

**SECOND AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS**

Made and entered into November ____, 2002, by **RIVERTON COMMUNITY ASSOCIATION, INC.**, a New York Not-For-Profit Corporation (the "Association").

WHEREAS, certain Property (as hereinafter defined in section 1.16) was made subject to a certain Declaration of Covenants, Conditions, Restrictions and Easements dated as of June 13, 1973, and duly recorded in the Office of the Monroe County Clerk on June 14, 1973, at Liber 4461 of Deeds, page 45 ("the Original Declaration"); and

WHEREAS, such Property (as hereinafter defined in section 1.16) was thereafter made subject to a certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements dated as of October 18, 1978 and duly recorded in the Office of the Monroe County Clerk on October 18, 1978 in Liber 5520 of Deeds at Page 202 ("Amended Declaration"); and

WHEREAS, the Association was formed in order to perform certain functions on behalf of the owners of property in, and residents of, Riverton, including: the development of land, the ownership of land; the building of facilities; the operation, management and maintenance of such land and facilities; the provision of services; the assessment, collection and application of all charges imposed in order to carry out the aforesaid activities; and the enforcement of all covenants, conditions, restrictions and easements contained in the Original Declaration and the Amended Declaration and all liens, fines and rights created thereby; and

WHEREAS, The members of the Association desire to amend and restate the Amended and Restated Declaration in the manner set forth herein. In furtherance of that objective, the proper officers of the Association are executing this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (the "Second Amended and Restated Declaration") pursuant to a resolution executed by more than 2/3 of the total number of registered members of the Association consistent with the requirements of Article XI of the Second Amended and Restated Declaration;

NOW, THEREFORE, in consideration of the premises, the Association and its members hereby declares, that all of the property described in Exhibit A attached hereto shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions, restrictions and easements shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in and to any plot or parcel of land constituting any part of the Property (as hereinafter defined at 1.16 below) and shall inure to the benefit of each Owner thereof, his grantees, distributees, successors and assigns, and to the benefit of each Resident, of the Association, and of the United States.

As of the "Effective Date" of this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (as such term is defined at Article XIV hereof), Exhibit A to the Original Declaration and the Amended and Restated Declaration shall be superseded, it being intended that neither the Original Declaration or the Amended and Restated Declaration shall thereafter benefit, burden, or have any further application to any real property other than the Property defined in this Second Amended and Restated Declaration.

ARTICLE I

DEFINITIONS

The following words, when used herein and when the first letters thereof are capitalized, shall have the following meanings (unless the context shall otherwise require).

1.1. **ARCHITECTURAL REVIEW BOARD.** “Architectural Review Board” and “ARB” shall mean and refer to the board, if any, established and authorized pursuant to Article V of these Covenants.

1.2. **ASSESSABLE PROPERTY.** “Assessable Property” shall mean and refer to the whole of the Property (as defined in section 1.12 herein), with the exception of the following which shall be exempted from any assessments created under this Declaration:

- a. all land and permanent improvements owned by the United States, the State of New York, the County of Monroe, or the Town of Henrietta, New York;
- b. all Common Property; and
- c. all land and permanent improvements exempt from real property taxation by virtue of applicable law.

1.3. **ASSOCIATION.** “Association” shall mean and refer to the Riverton Community Association, Inc.

1.4. **BOARD.** “Board” shall mean and refer to the Board of Directors of Riverton Community Association, Inc.

1.5. **COMMON PROPERTY.** “Common Property” shall mean and refer to the real property now or hereafter owned or leased by the Association for the common use and enjoyment of the Owners and Residents.

1.6. **COMPLETED LIVING UNIT.** “Completed Living Unit” shall mean and refer to any building or portion of a building situated upon the Property on which construction has been completed, which is either occupied or ready for occupancy, and which is designed as a residence for one family or one family-sized group of persons.

1.7. **DECLARATION.** “Declaration” shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements as the same may from time to time be supplemented or amended in the manner prescribed herein.

1.8. **EASEMENT AREA.** “Easement Area” shall refer to easements reserved for the purposes set forth in Article X hereof, and shall mean and refer to:

- a. those areas on each Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto; or
- b. to the extent not inconsistent with other easements shown on such deed, map or plat, a strip of land within the Lot lines ten (10) feet in width in the front and rear of the Lot and five (5) feet in width on each side of the Lot, each said distance being measured in each case from the Lot line toward the center of the Lot, provided, however, that there shall be specifically excluded from said strips of land subject to easements hereunder any area of land on which there is standing a Structure.

1.9. **LOT.** “Lot” shall mean and refer to (i) any plot or parcel of land shown on a plat or subdivision map of any part of the Property (as hereinafter defined in section 1.16) filed in the Office of the Clerk of the County of Monroe, (ii) any other plot or parcel of land constituting part of the Property (as hereinafter defined in section 1.16) with respect to which a Single Family Dwelling Unit, Multifamily Structure, or Nonresidential Structure shall have been erected or the plans for the erection of which Dwelling Unit or Structure shall have been filed with the appropriate department in the Town of Henrietta or the County of Monroe, State of New York, on or after the effective date of the “Original Declaration” or the “Amended and Restated Declaration”, or (iii) any plot or parcel as designated in a Declaration filed pursuant to the Condominium Act of the State of New York. With respect to any of the foregoing, the term Lot shall include all permanent structural improvements thereon. The term Lot shall not include Common Property.

1.10. **MEMBER.** “Member” shall mean and refer to every person or entity that shall be a member of the Association, pursuant to Section 3.1 hereof.

1.11. **MULTIFAMILY STRUCTURE.** “Multifamily Structure” shall mean and refer to any building containing two or more Completed Living Units under one roof, excluding single family homes of the type known as town houses or row houses and excluding condominium or cooperative units.

1.12. **NONCOMPLIANCE.** “Noncompliance” shall mean the failure of an Owner or Resident to comply in full with any of the terms or conditions contained in this Declaration, the By-Laws or any other relevant law, ordinance or regulation in the State of New York for a period of in excess of thirty (30) days, following notice thereof from the Association, Board or their successors, heirs and/or assigns.

1.13. **NONRESIDENTIAL STRUCTURE.** “Nonresidential Structure” shall mean and refer to any building or any portion of a building which has a nonresidential use, as defined by local zoning regulations, and which is situated on the Property.

