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**RESTATED  
DECLARATION  
OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS -WOOD CREEK  
(THE WOOD CREEK DECLARATION)**

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DATED: AUGUST 9, 2004

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**NOTE: THIS DOCUMENT STAYS WITH THE UNIT.**



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RESTRICTIONS, EASEMENTS, CHARGES AND LIENS -WOOD CREEK  
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**RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS - WOOD CREEK  
(THE WOOD CREEK DECLARATION)**

THIS RESTATED DECLARATION, made this \_9th day of August, 2004, by the undersigned Owners representing more than 75% of the votes of all Lots comprising Wood Creek Homeowner's Association, Inc., Pittsford, New York, being referred to hereinafter as "the Owners."

**WITNESSETH**

WHEREAS, the undersigned Owners are the Owners of Units located on subdivision lots located within the real property described in Article II of this Restated Declaration, which real property is known as "Wood Creek" and which real property includes open spaces and other common facilities for the benefit of all Owners within said Wood Creek community; and

WHEREAS, a Declaration of Protective Covenants, Conditions and Restrictions ("The Wood Creek Declaration") was recorded in the Monroe County Clerk's Office in Liber 5819 of Deeds at page 208; and

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

WHEREAS, pursuant to the aforementioned Declaration, Article XI, Section 1, the Declaration may be amended or rescinded by an instrument signed by the Owner's of Wood Creek Homeowners Association, Inc. having not less than 75% of the votes of all Lots which are subject to the Declaration.

WHEREAS, the undersigned Owners represent more than 75% of the votes of all Lots; and

WHEREAS, the Owners desire to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; 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 maintaining and administering the common property and facilities, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the WOOD CREEK 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.

NOW THEREFORE, the undersigned 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 Wood Creek 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 any structure containing one or more Units.
- (D) “Declaration” shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Wood Creek (The Wood Creek Declaration) as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- (E) “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 Unit.
- (F) “Lease” shall mean and be synonymous with “rent”.
- (G) “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 Pittsford; and (ii) shown as a separate lot upon any



recorded or filed subdivision map, upon which a Unit has been constructed.

- (H) “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 Unit, whether or not such holder actually resides in such Unit or on such Lot.
- (I) “Property” shall mean and refer to all properties as are subject to this Declaration.
- (J) “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.
- (K) “Unit” shall mean and refer to a residential unit, including the garage.

## **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 Pittsford, 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, 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 Units 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. Dedication of Association Property. Certain tracts of land have been conveyed to the Association, and subject to the provisions of this Declaration, for the use

and enjoyment of the Owners. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property."

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 following rights and easements:

- a. Enjoyment - to enjoy all Association Property;
- b. Ingress and Egress - an easement by vehicle or on foot for ingress and egress in common with other Owners over all sidewalks, driveways, roadways located on Association Property; and
- c. Utilities and Conduits - to use, maintain, repair and replace any pipes, wires, cables, conduits, drainage areas, and other utility lines servicing such Owner's Lot (Unit) but located on Association Property, on another Lot or in another Unit. Entry to a Unit shall require reasonable notice to the Unit Owner, unless an emergency exists.
- d. Wood Decks, Cement Patios and Air Conditioning Units - a permanent easement for the wood decks, cement patios, air-conditioning units and the pad under the air conditioning units or any replacement thereof now existing which encroach onto Association Property. The Owners, their heirs, assigns or successors in interest, may not, however, at any time expand, rebuild or build the decks in a manner which would result in a greater encroachment upon the property of the Association than that which now exists, without receiving an additional easement from the Association as set forth in Section 4.03(e) below.

The Association retains the right to enter upon all Lots to the extent necessary to perform all maintenance, repairs, restoration and replacement of the wood decks, and cement patios. All such maintenance, repairs, restorations and replacement shall be at the sole cost and expense of the Association.

In the event of partial or total destruction of the wood decks, cement patios and/or air-conditioning units, this encroachment easement shall remain in effect to allow for restoration and/or replacement of same in the same location and of the same size and dimensions as originally constructed. Any restoration and/or replacement shall be of similar quality and materials and subject to the approval of the Association.

