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**DECLARATION  
OF  
COVENANTS AND RESTRICTIONS  
SAWMILL RUN SUBDIVISION, PHASE 2**

MADE BY:           Sylvan Glen, Inc.  
                          P.O. Box 61  
                          Gaines, Pennsylvania 16921-0061

DATED:             April 29, 1993

RECORD AND RETURN TO:

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**DECLARATION  
OF  
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**TABLE OF CONTENTS**

<b>ARTICLE I</b>	
Definitions . . . . .	1
Section 1.01. DEFINITIONS . . . . .	1
<b>ARTICLE II</b>	
Property Subject to this Declaration . . . . .	2
Section 2.01 PROPERTY . . . . .	2
<b>ARTICLE III</b>	
The Association: Structure, Membership, Voting Rights and Directors . . .	2
Section 3.01. FORMATION OF THE ASSOCIATION . . . . .	2
Section 3.02. MEMBERSHIP . . . . .	2
Section 3.03. VOTING RIGHTS . . . . .	2
Section 3.04. HOLDER OF SECURITY INTEREST NOT A MEMBER . . . . .	3
Section 3.05. MEETING AND VOTING REGULATIONS . . . . .	3
Section 3.06. SELECTION OF DIRECTORS . . . . .	3
Section 3.07. POWERS AND DUTIES OF DIRECTORS . . . . .	3
Section 3.08. INDEMNIFICATION OF DIRECTORS AND OFFICERS . . . . .	3
Section 3.09. DEVELOPER'S WRITTEN CONSENT NECESSARY FOR CERTAIN ACTIONS TAKEN BY BOARD OF DIRECTORS . . . . .	3
<b>ARTICLE IV</b>	
Property Rights and Easements . . . . .	4
Section 4.01. DEDICATION OF ASSOCIATION PROPERTY . . . . .	4
Section 4.02. RIGHT AND EASEMENT OF ENJOYMENT IN ASSOCIATION PROPERTY . . . . .	4
Section 4.03. RIGHTS OF ASSOCIATION . . . . .	4
Section 4.04. RIGHT OF ASSOCIATION TO CONTRACT DUTIES AND FUNCTIONS . . . . .	5
Section 4.05. DISTRIBUTION OF CONDEMNATION AWARDS . . . . .	5
Section 4.06. HEARING PROCEDURES . . . . .	5
Section 4.07. ASSOCIATION'S EASEMENTS AND RIGHT OF ACCESS FOR MAINTENANCE, REPAIR AND REPLACEMENT . . . . .	5
<b>ARTICLE V</b>	
Assessments and Right of Association to Borrow . . . . .	6
Section 5.01. IMPOSITION, PERSONAL OBLIGATION, LIEN . . . . .	6
Section 5.02. PURPOSE OF ASSESSMENTS . . . . .	6

Section 5.03.	DATE OF COMMENCEMENT AND NOTICE OF ASSESSMENTS . . . . .	6
Section 5.04.	ASSESSMENTS FOR SPECIFIC LOTS . . . . .	6
Section 5.05.	BASIS FOR ASSESSMENTS; DEVELOPER SUBSIDY . . . . .	6
Section 5.06.	CHANGE IN BASIS OF ASSESSMENTS . . . . .	6
Section 5.07.	NON-PAYMENT OF ASSESSMENT . . . . .	7
Section 5.08.	NOTICE OF DEFAULT . . . . .	7
Section 5.09.	RIGHT TO MAINTAIN SURPLUS . . . . .	7
Section 5.10.	ASSESSMENT CERTIFICATES . . . . .	8
Section 5.11.	SUBORDINATION OF ASSESSMENT LIEN TO MORTGAGES . . . . .	8
Section 5.12.	RIGHT TO BORROW AND MORTGAGE . . . . .	8
Section 5.13.	REPAYMENT OF MONIES BORROWED . . . . .	8
ARTICLE VI		
Maintenance . . . . .		9
Section 6.01.	MAINTENANCE AND REPAIR BY THE ASSOCIATION . . . . .	9
Section 6.02.	REPAIRS AND MAINTENANCE WHICH ARE NOT THE RESPONSIBILITY OF THE ASSOCIATION . . . . .	9
Section 6.03.	QUALITY AND FREQUENCY OF MAINTENANCE AND REPAIRS . . . . .	9
ARTICLE VII		
General Covenants and Restrictions . . . . .		9
Section 7.01.	. . . . .	10
Section 7.02.	. . . . .	10
Section 7.03.	. . . . .	10
Section 7.04.	. . . . .	10
Section 7.05.	. . . . .	10
Section 7.06.	. . . . .	10
Section 7.07.	. . . . .	10
Section 7.08.	. . . . .	10
Section 7.09.	. . . . .	10
ARTICLE VIII		
Enforcement, Amendment and Duration of Declaration . . . . .		10
Section 8.01.	DECLARATION RUNS WITH THE LAND . . . . .	10
Section 8.02.	ENFORCEABILITY . . . . .	10
Section 8.03.	NO WAIVER BY FAILURE TO ENFORCE . . . . .	11
Section 8.04.	OBLIGATION AND LIEN FOR COST OF ENFORCEMENT . . . . .	11
Section 8.05.	NOTIFICATION TO ASSOCIATION OF MORTGAGEES AND DEFAULT NOTICES TO BE SENT TO MORTGAGEES . . . . .	11
Section 8.06.	AMENDING OR RESCINDING . . . . .	11
Section 8.07.	OWNER RESPONSIBILITY FOR TENANTS AND GUESTS . . . . .	12
Section 8.08.	WHEN AMENDMENT OR RESCISSION BECOMES EFFECTIVE . . . . .	12
Section 8.09.	DURATION . . . . .	12
Section 8.10.	CONSTRUCTION AND INTERPRETATION . . . . .	12