1.14. **NOTICE.** “Notice” shall mean written notice from the Association or Board to any Owner, Member or Resident concerning any Noncompliance or any other matter relating to this Declaration or the By-Laws. Notice shall be deemed effective upon mailing and shall be addressed to such Owner, Member or Resident at his, her, or its individual unit(s) located upon the Property. All Notices herein shall be sent by certified mail, return-receipt requested. Should any Owner, Member or Resident own or occupy more than one unit at the Property, then notice shall be effective if sent to any one such unit owned or occupied by such Owner, Member or Resident and located upon the Property.

1.15. **OWNER.** “Owner” shall mean and refer to any or all persons or entities holding Fee Simple title of record to any specified plot or parcel and/or building within the Property.

1.16. **PROPERTY.** “Property” shall mean and refer to that certain real property described more particularly in Exhibit A hereto, together with such additional lands as may be subjected to the provisions hereof by the Association and the owner of such lands executing and recording in the Office of the Clerk of the County of Monroe an instrument describing such additional property. Nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development shall be construed as requiring the Association, or any successor or assignee thereto, to subject to the provisions of this Declaration any other land now or hereafter owned by either of them, regardless of whether or not such other land is governed by agreements similar or identical to the provisions hereof.

1.17. **RESIDENT.** “Resident” shall mean and refer to any person who has a fixed, principal home within the Property to which he intends to return, regardless of whether he may be temporarily absent.

1.18. **RESTRICTIONS.** “Restrictions” shall mean and refer to all covenants, conditions, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.19. **SECRETARY.** “Secretary” shall mean and refer to the Secretary of Housing and Urban Development acting through the New Community Development Corporation or other authorized representative.

1.20. **SINGLE FAMILY DWELLING UNIT.** “Single Family Dwelling Unit” shall mean and refer to any building designed as a residence for one family or one family-sized group of persons, including each single condominium or cooperative unit and including single family houses of the type known as town houses or row houses.

1.21. **SINGLE FAMILY DETACHED DWELLING UNIT.** “Single Family Detached Dwelling Unit” shall mean and refer to any building designed as a residence for one family or one family sized group of persons which consists of a single building on the Lot not attached to any other adjacent buildings and specifically excluding a condominium or cooperative unit and excluding single family houses of the type known as townhouses or row houses.

1.22. **SINGLE FAMILY ATTACHED DWELLING UNIT.** “Single Family Attached Dwelling Unit” shall mean and refer to any building designed as a residence for one family or family sized group of persons which consists of a single condominium or cooperative unit or a single family house of the type known as townhouses or row houses and specifically excluding a single building on the lot not attached to any other adjacent buildings.

1.23. **STRUCTURE.** “Structure” shall mean and refer to:

a. any thing or object (other than trees, shrubbery, hedges, landscaping) the placement of which upon any plot or parcel constituting part of the Property may substantially affect the appearance of such plot or parcel, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, coop, cage, swimming pool, signboard, living quarters (including any house trailer), or other similar improvement to such plot or parcel; and

b. any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any plot or parcel constituting part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any such plot or parcel.

ARTICLE II

POWERS OF THE ASSOCIATION

2.1. APPROVAL OF ALL PROPERTY ACQUIRED, TRANSFERRED OR DEVELOPED.

a. The Board shall first approve any and all Property prior to such Property being acquired by purchase, gift, or otherwise by the Association, including, but not limited to Common Property as set forth more fully below.

b. The Board shall also approve any and all development of any undeveloped Property by any Owner or Member, through the Architectural Review Board as set forth in Article V herein.

c. The Board may impose any reasonable restriction, condition or other regulation upon any Property coming under Association ownership as a condition of its acquisition, holding or disposal by the Association.

d. The Board may also regulate the construction, renovation and demolition of any Structure or other improvement located upon the Property or upon the individual Lot of any Owner, Member or Resident.

2.2. COMMON PROPERTY

a. **HOLDING COMMON PROPERTY.** The Association shall have the power to receive and hold property as Common Property on behalf of the Members and to levy user charges as to all or a part thereof, in addition to the Assessments set forth herein.

b. **RIGHT OF ENJOYMENT.** Every Owner, by reason of such ownership, shall have the right to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with each Lot upon transfer. Every Resident shall have the right to use and enjoy the Common Property until he shall cease to be a Resident of Riverton. The Association may permit non-Owners and non-Residents to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish consistent with the rules and regulations of any Federal, State or municipal body having jurisdiction thereof.

c. **SPONSORSHIP.** The Association shall be authorized to act in all respects as the sponsor of further development of the Property, including the filing from time to time of documents required of such sponsor in connection with an Offering Plan filed with the Office of the Attorney General of the State of New York.

2.3. **POWERS OF THE BOARD.** In addition to the powers, rights and privileges conferred in Section 2.1 and 2.2 the Board shall also have the following powers, rights and privileges:

a. Borrow money for the purpose of carrying out the activities of the Association, including the improvement of Common Property, and in aid of such improvement to mortgage the same; provided, however, that any such mortgage shall be approved by two-thirds (2/3) vote of the Members present, in person or by proxy, at a duly called meeting of the Members.

b. Dedicate or transfer all or any part of the Common Property to any municipality or other governmental body, agency or authority, for such purposes and subject to such conditions as may be agreed upon by the Board and such grantee, and to transfer to private persons any unimproved land immediately adjacent to pathways under terms which permit continued use of the pathways by the Members and for such consideration as the Board may deem appropriate. Any such dedication or transfer shall be subject to the approval of a two-thirds (2/3) vote of the Members present, in person or by proxy, at a duly called meeting of the members; no such dedication or transfer shall be made in violation of any deed restrictions affecting the Common Property so dedicated or transferred; and no dedication or transfer shall be made without the written consent of the transferee.

c. Promulgate rules and regulations relating to the development, operation and maintenance of the Common Property.

d. Grant easements or rights-of-ways covering Common Property to any municipality or other governmental body, agency or authority, or to any quasi-public agency or to any utility corporation.

e. Charge and collect fees commensurate with the costs of the facilities and services, receive grants, subsidies and gifts, and seek and exercise proxies.

f. To regulate the construction, renovation or demolition of any Structure or other improvement located upon the Property or any individual Lot of any Owner, Member or Resident.

g. Regulate the development of any Property by any Owner or Member through the Architectural Review Board as set forth in Article V herein.

h. Impose any fine upon any Member, Owner or Resident for Non-Compliance, in any amount authorized in this Second Amended Declaration, the By-Laws, or any other document governing the Association.

i. Promulgate rules with respect to the discharge of its powers and duties including the power to expand or reduce the powers of the Board to act for and on behalf of the Association.