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 Association 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 50 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 subject to first mortgages held by lending institutions 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;
- 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; and
- e. Grant Easements for Deck Encroachment on Association Property. - to grant easements to Owners to construct decks and attached stairs leading from the decks to the ground, onto Association property.

- f. Grant Easements for Relocation of Air Conditioning Units - to grant easements to Owners to relocate air conditioning units on Association Property.

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 Association Property or two (2) or more Lots;
- b. Utility Banks and Telephone Pedestals - for installation, maintenance, repair and replacement of utility banks and telephone pedestals 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, landscaping, 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 of Association Property - to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvement on Association Property, or other improvements constructed on the Lots; and
- e. Water for Watering of Lawns - to tie into and use water from any Unit for the watering of any lawns which the Association is obligated to maintain.

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 20 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 in a place reasonably accessible to the Owners. All Owners and other interested persons 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.

Section 4.07. Notice of Condemnation of Association Property and Resolution of Dispute as to Allocation of Award. The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding affecting Association Property to all Owners and to those lending institution first mortgagees of Units whose names appear as such on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

## **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 Association Property (“Maintenance Assessments”);
- b. special assessments for capital improvements or unbudgeted or extraordinary expenses (“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 Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund: (i) the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members, including but not limited to, the payment of taxes on Association Property, 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; (v) water used by individual Owners and for common purposes; and (v) such other needs as may arise.

Section 5.03. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot assessed shall be the same for all Lots, so that the annual Maintenance Assessment for each Lot shall be determined each year by dividing the number of Lots liable for the payment of Maintenance 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).

Section 5.04. Special Assessments. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that fiscal year and/or in one or more of the following years, for the purpose of (i) defraying, in whole or in part, the cost of any construction, reconstruction or replacement of, or repair of the Association Property or to any improvements or landscaping on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto or (ii) funding unbudgeted or extraordinary expenses. Before levying such a Special Assessment the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.06 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall: (i) for any Special Assessment for the construction (rather than the reconstruction, replacement or repair), of any capital improvement, or for any Special Assessment for an amount in excess of 20% of the then current amount of the annual Maintenance Assessment, obtain the consent of the Owners of 67% or more of all Lots who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Owners at least 30 days in advance, setting forth the purpose of the meeting; and (ii) for any Special Assessment, obtain the approval of not less than three-fourths (  $\frac{3}{4}$  ) of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special

Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.05. Notice of Assessments. Maintenance Assessments provided for herein shall be on a full year basis. The Board of Directors of the Association shall fix the amount of the Maintenance Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Maintenance 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 Maintenance Assessments as long as said Maintenance Assessments are established at least 30 days before due. Written notice of the annual Maintenance 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 Maintenance Assessments and Special Assessments, if any.

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 15 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 10% 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 Maintenance 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 Maintenance 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, Maintenance 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, and in conjunction therewith, mortgage its properties. 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 75% of the Owners.

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 Maintenance 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 Maintenance 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**

#### **Section 6.01. Maintenance and Repair by Association.**

- a. Association Property. Except as specifically otherwise provided in this Section 6.1, Association shall have responsibility for all maintenance and repair of and replacements to the improvements on Association Property, including:
  - (i) the maintenance, repair and replacement (including snow removal) of the common private driveways used to access the Lots containing Units, private roads, and the walkways in front of the Units;
  - (ii) the maintenance, repair and replacement of sanitary and storm sewers except for opening sewer lines that were clogged by material that entered the line as a result of action by the resident, water distribution facilities and other pipes, wires and conduits and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property); and
  - (iii) the maintenance of all shrubbery and other plantings installed on the Association Property, or by the Association on the Lots, but not for shrubbery, flower beds or other plantings installed by or at the direction of any Owner or Unit occupants unless the Association agrees to maintain specific items installed by or at the direction of the Owner or Unit occupants.
- b. Units. Except as specifically otherwise provided in this Section 6.1, Association shall have responsibility for all maintenance and repair of and replacements with respect to the exterior of the Lots and units, including:
  - (i) the exterior building surfaces, but not including glass and plastic window lights;
  - (ii) exterior painting and caulking including doors and garage doors;
  - (iii) roofs, roof vents, flashing, gutters, downspouts, skylights;

- (iv) patios, wood decks, steps, and stoops (including snow removal from stoop at front entrance); and
- (v) external lighting fixtures, but not the replacement of bulbs.

