.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Homes except with respect to those Lots or Homes whose owners specifically consent in writing to such termination, extinguishment or modification, except as provided in Section 11.08 of this Declaration.

Section 11.07. Owner Responsible for Tenants and Guests. Any lease of a Home shall provide and specify in writing within the lease specific reference to the "Declaration" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant or any guest of an Owner is in violation of

this Declaration, or the By-Laws or rules and regulations of the Association, the Board of Directors shall so notify the Owner of the Home which such tenant occupies or who hosted such guest, in writing by certified mail, return receipt requested. If the violation is not corrected or eviction proceedings are not commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration, including evicting the Tenant.

Section 11.08. Duration and Termination. This Declaration shall continue with full force and effect perpetually unless terminated or its duration shortened by the affirmative vote of not less than 90% of the total number of Owners after a Hearing is held in accordance with Section 4.06 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, duration, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Section 11.09. When Amendment or Termination Becomes Effective. Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Recording Office and upon such recording shall be binding from the date of such recording on all the Property unless specifically provided in such amendment or termination. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property for the purpose of preserving and maintaining the Property as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 11.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.12. Effect of Unenforceability or Invalidity of Provision of Declaration. The determination by any court that any provision of this Declaration is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII

GENERAL

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

Section 12.02. Notice. Any notice required to be sent to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person or entity appearing as Owner or mortgagee on the records of the Association at the time of such mailing. All Owners are required to provide the Secretary of the Association, or to a person designated by the Secretary, a current mailing address to which official Association notices may be sent.

Section 12.03. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party, and all references herein to the Board of Directors shall refer to the board of directors (or trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed

hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibility of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.04. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other owners' or residents' association or similar entity.

Attached to this Amendment is a Certification of the Board of Directors of the Association certifying that the required consents of the Owners have been received and filed with the Board of Directors.

ALLENS CREEK VALLEY HOMEOWNERS' ASSOCIATION, INC.

By Anne Peterson, President

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On the 27th day of January in the year 2012, before me, the undersigned, personally appeared Anne Peterson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lisa A. Alcott
Notary Public

LISA A. ALCOTT
Notary Public, State of New York
Reg. #01AL6132698
Commission Expires 8/29, 20 13

CERTIFICATION OF RECEIPT OF CONSENT
OF MEMBERS

The undersigned being _____ all, X a majority of the Members of the Board of Directors of the ALLENS CREEK VALLEY HOMEOWNERS' ASSOCIATION, INC., (the "Association") do hereby certify, pursuant to Article XI, Section 1 of the Allens Creek Valley Declaration recorded in the Monroe County Clerk's Office in Liber 6664 of Deeds at page 244, as amended by an amendment recorded in the Monroe County Clerk's Office in Liber 10929 Page 150 that:

1. Consents to the above Amended Restated Declaration have been received from the Owners of the Lots and have been filed with the Board of Directors;
2. The number of Owners consenting thereto exceeds the minimum number required to amend pursuant to Article XI, Section 1, as amended of the Allens Creek Valley Declaration; and
3. All Owners have been given or have waived the proper notice as required.

D. L. Bennett

Nancy P. Starks

Marianne Piccone

Thomas D. Knaley

Kenneth E. DeHaven

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 27 day of January, 2012, before me, the subscriber(s), personally appeared Don Bennett, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

Felicia N. Sherley
Notary Public
FELICIA N. SHERLEY
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SH6096808
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES 08/11/2015

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 27 day of January, 2012, before me, the subscriber(s), personally appeared Nancy Stark, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

Felicia N. Sherley
Notary Public
FELICIA N. SHERLEY
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SH6096808
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES 08/11/2015

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 30th day of January, 2012, before me, the subscriber(s), personally appeared Marianne Pirone, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

Felicia N. Sherley
Notary Public
FELICIA N. SHERLEY
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SH6096808
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES 08/11/2015

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 30th day of January, 2012, before me, the subscriber(s), personally appeared Thomas J. Karaley, to me personally known to be the same person(s) described in and who executed the foregoing instrument and the he/she duly acknowledged to me that he/she executed the same.