2.4. **RESIDUAL POWERS.** In furtherance of, and not in limitation of, any of the foregoing rights and privileges, the Board and the Association shall continue to have all of the powers of a corporation organized under the Not-For-Profit Corporation Law of the State of New York, and may do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of any one or more of the purposes of the Association as set forth in its Certificate of Incorporation.

2.5. **SUSPENSION OF MEMBERSHIP.** The Board may suspend the voting rights and rights of enjoyment in the Association of any Member who, after having had a reasonable opportunity to address the Board:

a. Shall be determined by the Board to be in Noncompliance for more than thirty (30) days following Notice, thereof; or

b. Shall be more than thirty (30) days past due in the payment of any assessment, administrative charge or fine levied by the Association or Board pursuant to the provisions of the Declaration.

Such suspension shall be for the balance of the period in which the Member remains in Noncompliance, as aforesaid, as determined by the Association in its reasonable judgment, unless sooner terminated by the Board.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1. **MEMBERS.** The following shall be Members and shall constitute the entire membership of the Association:

a. **CLASS A MEMBERS.**

1. Each Resident eighteen (18) years or older shall be a Class A Member and if registered in accordance with Section 3.2 hereof, shall be entitled to one (1) vote.

2. Each Owner of a Single Family Dwelling Unit shall be a Class A Member and, if registered in accordance with Section 3.2 hereof, shall be entitled to one (1) vote for each Single Family Dwelling Unit owned. In the event two or more persons own a Single Family Dwelling Unit, all such persons shall be Members entitled to a single vote for such Unit to be exercised as determined amongst themselves.

b. **CLASS B MEMBERS.**

1. Each Owner of a Multifamily Structure shall be a Class B Member and, if registered in accordance with Section 3.2 hereof, shall be entitled to one (1) vote, plus an additional vote for every 125 Completed Living Units contained in Multifamily Structures owned by said Owner.

2. Each Owner of a Nonresidential Structure shall be a Class B Member and, if registered in accordance with Section 3.2 hereof, shall be entitled to one (1) vote, plus an additional vote for each full 3,500 square feet contained in Nonresidential Structures owned by said Owner.

A person or entity entitled to one or more votes pursuant to any provision of this Section 3.1 may also be entitled to one or more votes pursuant to any other provision of this Section 3.1.

3.2. REGISTRATION.

a. Qualification to vote shall require registration as a Resident and/or Owner on the official register of voting Members maintained by the Board or its representatives. Any Member may become a registered Member upon submission of proof satisfactory in form and content to the Board as to status as a Member. The register shall remain open for new registrations at such times during reasonable business hours as the Board may direct. Only registered Members of the Association may vote at regular or special meetings of the Association.

b. To prove membership status, the Member shall furnish proof reasonably satisfactory to the Board. Such proof may include but is not limited to a current deed, a current lease, driver's license, or current affidavit (or affirmation) of residence.

c. Members who have registered prior to the effective date of this Second Amended Declaration need not re-register.

3.3. DIRECTORS.

a. **CLASSES OF DIRECTORS.** The Board shall be divided into two (2) classes, designated as "Class A" and "Class B" Directors. The Class A Members shall elect Class A Directors and the Class B Members shall elect the Class B Directors. A person shall not be required to be a Member or a Member of any particular class in order to be a Director.

b. **NUMBER OF DIRECTORS: TERM.** There shall be six Class A Directors and one Class B Director, who shall serve three - year terms. Two Class A Directors shall be elected each year and the one Class B Director shall be elected every three years. Each Director shall serve until a successor is elected or appointed and qualifies, unless his directorship shall be vacated by resignation, death or removal. Six Class A Directors shall be elected pursuant to subsection (d) of this Section 3.3 and shall be divided by lot into three groups of two Directors each. The first group shall serve one-year terms; the second group shall serve two-year terms, and the third group shall serve three-year terms. Thereafter, all Directors shall serve three-year terms.

c. **NOMINATIONS FOR ELECTION.** Nominations for the election of Class A Directors shall be made by a nominating committee appointed by the Six Class A Directors from among Members entitled to vote for Class A Directors. Class A Directors shall be eligible to serve on such nominating committee. The nominating committee for Class B Directors shall be the Board until such time as a Class B Director is elected, at which time the incumbent Class B Director shall be the nominating committee for that Class. In addition to the nominating committee, nominations for a Class A Director may also be made by written petition of ten or more Class A Members and nominations for the Class B Director may be made by written petition of two or more Class B Members, provided that the nominating petitions are filed with the Board at least seven (7) days prior to the annual meeting of the Members. Nominations may not be made from the floor at the annual meeting.

d. **ELECTION OF DIRECTORS.** Directors shall be elected by a simple majority of greater than fifty percent (50%) of all votes cast by secret written ballot, with the form fixed and determined by the Board. In the event there is no contest, those nominated shall be deemed elected upon certification thereof by the Secretary of the Association.

e. **REMOVAL OF DIRECTORS.** Directors may be removed from office by the Board at any time, with or without cause. Directors may also be removed from office at any time by a vote of the Class of Members that they represent, in the same manner and by the same majority required for election.

f. **VACANCY.** A vacancy of a Class A Director shall be filled by a vote of the Class A Directors then in office and a Director so chosen shall serve until the next annual meeting of Members, when a Director shall

be elected to serve any remaining balance of the term of the departing Class A Director. A vacancy of the Class B Director shall be filled by a special election of the Class B Members. The Board shall call such election for a date not later than 30 days after the occurrence of the vacancy. The Class B Director so elected shall serve the balance of the term of the departing Class B Director.

3.4. TERMINATION OF MEMBERSHIP. No Resident shall continue to be a Member by reason of residency after he shall cease to be a Resident (as defined in 1.17 above). No Owner shall continue to be a Member by reason of ownership after he shall cease to own or hold an ownership interest in any Single Family Dwelling Unit, Multifamily Structure, or Nonresidential Structure.

3.5. VOTING PROCEDURES. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by the Not-For-Profit Corporation Law of the State of New York, the Certificate of Incorporation of the Association and the By-Laws of the Association, and by this Declaration as each shall from time to time be in force and effect.