The Association shall not have the responsibility to:

- (i) maintain, repair or replace exterior doors, storm doors, garage doors, garage door hardware, tracks or openers, or screens (except for exterior painting and caulking of doors and garage doors);
  - (ii) maintain, repair or replace foundations of Units, pads under air conditioning units, or air conditioning units;
  - (iii) phone and TV connections; or
  - (iv) the maintenance, repair of or replacement of exterior modifications made by or at the direction of any Owner or Unit occupants unless the Association agrees to maintain specific items installed by or at the direction of the Owner or Unit occupants.
- c. Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.
- d. The Association shall have an easement and right of access for maintenance and repairs as set forth in Sections 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, or their families or invitees 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 Maintenance 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 Unit 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 Unit to make necessary repairs or to prevent damage to any Unit 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 Unit 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, shall be made on or to such Unit, 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 Wood Creek Townhouse Development and is not of comparable quality.

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.

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 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, from time to time, make rules and regulations governing the form and content 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 of at least three members 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 Unit 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 Unit may not be transferred until an Architectural Certificate has been issued by the Board indicating that the Unit 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 Unit 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 75% 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 of Lots 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 Units, 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 Units; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two (2) adjoining Units, whether or not the wall is on the dividing line between such Units.

Section 8.02. Maintenance of Party Walls. Each Owner whose Unit contains a party wall shall have an easement to enter upon the Lot and within the Unit 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) Units 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 Unit 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 Unit.

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 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 Unit 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 Unit 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; (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, and, at the option of the Board of Directors, improvements and betterments (including upgrading of appliances, kitchen cabinets, carpeting, and lighting fixtures, etc. made by present or prior Lot or Unit Owners or occupants, excluding (i) the land, and (ii) the personal property of Unit 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 sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; (ii) coverage for loss of maintenance 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 30 days prior written notice to all of the insureds, (10 days notice for non-payment of premium), including all mortgagees of Units 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 appraisal 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 appraisal shall be made by a qualified professional appraiser and, at the option of the Board of Directors a prior appraisal may be used after it has been adjusted for the change of building costs that have occurred since it was originally made.

The proceeds of all policies of physical damage insurance, if \$75,000.00 or less, 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 Unit 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 Units 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 Unit or Units, 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 Unit or Units 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 Units 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 Units and Association Property, the insufficiency of funds can be deemed a common expense.

In the event of damage or destruction of any Unit 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 Unit or from any utility line or conduit which services such Unit or other Units, whether located within or without the Unit, the Owner or Owners of such Unit shall be responsible for the deductible amount.

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 Unit Owners. Each Owner has the right, at such Owner's expense, to 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 Unit and on such Owner's Lot; and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit 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 signs or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property except for "Open for Inspection" signs on Sunday and used in conjunction with selling a unit. Other temporary signs advertising property for sale or lease are prohibited.

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 Unit. 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.

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 Units. No temporary structure, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or structure in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association.

Section 10.06. Television and Communication Antennas. No outside television, radio, "C.B." 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.

Section 10.07. Trees and Other Natural Features. No trees, plantings, beds, shrubs or hedges shall be changed, planted or removed from any portion of the Property except with the permission of the Association's Board of Directors. The Association's Board of Directors, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of plantings, beds, shrubs, hedges, trees and other natural resources and wildlife upon the Property.

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. No structure shall be erected, altered, placed or permitted to remain on any lot other than one attached single-family dwelling and a garage shall not exceed one story in height.

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 Wood Creek is also subject to the Pittsford 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 a garage);
- b. commercial vehicles (as determined by the Board in its sole discretion);
- c. recreational vehicles (parked for more than 72 hours);
- d. unlicensed motor vehicles of any type;
- e. camper bodies;
- f. boats or trailers.

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. Lease of Entire Unit Only. An Owner shall not lease any portion of a Unit (other than the entire Unit).

Section 10.14. 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 10.15. 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. 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.