Felicia N. Sherley
Notary Public

FELICIA N. SHERLEY
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SH6096808
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES 08/11/2015

SCHEDULE A

LANDS COVERED BY THE DECLARATION

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe, State of New York, being a part of Town Lots 73, 74 and 61, Township 13, Range 4 and being more particularly bounded and described as follows:

Beginning at the intersection of the southerly right-of-way line of Penfield Road with the easterly line of property now or formerly Peter R. Lyman, having New York Sate Plane Coordinates N-1,144,160.87, E – 787,301.35; thence

1. N 89°32'00" E, along the southerly right-of-way line of Penfield Road, a distance of 137.62 feet to a point of curvature; thence
2. Easterly and southerly, along a curve to the right having a radius of 1403.01 feet through a central angle of 15°03'45", a distance of 368.84 feet to a point of tangency, thence
3. Continuing along the southerly line of Penfield Road, S 75°24'15" E, a distance of 515.45 feet to an angle point, thence
4. S 56°05'24" E, a distance of 165.85 feet to an angle point; thence
5. S 82°35'03" E, a distance of 84.38 feet to an angle point; thence
6. N 27°43'14" E, a distance of 65.83 feet to an angle point; thence
7. N 86°40'00" E, a distance of 284.05 feet to an angle point; thence
8. S 43°35'06" E, a distance of 55.61 feet to an angle point; thence
9. N 71°44'53" E, a distance of 244.02 feet to an angle point; thence
10. N 71°55'51" E, a distance of 261.48 feet to the intersection of the southerly right-of-way line of Penfield Road with the westerly line of lands now or formerly Benderson Development Company, Inc. (Liber 3473 of Deeds, Page 261), said point having New York State Plane coordinates of N – 1, 144,074,42, E – 789,336.98; thence
11. S 47°17'28" W, along the westerly line of said Benderson lands, a distance of 135.32 feet to a point, thence
12. S 09°22'03" W, a distance of 344.61 feet to a point; thence
13. S 59°20'03" W, a distance of 88.89 feet to a point; thence
14. N 90°00'00" W, along a line through lands now or formerly Dolomite Products Company, Inc., said line being the north line of proposed Sections 2 and 3, a total distance of 1,791.82 feet to the easterly line of lands now or formerly Peter R. Lyman, thence

15. N 01°22'30" W, a distance of 563.03 feet to the Point of Beginning.

Excepting therefrom a parcel of land containing 0.383 acres, more or less, being more particularly bounded and described as follows:

Beginning at the intersection of the southerly right-of-way line of Penfield Road with the easterly line of lands now or formerly Peter R. Lyman, New York State Plane Coordinates N-1,144,160.97, E-787,301.35; thence

1. N 89°32'00" E, a distance of 25.00 feet to a point; thence
2. S 01°22'30" E, through the lands of Dolomite Products Company, Inc., a distance of 460.00 feet to a point, thence
3. N 88°37'30" E, a distance of 25.00 feet to a point; thence
4. S 01°22'30" E, a distance of 103.83 feet to a point on the match line between Section 1 and proposed Section 2; thence
5. N 90°00'00" W, a distance of 50.01 feet to a point on the easterly line of lands now or formerly Peter R. Lyman, thence
6. N 01°22'30" W, a distance of 563.03 feet to the Point of Beginning.

BEING and hereby intending to describe premises known as Allens Creek Valley, Section I, as shown on maps made by Sear-Brown Associates, P.C., dated November 1983, having Drawing Nos. 2667A-01 and 2667A-02, which maps were filed in the Monroe County Clerk's Office in Liber 230 of Maps, pages 44 and 45.