ARTICLE IV

ASSESSMENTS

4.1. COVENANT. Each Owner for himself, his distributees, legal representatives, successors and assigns, by acceptance of a deed or other conveyance of a Lot or other portion of the Assessable Property, whether or not the Restrictions contained herein shall be expressed in any such deed or other conveyance, and whether such acceptance occurred while such Lot was subject to the Original Declaration, the Amended and Restated Declaration or occurs while such Lot is subject to this Declaration, each hereby covenants and agrees by such acceptance that he will pay to the Association the assessments which may or shall be levied by the Association against each Lot owned by him. Each Owner covenants and agrees that he shall be personally liable for all such assessments which become due while he is the Owner of each Lot being assessed and that such assessment shall be a continuing charge and lien upon each Lot against which an assessment is made.

4.2. PURPOSE AND LIMITATIONS OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, education, cultural enrichment and welfare of the Members, including but not limited to the improvement and maintenance of the Common Property, the enforcement of the Restrictions contained in this Declaration, the costs and expenses of the operation of the Association and the operation of programs and provision of services related to such purposes.

4.3. ANNUAL ASSESSMENTS. The Board shall levy an Annual Assessment at the start of each of its fiscal years commencing on or before July 1st of each year, or as soon thereafter as practicable. The Board shall send a written bill to each Owner, Member or Resident stating: the amount of the Annual Assessment imposed against each Lot owned by the Owner, Member or Resident; the method used to determine the same; the time period for payment thereof, and the administrative and/or service charges to be charged for late payments thereof. Each Annual Assessment shall be due and payable on or before August 31 in the year in which the same is levied and billed.

Each Single Family Attached Dwelling Unit shall be assessed at a rate equal to 85% of the Single Family Detached Dwelling Unit. Each Completed Living Unit in a Multifamily Structure shall be assessed at a rate equal to 40% of the assessment rate of a Single Family Detached Dwelling Unit, and any lots upon which there is no Single Family Dwelling Unit, Multifamily Structure, or Non-Residential Structure shall be assessed at a rate equal to 10% of the assessment rate of a Single Family Detached Dwelling Unit. Non-Residential Structures shall be assessed at the rate of \$78.80 for each 1000 sq. ft. or portion thereof of Structure contained in such Non-Residential Structure.

The Board may annually increase the maximum assessment that may be levied against any property by an amount not to exceed 7% of the maximum assessment in the previous year. The Board shall have the power in any year to establish an annual assessment rate at any level equal to or less than the maximum permitted assessment rate.

4.4. SPECIAL ASSESSMENTS. In addition to the Annual Assessments authorized in this Article, the Board may levy Special Assessments. Any Special Assessment levied shall be charged against the Assessable Property in the same ratio as the Annual Assessment. The levy of any such Special Assessment shall be subject to approval by a vote of two-thirds (2/3) of the Members voting at a Special Meeting called for that purpose in accordance with the By-Laws of the Association. The bill for a Special Assessment, if so approved, shall be mailed to each Owner after the Special Meeting approving the same and such Special Assessment shall be due and payable thirty (30) days after the mailing of such bill.

4.5. LATE PAYMENTS.

a. Should any Owner, Member or Resident fail to pay in full any assessment or portion thereof such Owner, Member or Resident shall be assessed an administrative charge of not less than ten dollars (\$10.00) per month--not to exceed three (3) months in any one given fiscal year which shall be levied in August, September and October of such fiscal year--for any payment received after August 31 in the year in which the same is levied and billed. Failure to make such payment on or before August 31 in the year in which the same is levied and billed shall also render such Owner, Member or Resident subject to a one and one-half percent (1.5%) per month service charge for each month or any portion thereof that said assessment or portion thereof remains unpaid after August 31. Should such service charge, as calculated herein, result in an amount less than \$.50 for any given month, then such amount shall be rounded up to the nearest \$.50. It is hereby intended that a minimum service charge of \$.50 shall be charged for each month or portion thereof that said assessment or portion thereof remains unpaid after August 31. Such unpaid amount, together with administrative charges, service charges, court costs, lien filing fees and reasonable attorney's fees actually incurred to collect such unpaid sums, shall become a binding personal obligation of such Owner, Member or Resident, as well as a lien on such Owner, Member or Resident's Lot enforceable pursuant to the provisions of Article XII hereof. By acceptance of a deed, lease or other conveyance or interest in and to any Lot or other portion of the Assessable Property, prior to or subsequent to the effective date hereof as set forth in 14.1 below, each Member, Owner or Resident, hereby agrees to such personal liability.

b. The Board may from time to time change the administrative and service charges, which shall be charged for payment received after the due date of any assessment or any portion thereof.

4.6. CERTIFICATE OF PAYMENT. Upon written demand by an Owner, the Association shall within a reasonable period of time, issue and furnish to such Owner a written certificate stating that all assessments (including charges and costs, if any) have been paid with respect to any specific Lot owned by said Owner as of the date of such Certificate or, if all assessments have not been paid, setting forth the amount of such then due and payable. The Association may make a reasonable charge for the issuance of such certificate. 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 of, or lender secured by, the Lot or Lots to which any such certificate refers.

4.7. ADDITIONAL PROCEDURES. The Board shall have the right to adopt procedures for the purpose of making the assessments provided herein and the billing and collection of the same, including, but not limited to any installment plan, provided that such procedures are not inconsistent with the provisions hereof.

ARTICLE V

ARCHITECTURAL REVIEW BOARD

5.1. **REVIEW POWERS.** The Board shall have such powers concerning review and approval of plans and specifications and enforcement of this Declaration as are set forth herein; the Board may choose to delegate any of its powers specified in Articles V through XII hereof to the Architectural Review Board (“ARB”).

5.2. COMPOSITION, APPOINTMENT, REMOVAL.

a. The Board may establish and appoint an Architectural Review Board (“ARB”) consisting of five (5) Members, who shall serve for one (1) year terms.

b. The Board shall fill vacancies within thirty (30) days after their occurrence and in the event that the Board shall fail to fill such vacancy within thirty (30) days, the ARB shall appoint a new member to fill such vacancy who shall continue to serve, subject to the approval of the Board. When a vacancy occurs, the remaining members of the ARB shall continue to act on matters pending before it.