Section 10.16. Lease Term of a Unit. Lease of a Unit shall be for an initial Term of no less than one year, or for a lesser period with Board approval, Board of Directors approval is required before a Unit can be leased so as to comply with the requirements of Section 10.17 below. The Owner shall notify the management company as to the name(s) of the Tenant(s), prior to occupancy.

Section 10.17. Limit on Number of Units Leased/Rented. Only 20% of the Units in the Association may be leased at any time. Accordingly, Board of Directors approval of a lease of a Unit is required before a lease may be executed.

Section 10.18. Subleasing. The approval of the Board of Directors is required before a Unit can be subleased.

## **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 and non-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 Unit 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 Unit Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Unit. 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 not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of Owners of 75% 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 Units 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 Units except with respect to those Lots or Units 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 Unit 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 Unit 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 80% 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 benefitted 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. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.13. 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.

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 homeowners' 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 75% or more of the Owners has been received and filed with the Board of Directors.

**WOOD CREEK HOMEOWNERS ASSOCIATION, INC.**

By 

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

On this 9<sup>th</sup> day of August, 2004, before me personally came Joseph J. Cameron, to me known, who being by me duly sworn, did depose and say that he resides at 57 Creek Ridge, New York; that he is the President of WOOD CREEK HOMEOWNERS ASSOCIATION, INC., the corporation described in, and which executed the above instrument; that said corporation has no seal, never having adopted any seal, and that the foregoing instrument was executed without corporate seal by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



BFLO Doc. # 1352769.1

Deborah Cameron Napier  
Notary Public #4817501  
Monroe County, New York State  
Commission Expires: 2/4/07

OF MEMBERS

The undersigned being \_\_\_\_\_ all, \_\_\_\_\_ a majority of the Members of the Board of Directors of the WOOD CREEK HOMEOWNERS ASSOCIATION, INC., (the "Association") do hereby certify, pursuant to Article XI, Section 1 of the Wood Creek Declaration recorded in the Monroe County Clerk's Office in Liber 5819 of Deeds at page 208, as amended by amendment recorded in the Monroe County Clerk's Office in Liber 9347 of Deeds at page 504 that:

1. Consents to the above Restated Declaration have been received from those Owners of the Lots as set forth on EXHIBIT 'T' attached hereto 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 of the Wood Creek Declaration; and
3. All Owners have been given or have waived the proper notice as required.

Deborah Ballisario  
Deborah Ballisario  
Ivy Runyan

Edward M. Maybeck  
Edward M. Maybeck

Catherine X. Lyons

Edwin Kinnen

Edwin Kinnen  
James G. Hamilton

Jim Blatt

Joseph D. Cameron

Keith Knight

STATE OF NEW YORK

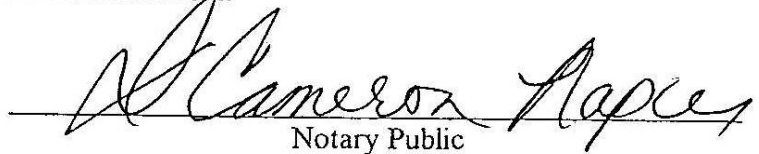
)

)SS.:

COUNTY OF MONROE

)

On the 9th day of August in the year 2004, before me, the undersigned, personally appeared Edward M. Maybeck, Catherine A. Lyons, Edwin Kinnen, James G. Hamilton, Jim Blatt, Joseph J. Cameron, Keith Knight, Deborah Ballisario, and Ivy Runyan personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument, the individuals, or the persons upon behalf of which the individuals acted, executed the instrument.