Section 2

All that tract or parcel of land containing 12.021 acres, more or less, situate in Township 13, Range 4, Part of Town Lots 61, 73 and 74, Town of Penfield, County of Monroe, State of New York, as shown on a map entitled "Allens Creek Valley, Section 2, Subdivision Plan" prepared by Sear-Brown Associates, P.C. of Rochester, New York, and having Drawing No. 26678-01, and dated January, 1985, having been filed in the Monroe County Clerk's Office in Liber 234 of Maps, page 63, and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of lands now or formerly belonging to Peter R. Lyman (Tax Map Number 138.070-01-037) at the southwest corner of Allens Creek Valley, Section 2, said point having New York State Plane Coordinates of N - 1,142,752.58; E - 787,335.16; thence

1. N 01°22'30" W, along the westerly property line of the parcel being described, a distance of 748.80 feet to a point at the southwest corner of the piece of land labelled "Exception Parcel" on the above-referenced subdivision plan; thence

2. N 88°37'30" E, along the southerly property line of said Exception Parcel, a distance of 50.00 feet to an angle point; thence

3. N 01°22'30" W, along the easterly property line of said Exception Parcel, a distance of 95.77 feet to an angle point; thence

4. S 90°00'00" E, along the northerly property line of the parcel being described, a distance of 585.13 feet to the northeast corner of the parcel being described; thence

5. S 00°00'00" W, along the easterly property line of the parcel being described, a distance of 845.53 feet to the southeast corner of the parcel being described; thence

6. N 90°00'00" W, along the southerly property line of the parcel being described, a distance of 614.84 feet to the southwest corner of the parcel being described and the Point of Beginning.

Subject to all covenants, easements and restrictions of record.

SECTION 3

All that tract or parcel of land containing 27.205 acres, more or less, situate in Town Lot 61, Township 13, Range 4, Town of Penfield, County of Monroe, State of New York, as shown on a map entitled "Allens Creek Valley, Section 3, Subdivision Plan" prepared by Sear-Brown Associates, P.C. of Rochester, New York, having drawing no. 2667C-05, dated October, 1986[±] and being more particularly bounded and described as follows.

Beginning at the northeasterly corner of Allens Creek Valley, Section 3, said corner being the southeasterly corner of Allens Creek Valley, Section 1, as filed in the Monroe County Clerk's Office in Liber 230 of Maps at page 45, said corner also having New York State Plane Coordinates of N - 1,143,598.10, E - 789,106.68; thence

1. S 03°05'52" E, along the westerly boundary line of lands now or formerly Town of Penfield (Parcel I.D. No. 138.08-01-53), lands now or formerly Emil Mueller (Parcel I.D. No. 138.08-01-52), lands now or formerly John F. Forsyth (Parcel I.D. No. 138.08-01-54) and lands now or formerly Sybron Corporation (Parcel I.D. No. 138.08-01-56), a total distance of 688.46 feet to an angle point; thence
2. S 25°29'08" W, along the westerly boundary line of lands now or formerly Sybron Corporation (Parcel I.D. No. 138.08-01-56), a distance of 388.34 feet to a common corner of the aforementioned Sybron lands and lands now or formerly Handicapped Children's Camp for Monroe County, Inc. (Parcel I.D. No. 138.08-01-65), said common corner having New State Plane Coordinates of N - 1,142,560.10, E - 788,976.79; thence
3. S 85°56'08" W, along the northerly boundary line of the aforementioned Handicapped Children's Camp lands, a distance of 68.13 feet to a point; thence
4. S 03°29'54" E, along the westerly boundary line of the aforementioned Handicapped Children's Camp lands, a distance of 55.37 feet to a point; thence
5. N 90°00'00" W, a distance of 512.21 feet to a point; thence
6. N 00°00'00" E, a distance of 100.00 feet to a point, said point having New York State Plane Coordinates of N - 1,142,600.00, E - 788,400.00; thence
7. N 90°00'00" W, a distance of 200.00 feet to a point; thence
8. N 00°00'00" E, a distance of 100.00 feet to a point; thence
9. N 90°00'00" W, a distance of 250.00 feet to the southwesterly corner of Allen's Creek Valley, Section 3, said southwesterly corner having New York State Plane Coordinates of N - 1,142,700.00, E - 787,950.00; thence

[±] having been filed in the Monroe County Clerk's Office in Liber 244 of Maps, page 51.