5.3. **SUBMISSION OF PLANS & SPECIFICATIONS.** No development of any Property shall take place, nor shall any new Structure be erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance thereof, nor shall any Lot or Structure be used for a purpose other than that for which it was originally designed or designated, unless plans and specifications (including a description of any proposed new use) therefore shall have been submitted to and approved in writing by the ARB. Such plans and specifications shall be in such form and shall contain such information as may be required by the ARB, and shall include:

a. a grading plan for the particular Lot; and

b. a site plan of the Lot together with landscaping plans and plans showing the location, nature, kind, shape, height, materials and exterior colors of all Structures with respect to the particular Lot and with reference to all Structures on adjoining Lots, and the number and location of all parking spaces and driveways on the Lot.

5.4. **REVIEW PROCESS.** No development of any Property shall occur without the approval of the ARB. No Structure or Dwelling unit shall be erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which substantially changes the exterior appearance thereof, unless plans and specifications therefor shall have been submitted to the Board and approved as provided for herein.

5.5. **APPROVAL OF PLANS AND SPECIFICATIONS.** Upon approval by the ARB of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARB and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans or specifications shall not be deemed a waiver of the ARB’s right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Lots. The ARB shall give Notice to the Board of such approval within ten (10) days thereafter. The Board shall then have the independent right to approve, disapprove or modify such plans or specifications, provided the Board takes such action within twenty (20) days following approval of the ARB. The failure of the Board to act within twenty (20) days following approval by the ARB after receipt of Notice thereof shall be deemed an approval of the ARB action. Approval

of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any condition attached to any such approval.

5.6. DISAPPROVAL OF PLANS AND SPECIFICATIONS. The ARB shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- a. the failure of such plans or specifications to comply with any of the Restrictions contained herein;
- b. the failure to include information in such plans and specifications as may have been reasonably requested;
- c. the objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;
- d. the objection to the exterior design, appearance, proportions, materials or color scheme of any proposed Structure;
- e. the incompatibility of any proposed Structure or use with existing Structures or uses upon other Lots in the vicinity;
- f. the objection to the grading plan for any Lot;
- g. the objection to parking areas proposed for any Lot; or
- h. any other matter which, in the judgment of the ARB , would render the proposed Structure, Structures or uses not in harmony with the general plan of improvement of the area as determined by the Board or with Structures or uses located upon other Lots in the vicinity.

In any case in which the ARB shall disapprove any plans or specifications submitted to it, or shall disapprove the same pending specified modifications or conditions, such disapproval or conditional disapproval shall be explained in writing by a statement of the grounds upon which such action was based. In any such case, the ARB shall, if requested, make reasonable efforts to assist and advise the applicant in submitting an acceptable proposal.

5.7. FEES. The Board and the ARB may charge and collect a reasonable fee, which shall not exceed the cost of examination of any plans and specifications submitted pursuant to this Article, payable at the time such plans and specifications are submitted.

5.8. REVIEW PROCEDURES. The ARB shall exercise such powers set forth in this Article as are delegated to it by the Board. The ARB shall keep minutes for each of its meetings, which shall record all votes and which shall be available for inspection by Members of the Association, applicants who submit plans and specifications and such others as the Board may designate. Such minutes shall be available for review by the Board in the event of appeal as hereinafter set forth. The Board shall have final power to adopt, ratify, reject or modify any decision of the ARB, provided the Board takes such action within twenty (20) days after Notice of ARB action.

5.9. APPEALS. An applicant whose proposal is rejected by the ARB or who is otherwise dissatisfied by an ARB decision may, within ten (10) days of the date of the ARB decision, file a written notice of appeal to the Board, stating with reasonable specificity the basis for such appeal. The Board shall hear the appeal within twenty (20) days of the filing of the notice of appeal, and the applicant shall produce all such evidence as he shall require in addition to evidence, including plans and specifications, submitted to the ARB. The Board will deliver its decision in writing within ten (10) days following the date of hearing of the appeal.

5.10. **CERTIFICATE OF COMPLIANCE.** Upon completion of the construction or alteration of any Structure or Dwelling unit in accordance with plans and specifications previously approved by the ARB, the ARB shall, upon the written request of the Owner, Member or Resident issue a Certificate of Compliance. Any such Certificate of Compliance shall be prima facie evidence of compliance with this Article V as to any purchaser, mortgagee, or other holder of an interest who purchases in good faith and for value, or as to any title insurer. Such certificate of compliance shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein, comply with all the requirements of this Declaration as to which the ARB or Board exercised any discretionary or interpretive powers.

5.11. **INSPECTION RIGHTS.** Any agent of the ARB, the Board or the Association, at any reasonable time or times, upon reasonable notice to and with the consent of any Owner, Member or Resident, may enter upon any Lot owned or occupied by such Owner, Member or Resident for the purpose of ascertaining whether the maintenance of such Lot or the construction, alteration or exterior maintenance of any Structure thereon is in compliance with the provisions hereof.

5.12. **CONFLICTS OF INTEREST.** No member of the Board or the ARB may vote in any decision with respect to approval of plans and specifications on a matter in which he has a financial interest (other than in his capacity as a Member), or on a matter in which he has personally provided professional or consultative services.

5.13. **NONDISCRIMINATION.** The Board and the ARB shall not discriminate or take any action the intent or effect of which is to discriminate against any person because of such person's race, color, sex, religion or national origin.

5.14. **NONCOMPLIANCE.** If any new development is undertaken by any Owner, Member or Resident or any Structure is altered, erected, placed or maintained upon any Lot, or any new use commenced upon any Lot, other than in accordance with the plans and specifications previously approved by the ARB pursuant to the provisions of this Article V, such development, alteration, erection, maintenance or use shall be deemed to be in Noncompliance with this Article V and without the required approval of the ARB and the Board. If, in the opinion of the ARB, such Noncompliance shall have occurred, the ARB shall notify the Board. If the Board shall agree with the determination of the ARB with respect to such Noncompliance, then upon Notice from the Board, any such development or such Structure so altered, erected, placed or maintained upon any Lot in Noncompliance with this Article shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such Noncompliance. If the Owner, Member or Resident of the Lot upon which such Noncompliance exists shall not have taken reasonable steps towards eliminating such Noncompliance within twenty (20) days following Notice, then the ARB or the Board shall have the Right of Enforcement as provided in Article XII.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

6.1. **ABSOLUTE PROHIBITIONS.** The following activities and uses are, and shall be, prohibited on, or in connection with, the Property:

a. No plot or parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

b. Except during construction undertaken in accordance with plans and specifications approved by the Board, or as otherwise provided in Section 10.1 (b), no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any plot or parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

c. Except during construction undertaken in accordance with plans and specifications approved by the Board, or as otherwise provided in Section 5.5, no facilities, including poles and wires, for the transmission of electricity or telephone messages, and no radio or television antennas or similar apparatus, shall be installed or maintained on any plot or parcel above the surface of the ground.

d. Except during construction undertaken in accordance with plans and specifications approved by the Board, or as otherwise provided in Section 5.5, no activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight shall be permitted upon any portion of the Property, nor shall anything be done thereon, which may be or become a nuisance or annoyance to the neighborhood.