  
Notary Public

OOLa  
1416533

Deborah Cameron Napier  
Notary Public #4817501  
Monroe County, New York State  
Commission Expires: 11/06

## **SCHEDULE A**

### **LANDS COVERED BY THE DECLARATION**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Pittsford, Monroe County, New York, and being described as follows:

All that tract or parcel of land containing 6.12 acres, more or less, situate in Town Lot 21, Township 12, Range 5, Town of Pittsford, Monroe County, State of New York, all as shown on Drawing No. 2215.00-09, dated April 1979, prepared by Sear-Brown Associates, P.C. of Rochester, NY, being more particularly bounded and described as follows:

Beginning at the intersection of the northerly right-of-way line of Pittsford-Palmyra Road with the southerly right-of-way line of Wood Creek, said point having New York State Plan Coordinate Values of N 1,126,946.96 E 787,776.49; thence

(1) Westerly, on a curve to the left, having a radius of 1682.02 feet, along the northerly right-of-way line of Pittsford-Palmyra Road a distance of 97.18 feet to a found iron pin; thence

(2) N 32E-35'03" E, along the easterly property line of lands now or formerly Zornow a distance of 922.00 feet to a point; thence

(3) S 53E-47'-42" E, along the southwesterly line of the lands of Wood Creek Development Corporation, a distance of 473.32 feet to a point; thence

(4) S 49E-30'-24" E, along said southwesterly line of Wood Creek Development Corporation, a distance of 218.66 feet to a point at the intersection of said southwesterly line and the southerly right-of-way line of Wood Creek; thence

(5) Southwesterly and westerly, on a curve to the right, having a radius 410.00 feet, along the southerly right-of-way line of Wood Creek a distance of 410.24 feet to a point of tangency; thence

(6) N 74E-37'-58" W, along the southerly right-of-way line of Wood Creek, a distance of 163.50 feet to a point of curvature; thence

(7) Westerly and southwesterly, on a curve to the left, having a radius of 240.00 feet, along the southerly right-of-way line of Wood Creek, a distance of 304.87 feet to a point of tangency; thence

(8) S 32E-35'-03" W, along the southerly right-of-way line of Wood Creek, a distance of 265.38 feet to the point or place of beginning.

Bearings contained within this description are referenced to the New York State Plane Coordinate System, Transverse Mercator Projection, Western Zone.



**DESCRIPTION OF WOOD CREEK SUBDIVISION  
PHASE II - SECTION 1**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town Lot 21, Township 12, Range 5, Town of Pittsford, County of Monroe, State of New York as shown on Drawing No. 2215B-01, dated October, 1981, as prepared by Sear-Brown Associates, P.C. and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of lands owned now or formerly by T.J. Zornow, said point being the northwesterly corner of Wood Creek Subdivision - Phase I, as filed in the Monroe County Clerk's Office in Liber 215 of Maps at Page 19, said corner having State Plane Coordinate values of N = 1,127,741.45; E = 788,177.46; thence

1. N 32E-35'-03" E, along said easterly line, a distance of 181.38 feet to a point at the southwesterly corner of said Zornow lands; thence
2. S 81E-57'-40" E, along the southerly line of said Zornow lands, a distance of 707.46 feet to a point; thence
3. S 32E-20'-03" E, a distance of 381.52 feet to a point of curvature; thence
4. Southwesterly, along a curve to the left whose radius is 230.00 feet, through a central angle of 01E-26'-12", a distance of 5.77 feet to a point of reverse curvature; thence
5. Southwesterly and westerly along a curve to the right whose radius is 440.00 feet through a central angle of 24E-20'-19", a distance of 186.91 feet to a point of tangency; thence
6. S 02E-58'-36" E, a distance of 113.05 feet to a point; thence
7. S 44E-36'-29" W, a distance of 166.71 feet to a point on the northeasterly line of said Phase I lands; thence
8. N 45E-23'-31" W, along said Phase I line, a distance of 175.00 feet to a point; thence
9. N 49E-30'-24" W, continuing along said phase line, a distance of 280.01 feet to a point thence
10. N 53E-47'-42" W, continuing along said phase line, a distance of 473.32 feet to the True Point of Beginning.

Intending to describe a parcel of land containing 8.47 $\nabla$  acres.

Subject to any easements or encumbrances that an updated Abstract of Title may show.