10. N 00°00'00" E, along the easterly boundary line of other lands of Dolomite Products, Inc. and Allens Creek Valley, Section 2, said Section 2 as filed in the Monroe County Clerk's Office in Liber 234 of Maps at page 63, a total distance of 898.11 feet to the northeasterly corner of Allens Creek Valley, Section 2, said point being the northwesterly corner of Allens Creek Valley, Section 3, said point also having New York State Plane Coordinates of N - 1,143,598.10, E - 787,950.00 feet; thence

11. S 90°00'00" E, along the southerly boundary line of Allens Creek Valley, Section 1, as filed in the Monroe County Clerk's Office in Liber 230 of Maps at page 44 and page 45, a total distance of 1,156.68 feet to the Point of Beginning.

The map filed in the Monroe County Clerk's Office at Liber 244 of Maps, page 251 contains an inadvertent error. It states that the portion of the boundary of Allens Creek Valley Section III which is described herein as course #9 measures 230' feet, whereas the correct and actual distance is 250'. The map will be amended by a map to be filed in the Monroe County Clerk's Office, the sole purpose of the amended map being to correct this error so that the dimensions of Allens Creek Valley, Section III shown on the map, will conform to the actual dimensions, as described herein.

Section 4

ALL THAT TRACT OR PARCEL OF LAND, containing 11.036 acres of land, more or less, situate in Township 13, Range 4, Town Lot 61 and 74, Town of Penfield, County of Monroe, and State of New York as shown on a drawing entitled "Allens Creek Valley, Section 4 - Phase I - Subdivision and Site Plan" map filed in the Monroe County Clerk's Office in Liber 271 of Maps, page 30.

Beginning at a Point, said point being the southeasterly corner of Allens Creek Valley, Section 2 as shown on a map filed in the Monroe County Clerk's Office at Liber 234 of Maps, page 83, said point also being in the west line of Allens Creek Valley Section 3 as shown on a map filed in said County Clerk's Office at Liber 244 of Maps, page 51; thence

1. S 00°-00'-00" W, along the westerly boundary line of said Allens Creek Valley, Section 3, a distance of 52.58 feet to the southwesterly corner of said Section 3; thence
2. S 90°-00'-00" E, along the southerly boundary of said Section 3, a distance of 250.00 feet to a point; thence
3. S 00°-00'-00" W, along the westerly boundary of said Section 3, a distance of 100.00 feet to a point; thence

The following four (4) courses through lands of Dolomite Products Company, Inc.

4. S 00°-00'-00" W, a distance of 101.11 feet to a point; thence
5. S 84°-25'-08" W, a distance of 47.20 feet to a point;
6. S 12°-47'-00" W, a distance of 133.61 feet to a point; thence
7. S 00°-36'-39" W, a distance of 307.31 feet to a point; thence
8. S 89°-44'-39" W, along the northerly boundary line of lands now or formerly of Malcolm Glazer, a distance of 674.76 feet to a point on the easterly boundary line of lands now or formerly of Genevieve Harper; thence
9. N 00°-26'-59" E, along the easterly boundary line of said Harper, a distance of 698.91 feet to the northeast corner of said Harper, said point being the approximate centerline of Allens Creek; thence
10. S 73°-51'-15" W, along said centerline of Allens Creek, a distance of 120 feet more or less to a point; thence
11. N 01°-22'-20" E, a distance of 30 feet more or less to the southwest corner of Allens Creek Valley, Section 2; thence
12. S 90°-00'-00" E, along the southerly boundary line of said Allens Creek Valley, Section 2, a distance of 614.84 feet to the point or place of beginning.

Together with all the right, title and interest of the grantor in and to any strips and gores adjoining and lying adjacent to the premises hereby conveyed.