6.2. CONDITIONAL PROHIBITIONS. The following activities and uses are, and shall be, prohibited on, or in connection with, the Property except upon the prior written approval of the ARB or the Board.

a. No temporary building, trailer, garage or building in the course of construction shall be used, temporarily or permanently, as a residence on any plot or parcel.

b. No Lot shall be sub-divided for sale, resale, gift, transfer or otherwise.

c. No fence, wall, enclosure, screen or covered patio of any kind, not originally approved pursuant to the provisions of Section 5.5, shall be erected or permitted on any Lot.

d. No driveways shall be developed, maintained or extended on any Lot beyond the boundaries of, or in areas other than, the areas previously approved therefor.

6.3. SLOPE CONTROL. Within any slope control area shown on any filed or recorded map or plat of any part of the Property, no Structure, planting, or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may create erosion or sliding or which may obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot or other parcel of the Property and all improvements in them shall be maintained continuously by the Owner of the Lot or such parcel, except for those improvements for which a public authority or utility company is responsible.

6.4. TRASH. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate outside on any Lot, except building materials during the course of construction of a Structure, unless such items are screened from view by enclosures or fences. During construction, it shall be the responsibility of each Owner to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like, are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made at such place on the Lot so as to provide access to persons making such pickup. At all other times such containers shall be stored in such a manner that they cannot be seen from adjacent and neighboring Lots and from streets.

6.5. SIGNS. No sign or other advertising device of any nature shall be placed upon any plot or parcel constituting part of the Property except as provided herein. Signs advertising real estate for sale or for rent may be placed on any such plot or parcel, subject, however, to the reasonable regulations of the ARB or the Board. Signs and other advertising devices may be erected and maintained upon any portion of the Property devoted to commercial or industrial uses, if approved by the ARB or the Board as set forth in Article V hereof.

6.6. TREES. No living tree having a diameter of four (4) inches or more (measured at a point two feet above ground level) shall be destroyed or removed from any plot or parcel constituting part of the Property without the express prior written authorization of the ARB or the Board.

6.7. WATERFRONT PLOTS OR PARCELS. On any plot or parcel constituting part of the Property adjacent to any lake or river, including the Genesee River:

a. No land vehicle shall be stored within twenty (20) feet of the water boundary thereof.

b. No boat canal for private use shall be dug or excavated therein, except with the prior approval of the ARB or the Board.

c. No bulkheading, barge, docks, piling, float or other marine Structure shall be erected adjacent thereto or thereupon, without the approval of the ARB or the Board.

d. No boat shall be moored so as to obstruct navigation on such waters. No power boat (whether powered by an inboard or outboard motor), except a boat powered by an electric motor, and no boat of a length overall greater than 18 feet, shall be launched into, or used on, lakes.

e. No refuse of any kind shall be placed or disposed of into the adjacent waters.

6.8. ANIMALS. No animals, including birds, insects or reptiles, shall be kept or maintained on any residential Lot or residential portion of a mixed Lot, except as household pets. The ARB or the Board may, from time to time, impose and publish reasonable regulations setting forth the types and numbers of household pets that may be kept or maintained on or in any such Lots or Structures. No business enterprise involving the use or sale of animals shall be conducted on or in any commercial or industrial plot or parcel constituting part of the Property, or in any Structure or nonresidential portion of a mixed use Lot, except with the prior written consent of the ARB or the Board.

6.9. MAINTENANCE. Each Member, Owner or Resident shall keep and maintain all Lots and Structures owned, leased or otherwise occupied by him in good condition and repair, including, but not limited to: the seeding, watering and mowing of all lawns; the pruning and trimming of all trees, hedges and shrubbery so that the same are not detrimental to adjoining Lots, obstructive of a view of street traffic or unattractive in appearance; and the repairing and painting (or other appropriate external care) of all Structures. Each Member, Owner or Resident shall also maintain all such shrubbery and trees, regardless of ownership, that are located upon such Lot owned, leased or otherwise occupied by such Member, Owner or Resident, or in the right-of-way upon such Lot. If, in the opinion of the ARB or the Board, any Member, Owner or Resident fails to perform the duties imposed by this Section, the ARB or the Board shall give Notice to the Member, Owner or Resident to correct such Noncompliance. Should such Member, Owner or Resident fails to correct such Noncompliance or to undertake reasonable steps to correct such Noncompliance within thirty (30) days after Notice thereof from the ARB or the Board, then the ARB or the Board shall be entitled to avail itself of all Rights of Enforcement as provided in Article XII.

6.10. AIR AND WATER POLLUTION. No use of any plot or parcel constituting part of the Property will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway, in excess of environmental standards applicable thereto established by Federal and State law and any regulations thereunder applicable to the Property, or in violation of such standards, not inconsistent with applicable laws and regulations, as the Board may, from time to time establish. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of Monroe County, the Town of Henrietta, or any private or public body having jurisdiction thereof.

ARTICLE VII

RESIDENTIAL COVENANTS AND RESTRICTIONS

The Restrictions contained in this Article VII shall pertain and apply to all Lots constituting part of the Property, which is designated as residential by local zoning authorities (hereinafter in this Article VII each such plot or parcel is called a "Residential Lot").

7.1. **ABSOLUTE PROHIBITIONS.** No commercial, industrial or mixed use shall be maintained on a Residential Lot; nor shall any Nonresidential Structure be erected on a Residential Lot.