**DESCRIPTION OF WOOD CREEK SUBDIVISION  
PHASE II - SECTION 2**

ALL THOSE TRACTS OR PARCELS OF LAND situate in Town Lot 21, Township 12, Range 5, Town of Pittsford, County of Monroe, State of New York, as shown as Drawing No. 2215B-02, dated October, 1981, as prepared by Sear-Brown Associates, P.C. and being more particularly bounded and described as follows:

Beginning at a point of the southerly line of lands owned now or formerly by T.J. Zornow, said point being the northeasterly corner of Wood Creek Subdivision, Phase II, Section 1; thence

1. S 81E-57'-40" E, along said southerly line, a distance of 137.34 feet to a point; thence
2. S 71E-25'-35" E, continuing along said southerly line, a distance of 325.60 feet to a point on the westerly line of lands owned by New York State (N.Y.S. Thruway Connection - Route 490); thence
3. S 26E-58'-36" E, along said westerly line, a distance of 758.33 feet to a point; thence
4. S 00E-01'-03" W, continuing along said westerly line, a distance of 16.73 feet to a point on the northerly line of lands owned now or formerly by Niagara Mohawk Power Corp.; thence
5. N 89E-36'-55" W, along the northerly line of said Power Corp. lands, a distance of 700.84 feet to a point at the southeasterly corner of said Wood Creek Subdivision, Phase II, Section 1; thence
6. N 43E-20'-57", along an easterly line of said Phase II, Section 1, a distance of 165.57 feet to a point; thence
7. N 45E-28'-31" W, continuing along said easterly line, a distance of 74.28 feet to a point; thence
8. N 44E-36'-29" W, along a southeasterly line of said Phase II, Section 1, a distance of 166.71 feet to a point; thence
9. N 02E-58'-36" W, along an easterly line of said Phase II, Section 1, a distance of 113.05 feet to a point of curvature on the southerly right-of-way line of Wood Creek; thence
10. Easterly and northeasterly, along said right-of-way line along a curve to the left whose radius is 440.00 feet through a central angle of 24E-20'-19", a distance of 186.91 feet to a point of reverse curvature; thence

11. Northeasterly, continuing along said right-of-way line along a curve to the right whose radius is 230.00 feet through a central angle of 01E-26'-12", a distance of 5.77 feet to a point of tangency on an easterly line of said Phase II, Section 1; thence

12. N 32E-20'-03" W, along the easterly line of said Phase II, Section 1, a distance of 381.52 feet to the True Point of Beginning.

Intending to describe a parcel of land containing 9.47 $\nabla$  acres.

Subject to any easements or encumbrances that an updated Abstract of Title may show.