SCHEDULE B

Allen Creek Valley Homeowners' Association Maintenance Responsibilities

Item Number	I. Item Service	II. Association	III. Owner	IV. Notes
BUILDING				
1	Doors, Door Jambs, Door Hardware, Storm Doors, Garage Doors, Garage Door Hardware, Tracks, and Openers	Repair or replacement of pedestrian door jamb to garage	All Other	Style, Color, etc. Modifications subject to architectural/variance Approval by HOA. HOA to paint all exterior doors as appropriate
2	Original Flagstone Patio, Fences, Courtyard Walls, Patio Steps, Gates, Decks, Front Stoop	All Original	Additions or replacement with other materials, except staining of decks	
3	Foundation/Basement		All	
4	Glass Surfaces/Window Panes/Skylights, Window Frames, Screens		All	Style, Color, etc. Modifications subject to architectural/variances Approval by HOA.
5	Gutters/Downspouts	All		
6	Exterior Paint and Caulking	All Exterior Wood Surfaces, Trim, Window Sashes, Doors and Garage Doors	Storm Doors	
7	Building Interior, Including but not limited to Interior Plumbing, Electric, Water, Heating, Air-conditioning etc.	Maintenance and repair caused by exterior surface failures.	All	
8	Roofs	Shingles and Underlayment, Roof Vents, Flashing, Roof Deck, Soffit Vents	Roof Rafters or trusses	All associated internal repairs are the responsibility of the individual owners.
9	Exterior Building Surfaces	Siding, Tyvek, Plywood		

SCHEDULE B

Item Number	I. Item Service	II. Association	III. Owner	IV. Notes
10	Lighting/Electrical-Exterior	All Association installed exterior lighting	All other exterior lighting fixtures and bulbs, exterior electrical receptacles	Style, Color, etc. Modifications subject to architectural/variances approval by HOA. Electrical repairs must be made by trained professionals.
11	Chimneys, Chimney Chases, Fireplaces	All external surfaces, and sections on the building exterior. Original chimney caps.	All sections internal to the building, flues, fireplaces	Owners with active fireplaces are responsible for safety related maintenance.
12	Dryer Vents, Duct Work		All	
13	Vents (bathroom, kitchen, plumbing)	All original exterior roof vents.	All other vents	
14	Pest Control	All External damage	Extermination and internal damage	
15	Siding-Exterior	Replacement/Staining	Damage caused by landscaping/owner	
16	Any Association repair necessitated by the willful or negligent acts of any owner or family, guest, worker, contractor, or invitee shall become part of the assessment to which said owner's lot is subject.		All	
Grounds				
17	Driveways	All repairs, resurfacing, and sealing	Any repairs required due to Owner negligence or the presence of vehicles in a poor state of repair on the premises.	

SCHEDULE B

Item Number	I. Item Service	II. Association	III. Owner	IV. Notes
18	Individual Sidewalks and Patios	Repairs to original flagstone sidewalks and patios, except that in column III.	All repairs to modified sidewalks and patios.	
19	Lawns, Landscaping, Retaining Walls, Trees, Shrubs, and Plantings	All, except that in column III.	All improvements and additions made by past and current Owners within the courtyard and within 4 feet of the property line.	
20	Common Sidewalks	All		
21	Snow Removal	Driveways and Roads	All other areas not listed in Column II, including individual sidewalks, patios, and decks.	Removal typically for individual amounts of >3 inches OR as otherwise stipulated by contractual obligation. HOA retains right to regulate salting materials.
22	Storm Water Sewer System	All		
23	Gas and Electric Lines	All, except that in column III	Lines from the meter to the individual unit.	
24	Water Lines and Sanitary Sewer Systems	All, except that in column III	All within the property line.	Owner responsible for clogs caused by other than a break on the lateral.
25	Phone, Cable, Internet, and Satellite Dishes	All	All	Owner responsible for any damages caused by installation or removal of services.