7.2. **CONDITIONAL PROHIBITIONS.** No profession or home business or industry shall be conducted on any part of a Residential Lot, as defined by local zoning authorities, without the prior written approval of the ARB or the Board. The ARB or the Board in its discretion, upon consideration of the circumstances in each case, and particularly the effect on the surrounding area, may permit a Residential Lot to be used in whole or in part for the conduct of a profession or home business or industry, provided that such profession or home business or industry shall be compatible with a high quality residential neighborhood as determined in the reasonable discretion of the ARB or the Board. In this connection, the following activities, without limitation, may be permitted by the ARB or the Board in its reasonable discretion: music, art and dancing classes; day nurseries and schools; professional offices; fraternal or other social club meeting places; seamstress services; and the temporary maintenance of a real estate sales office limited to sales of real estate in the Property.

7.3. **STORAGE.** The ARB or the Board may in its discretion require any personal property located in the open on any Lot or Structure to be enclosed or removed from said Lot or Structure, including, without limitation, non-operable or unlicensed motor vehicles and junk.

7.4. **MACHINERY.** No machinery shall be placed or operated upon any Lot or Structure except such machinery as is usual in the maintenance of a private residence.

7.5. **TEMPORARY USES.** Notwithstanding any other provisions contained herein, the ARB or the Board may authorize any Owner, Member or Resident with respect to a Lot or Structure owned by him to temporarily use or maintain:

a. A Single Family Dwelling Unit for more than one family.

b. A sign other than as expressly permitted herein.

c. The residential use of a Structure, which is not the principal dwelling house on such Plot or Parcel.

d. Any other use which the ARB or the Board determines not to constitute a nuisance to Owners and Residents of other residential Plots or Parcels.

7.6. **PARKING FACILITIES.** The ARB or the Board shall approve and regulate the appearance, size, location, design and adequacy of all parking facilities. The ARB or the Board in its reasoned discretion may require the Owner, Member or Resident to pave, seal, grade, repair or replace any portion or the entire paved surface of such parking facility situate upon such Owner, Member or Resident's Lot or adjacent to such Residential, Single-Family or Multi-Family Dwelling Unit or Structure.

ARTICLE VIII

COMMERCIAL AND INDUSTRIAL COVENANTS AND RESTRICTIONS

The Restrictions contained in this Article VIII shall pertain and apply to all Lots constituting part of the Property which are designated as commercial or industrial by local zoning authorities (hereinafter in this Article VIII each such Lot shall be called a "Commercial or Industrial Lot").

8.1. **ABSOLUTE PROHIBITIONS.** No residential or mixed use shall be maintained on a Commercial or Industrial Plot or Parcel, nor shall any Single Family Dwelling Unit or Multifamily Structure be erected on a Commercial or Industrial Lot.

8.2. **LANDSCAPING AND MAINTENANCE.** All areas on a Commercial or Industrial Lot not actually used for buildings, improvements or paved parking or walkways shall be landscaped so as to enhance the appearance of the site and shall at all times be maintained in a neat condition, with hedges trimmed and lawns mowed and adequately sprinkled in summer. All such areas shall be kept free at all times from debris, papers, branches, trash and refuse of all kinds, and excessive leaves.

8.3. **PARKING FACILITIES.** The ARB or the Board shall approve and regulate the appearance, size, location, design and adequacy of all parking facilities. The ARB or the Board in its reasoned discretion may require the Owner, Member or Resident to pave, seal, grade, repair or replace any portion or the entire paved surface of such parking facility situate upon such Commercial or Industrial Lot. Each Owner, Member or Resident shall require all persons coming into his property to park any motor vehicles in the paved parking spaces and shall not permit any such person to park a motor vehicle on any street or road, either public or private, adjacent to a Commercial or Industrial Lot or at any place other than such paved parking spaces.

8.4. **LIGHTING.** The ARB or the Board shall approve the design, location and direction of all exterior lighting.

8.5. **STORAGE.** Raw materials, finished goods, products, supplies and other materials pertaining to the use of any Commercial or Industrial Plot or Parcel shall not be placed or stored outside of any building unless screened from view by enclosures or fences, and approval of any such enclosure or fence pursuant to Section 6.2 (c) shall not be unreasonably withheld.

ARTICLE IX

MIXED-USE COVENANTS AND RESTRICTIONS

The Restrictions contained in this Article IX shall pertain and apply to all Lots constituting part of the Property, which are designated as mixed use by local zoning authorities (hereinafter in this Article IX each such plot or parcel is called a "Mixed-Use Lot").

9.1. **CONDITIONAL PROHIBITIONS.** No Owner, Member or Resident shall occupy or use any Mixed-Use Lot, nor shall any Structure be erected on a Mixed-Use Lot, without the prior written approval of the ARB or the Board.

9.2. **OTHER RESTRICTIONS.** All the Restrictions contained in Sections 7.4, 8.2, 8.3, 8.4 and 8.5 hereof shall apply to Mixed-Use Lots.

ARTICLE X

EASEMENTS, ZONING AND RESTRICTIONS

10.1. **EASEMENTS.** Easements and rights-of-way are hereby expressly reserved to the Association, its successors and assigns, or any assignee of such rights pursuant to a duly recorded instrument, in, on, over and under the Easement Area of each Lot, for the following purposes:

a. The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, community antenna television cables, and other utilities and similar facilities.

b. The erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function, whether above ground or underground.

c. Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios previously approved or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

d. The planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature on any portion of an Easement Area which is designated on a recorded deed or on a filed or recorded map or plat as a "screen planting easement".

e. Subject to all of the other Covenants, Conditions and Restrictions contained in this Declaration, each Owner, Member or Resident shall have the right to use the Easement Area of his Lot in any manner not inconsistent with the purposes for which such Easement Area has been reserved pursuant to this Declaration.

10.2. **ENTRY.** The Association and its respective agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of the Easement Area of each Lot for any of the purposes for which said easements and rights-of-way are reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry. The Association and its respective agents, successors and assigns, shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 10.1.

10.3. **ZONING AND PRIVATE RESTRICTIONS.** The Restrictions shall not be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body, or by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

10.4. **NONDISCRIMINATION.** No Owner, Member or Resident or other person with any interest in any portion of the Property shall refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any portion of the Property to any person because of race, color, religion, sex or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time. The Association and the Secretary (or the United States) shall each be deemed a beneficiary of this covenant. As such beneficiaries, the Association and the Secretary (or the United States), in the event of any breach of this covenant, shall have the right to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach, to which beneficiaries of this covenant may be entitled. Any restrictive covenant on the Property relating to race, color, religion, sex or national origin is recognized as being illegal and void and is specifically disclaimed.