BFLO Doc. # 1352769.1

**Wood Creek Homeowners Assoc.  
Declaration Exhibit 1**

| First Name       | Last Name     | Address        | Yes Vote |  |
|------------------|---------------|----------------|----------|--|
| Estate of        | Hrabchek      | 2 Creek Ridge  |          |  |
| Jacob            | Schulenkloppe | 3 Creek Ridge  | X        |  |
| Dorothy          | Baker         | 4 Creek Ridge  | X        |  |
| Carol            | Metcalf       | 5 Creek Ridge  | X        |  |
| Linda            | French        | 6 Creek Ridge  |          |  |
| Wendy            | Ahlheim       | 7 Creek Ridge  | X        |  |
| Earl             | Thomas        | 8 Creek Ridge  | X        |  |
| Milton           | Darcy         | 9 Creek Ridge  | X        |  |
| Charles          | Cushing       | 10 Creek Ridge | X        |  |
| Susan            | Russell       | 11 Creek Ridge | X        |  |
| Keith            | Knight        | 12 Creek Ridge | X        |  |
| George           | Page          | 14 Creek Ridge | X        |  |
| James            | McKenna       | 15 Creek Ridge |          |  |
| George           | Kuipers       | 16 Creek Ridge | X        |  |
| Blanche          | Mansing       | 18 Creek Ridge | X        |  |
| Nancy            | Lamb          | 20 Creek Ridge | X        |  |
| Gordon           | Johnson       | 22 Creek Ridge | X        |  |
| Joan             | Fisher        | 24 Creek Ridge | X        |  |
| Carolyn          | Harvey        | 25 Creek Ridge | X        |  |
| Patricia         | Nix           | 26 Creek Ridge | X        |  |
| Richard          | Fullerton     | 27 Creek Ridge | X        |  |
| I.V.             | Runyan        | 28 Creek Ridge | X        |  |
| Stephen          | Moffett       | 29 Creek Ridge |          |  |
| Ursula           | Miller        | 30 Creek Ridge | X        |  |
| John             | Post, II      | 32 Creek Ridge | X        |  |
| Steven           | Carhart       | 34 Creek Ridge | X        |  |
| Elizabeth        | Bynum         | 36 Creek Ridge | X        |  |
| John             | Auer, Jr.     | 38 Creek Ridge | X        |  |
| Nancy            | Middleton     | 40 Creek Ridge | X        |  |
| Dwight           | Burnham       | 42 Creek Ridge | X        |  |
| James            | Frederick     | 44 Creek Ridge | X        |  |
| Paula            | Hollinger     | 46 Creek Ridge | X        |  |
| Frederick        | Riegel        | 48 Creek Ridge | X        |  |
| Anthony          | Chiarenza     | 50 Creek Ridge |          |  |
| Ernest & Deborah | Horkheimer    | 51 Creek Ridge | X        |  |
| Newton           | Green         | 52 Creek Ridge | X        |  |
| Melbourne        | Nibe          | 53 Creek Ridge |          |  |
| Jane             | Dieck         | 54 Creek Ridge | X        |  |
| James            | Hamilton      | 55 Creek Ridge | X        |  |
| Edward           | Maybeck       | 56 Creek Ridge | X        |  |
| Joseph           | Cameron       | 57 Creek Ridge | X        |  |
| John             | Herman        | 58 Creek Ridge | X        |  |
| Sara             | Johnson       | 59 Creek Ridge |          |  |
| Rogers           | Black         | 60 Creek Ridge | X        |  |
| Anna             | Perez         | 62 Creek Ridge | X        |  |
| Ronald           | Wierszewski   | 64 Creek Ridge | X        |  |
| Margaret         | Merli         | 66 Creek Ridge | X        |  |
| John             | O'Neill       | 71 Creek Ridge |          |  |
| Jacque           | Mahle         | 73 Creek Ridge | X        |  |

**Wood Creek Homeowners Assoc.  
Declaration Exhibit 1**

| First Name       | Last Name  | Address         | Yes Vote |  |
|------------------|------------|-----------------|----------|--|
| Douglas          | McLaine    | 75 Creek Ridge  | X        |  |
| John             | Hallagan   | 77 Creek Ridge  | X        |  |
| Ellen            | Zimmer     | 78 Creek Ridge  | X        |  |
| Robert           | Edelman    | 79 Creek Ridge  | X        |  |
| Barbara          | Echter     | 80 Creek Ridge  | X        |  |
| Mary             | Cooney     | 81 Creek Ridge  | X        |  |
| Joan             | Lienhardt  | 82 Creek Ridge  | X        |  |
| Bernadine        | Trombetta  | 83 Creek Ridge  | X        |  |
| Bernice          | Meyer      | 84 Creek Ridge  |          |  |
| Joan             | Lathan     | 85 Creek Ridge  | X        |  |
| Catherine        | Lyons      | 86 Creek Ridge  | X        |  |
| Robin            | Harter     | 87 Creek Ridge  | X        |  |
| Madonna          | Ward       | 89 Creek Ridge  | X        |  |
| Stewart          | Lambers    | 91 Creek Ridge  | X        |  |
| Muhammad & Prave | Raja       | 93 Creek Ridge  |          |  |
| Norbert          | Weiss      | 94 Creek Ridge  | X        |  |
| Charles          | Minster    | 95 Creek Ridge  | X        |  |
| Dudley           | Schuyler   | 96 Creek Ridge  | X        |  |
| Jane             | Landsman   | 97 Creek Ridge  | X        |  |
| Jessie           | Wolf       | 98 Creek Ridge  | X        |  |
| Edna             | Rossi      | 99 Creek Ridge  | X        |  |
| Henry & Ellen    | Thiede     | 100 Creek Ridge | X        |  |
| Marguerite       | Rose       | 101 Creek Ridge | X        |  |
| Carole           | MacMonagle | 103 Creek Ridge | X        |  |
| Christopher      | Williams   | 105 Creek Ridge | X        |  |
| Eleanor          | Otto       | 1 Rainberry     | X        |  |
| Claire           | Streb      | 2 Rainberry     | X        |  |
| Linda            | Halidow    | 3 Rainberry     | X        |  |
| Mary Anne        | Hoppe      | 4 Rainberry     |          |  |
| Edwin            | Kinnen     | 6 Rainberry     | X        |  |
| David            | Dickinson  | 8 Rainberry     | X        |  |
| J.E.             | Gilda      | 10 Rainberry    | X        |  |
| Harry            | Trueheart  | 12 Rainberry    | X        |  |
| Steven           | Krumm      | 2 Summertree    |          |  |
| Helen            | Suhr       | 4 Summer Tree   |          |  |
| John             | O'Neill    | 5 Summer Tree   | X        |  |
| Richard          | Legge      | 6 Summer Tree   | X        |  |
| Larry            | Morrison   | 7 Summer Tree   | X        |  |
| Edward           | Rooney     | 8 Summer Tree   | X        |  |
| Paul & Kam Lin   | Hill       | 9 Summer Tree   | X        |  |
| Ronald           | Reed       | 10 Summer Tree  |          |  |
| Delos            | Sanford    | 11 Summer Tree  | X        |  |
| Robert           | Fien       | 12 Summer Tree  | X        |  |
| Candice          | Fager      | 4 Winding Wood  | X        |  |
| Janet            | Bossert    | 6 Winding Wood  |          |  |
| Florence         | Muller     | 8 Winding Wood  |          |  |
| Raymond          | DiPasquale | 9 Winding Wood  |          |  |
| Michael          | Post       | 10 Winding Wood |          |  |
| Marion           | Lang       | 11 Winding Wood | X        |  |
| Akiko            | Masakawa   | 14 Winding Wood |          |  |