ARTICLE XI

DURATION AND AMENDMENT

11.1. **DURATION.** This Declaration and the Restrictions contained herein shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by each Owner, Member or Resident and his grantees, distributees, successors, assigns or legal representatives, the Association, the Board, the ARB and the Secretary (or the United States) until December 31, 2022, after which time the Restrictions shall be automatically renewed for successive periods of ten (10) years, unless, prior to December 31, 2022 or prior to the expiration of any such renewal period, an instrument terminating this Declaration and the Restrictions contained herein shall be executed by the proper Association officers and recorded in the Office of the Clerk of the County of Monroe or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution to such effect approved by a majority of the total number of Members.

11.2. **AMENDMENT.** This Declaration may not be amended in any respect except by an amendment executed by the proper Association officers and recorded in the Office of the Clerk of the County of Monroe or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approved by not less than a two-thirds (2/3) majority of those registered Owners, Members, or Residents present in person or by proxy at a regular or special meeting of the membership called and held after at least thirty (30) days notice of meeting to all Members. Such notice shall be made by posting in at least three (3) prominent places within the Property and mailing by first class mail to each Registered Member (as of the date of the mailing) of a notice of such meeting setting out the Board resolution or a summary thereof proposed for ratification at such meeting, provided, however, that to the extent permitted by the Not-for-Profit Corporation Law, such Notice may also be made by publication.

ARTICLE XII

ENFORCEMENT

12.1. **FINES FOR NONCOMPLIANCE.** The ARB or the Board may, after having first afforded the alleged offending Member, Owner or Resident reasonable Notice and opportunity to be heard before the ARB or the Board, levy reasonable fines against a Member, Owner or Resident for any Noncompliance, committed by such Member, Owner, Resident, or any occupant of any unit owned, leased or otherwise occupied by such Member, Owner or Resident. Such fines shall be imposed as set forth in the By-Laws and each Owner, Member, or Resident, by acceptance of a deed, lease, or other conveyance or property interest in and to any Lot or other portion of the Assessable Property, whether or not the Restrictions contained herein shall be expressed in any such deed, lease, or other instrument of conveyance, or property interest and whether such acceptance occurred while such Lot was subject to the Original Declaration, the Amended Declaration or occurs while such Lot is subject to this Second Amended and Restated Declaration, hereby covenants and agrees that such Owner, Member or Resident shall pay to the Association any and all fines that may be levied by the ARB or the Board against each Lot owned, leased or otherwise occupied by such Owner, Member or Resident. Each Owner, Member or Resident covenants and agrees to be personally liable for all such fines which may be imposed by the ARB or the Board against any such Lot owned, leased or otherwise occupied by such Owner, Member or Resident and that such fine shall be a continuing charge and lien upon each such Lot. Each Member, Owner or Resident shall be entitled to the same Notice and opportunity to be heard as set forth in Section 6.1(b) of the By-Laws.

12.2. **SPECIFIC PERFORMANCE.** Nothing contained herein shall be deemed to affect or limit the rights of the Association, any Owner, Member or Resident of any Lot within the Property to enforce the Restrictions hereof by appropriate judicial proceedings. However, the Association hereby declares that it is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of any Noncompliance; and therefore, 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.

12.3. **LIENS.** The Association shall have a lien on each Lot securing the total amount of any and all unpaid assessments, costs, fines, administrative charges, services charges, or other charges (including reasonable attorney's fees, Court costs and lien filing fees) imposed upon any Lot pursuant to this Declaration, which lien shall be prior to all other liens, including all liens which are subordinate to the Original Declaration, or the First Amended Declaration, except only liens for real property taxes or assessments, and all sums unpaid on a first mortgage of record. Any such lien may be enforced by the Association to the same extent, including a foreclosure sale and deficiency judgment, and subject to the same procedures as in the case of a foreclosure of a real property mortgage under the laws of the State of New York. In any action to enforce such a lien for unpaid assessments, fines, administrative charges, service charges or late payment fees as set forth herein, the amount which may be recovered by the Association shall include all such assessments, costs or other charges, as the case may be, plus the cost of such enforcement proceedings, including the greater of interest at the legal rate of nine percent (9%) per year or the total amount of administrative charge, service charges and late payment fees, together with the Association's reasonable attorney's fees. The foreclosure of a lien by the Association or the acceptance of a deed in lieu thereof, shall extinguish the lien for such assessments, costs or other charges as shall have accrued prior to the date of delivery of a deed pursuant to such foreclosure proceedings, or acceptance of a deed in lieu thereof.

12.4. **NO WAIVER.** The failure of any beneficiary, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restriction contained herein shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

12.5. **ADDITIONAL RULES.** The Association, consistent with the provisions hereof, may adopt and promulgate reasonable rules, regulations and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration.

ARTICLE XIII

MISCELLANEOUS

13.1. **NO REVERTER.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

13.2. **INVALIDITY.** The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

13.3. **INTERPRETATION.** The Board, where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Declaration, and in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction or interpretation shall be final and binding as to all persons (except the Secretary) or property benefited or bound by the provisions hereof.

13.4. **HEADINGS.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

13.5. **GENDER AND NUMBER.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa, unless the context otherwise requires.

ARTICLE XIV

EFFECTIVE DATE OF THIS DECLARATION

14.1. **RECORDING AND EFFECTIVE DATE.** This Second Amended and Restated Declaration shall be recorded in the Office of the Clerk of the County of Monroe promptly after the execution hereof by the Officers of the Association. Notwithstanding anything herein to the contrary, this Amended Declaration shall become effective as of the date and time of recording in the Office of the Clerk of the County of Monroe.

IN WITNESS WHEREOF, the parties hereto have set their hands and respective seals as of the day and year first above written.

[SEAL]

RIVERTON COMMUNITY ASSOCIATION, INC.

By: _____
President

By: _____
Vice-President

By: _____
Secretary

ATTEST:

STATE OF NEW YORK)
COUNTY OF MONROE)^{ss}

On this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE)^{ss}

On this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE)^{ss}

On this ____ day of _____, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**EXHIBIT A:
LEGAL DESCRIPTION**