**Wood Creek Homeowners Assoc.  
Declaration Exhibit 1**

| First Name     | Last Name  | Address            | Yes Vote   |  |
|----------------|------------|--------------------|------------|--|
| Virginia       | Borshoff   | 15 Winding Wood    |            |  |
| Chrysinda      | Rugg       | 16 Winding Wood    | X          |  |
| Charles        | Davis      | 17 Winding Wood    |            |  |
| Frances        | Flamm      | 18 Winding Wood    |            |  |
| Tina Pereda    | Foy        | 19 Winding Wood    |            |  |
| Andrea         | Tomaino    | 20 Winding Wood    | X          |  |
| James          | Blatt      | 22 Winding Wood    | X          |  |
| Harold         | Fishman    | 24 Winding Wood    | X          |  |
| Peter          | Webster    | 121 Wood Creek Dr. | X          |  |
| William        | Jabs       | 123 Wood Creek Dr. | X          |  |
| Jane           | Jezsu      | 124 Wood Creek Dr. | X          |  |
| Nelson         | Carter     | 125 Wood Creek Dr. | X          |  |
| Betty          | Willert    | 126 Wood Creek Dr. | X          |  |
| Theresa        | Dobrzynski | 127 Wood Creek Dr. | X          |  |
| Gertrude       | O'Leary    | 128 Wood Creek Dr. | X          |  |
| Betsy          | Mclsaac    | 129 Wood Creek Dr. | X          |  |
| Patricia       | Joerger    | 135 Wood Creek Dr. | X          |  |
| Arnold         | Mackintosh | 137 Wood Creek Dr. | X          |  |
| Richard        | Brookins   | 139 Wood Creek Dr. | X          |  |
| Elene          | Morris     | 141 Wood Creek Dr. | X          |  |
| James          | Rund       | 143 Wood Creek Dr. | X          |  |
| William        | Smith      | 149 Wood Creek Dr. | X          |  |
| Robert         | White      | 151 Wood Creek Dr. | X          |  |
| Deborah        | Bellisario | 153 Wood Creek Dr. | X          |  |
| Marjorie       | Smith      | 155 Wood Creek Dr. | X          |  |
| Virginia       | Weinstein  | 157 Wood Creek Dr. | X          |  |
| Robert & Sally | Thompson   | 159 Wood Creek Dr. | X          |  |
|                |            | <b>TOTAL</b>       | <b>101</b> |  |