Section 8.11. CONFLICT WITH MUNICIPAL LAWS . . . . . 13  
Section 8.12. CHANGE OF CONDITIONS . . . . . 13  
Section 8.13. INVALIDITY OF AGREEMENT OR DECLARATION . . . . . 13

ARTICLE IX

General . . . . . 13  
Section 9.01. HEADINGS AND CAPTIONS . . . . . 13  
Section 9.02. NOTICE . . . . . 13  
Section 9.03. RIGHT OF ASSOCIATION TO TRANSFER INTEREST . . . . . 13  
Section 9.04. RIGHT OF ASSOCIATION TO TRANSFER FUNCTIONS . . . . . 14

**DECLARATION  
OF  
COVENANTS AND RESTRICTIONS  
SAWMILL RUN SUBDIVISION, PHASE 2**

THIS DECLARATION, made this 29th day of April, 1993 by **Sylvan Glen, Inc.**, a Pennsylvania corporation authorized to do business in New York State having an office located at P.O. Box 61, Gaines, Pennsylvania 16921-0061 (hereinafter referred to as *Developer*)

W I T N E S S E T H :

**Whereas**, Developer is the owner of real property described in Article II of this Declaration which property is a subdivision know as Sawmill Run Subdivision, Phase 2, and

**Whereas**, such real property includes twenty (20) lots and a private road as shown on a subdivision map filed in the office of the Cattaraugus County Clerk being map dated December, 1991 and filed in the Cattaraugus County Clerk's Office on March 2, 1993 as Map No. 1862 entitled SAWMILL RUN SUBDIVISION, PHASE 2 FOR SYLVAN GLEN, INC., and

**Whereas**, it is intended that residential dwelling units be constructed on the lots either by the Developer or by individual purchasers of the lots which will be individually owned, and

**Whereas**, it is intended that the road built by the Developer be maintained and preserved by a homeowners association known as the Sawmill Run Property Owners' Association, Inc. whose members will be the owners of all subdivision lots except Lots 13, 14, 15, and 16, and

**Whereas**, Developer desires to provide for the preservation of the values and amenities in said community and, to this end, desires to subject all lots in the subdivision 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.

NOW THEREFORE, the Developer, for itself, its successors and/or assigns, declares 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 Sawmill Run Property Owners' Association, Inc., a not-for-profit corporation organized and existing pursuant to the laws of the State of New York.

- B. **Association Property** shall mean and refer to all land, improvements and other properties, heretofore and hereafter owned by the Association.
- C. **Declaration** shall mean and refer to this document of Covenants and Restrictions Sawmill Run Subdivision, Phase 2 as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. **Developer** shall mean and refer to Sylvan Glen, Inc., its successors and/or assigns.
- E. **Lot** shall mean and refer to a lot in the subdivision excepts Lots 13, 14, 15, and 16.
- F. **Member** shall mean and refer to each holder of a membership interest in the Association as such interests are set forth in Article III of this Declaration.
- G. **Owner** shall mean and refer to the holder of record title, whether one person or persons or entities of the fee interest of any Lot whether or not such holder actually resides on such Lot.
- H. **Property** shall mean and refer to all real property in the subdivision consisting of a total of 167.19 ± acres.
- I. **Subdivision** shall mean the real property depicted on a subdivision map filed in the Cattaraugus County Clerk's Office on March 2, 1993 as Map No. 1862 entitled SAWMILL RUN SUBDIVISION, PHASE 2 FOR SYLVAN GLEN, INC.

## 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 South Valley, County of Cattaraugus and State of New York as defined in Article I of this Declaration.

## 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 the State of New York, the Sponsor has formed Sawmill Run Property Owners' Association, Inc. to maintain a common road serving the Lots. Subject to any additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all of 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 only Lot Owners and Developer. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of a *Lot* or from the interest as *Developer* as defined in Article I of this Declaration.

**Section 3.03. VOTING RIGHTS** Voting rights of Lot Owners shall be as provided by the By-Laws. Any Lot Owner shall be entitled to assign such Lot 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. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

**Section 3.04. HOLDER OF SECURITY INTEREST NOT A MEMBER** Any person or entity which holds an interest in a Lot merely as security for the performance of an obligation shall not be an Owner.

**Section 3.05. MEETING AND VOTING REGULATIONS** The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of the Lot Owners, in regard to proof of membership in the Association, Lot ownership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot Owners for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

**Section 3.06. SELECTION OF DIRECTORS** The appointment or nomination and election of Directors, the filing of vacancies on the Board of Directors and the removal of Directors shall be governed by the By-Laws of the Association.

**Section 3.07. POWERS AND DUTIES OF DIRECTORS** The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association. While Developer is in control of the Board of Directors, certified financial statements will be provided each year to members.

**Section 3.08. INDEMNIFICATION OF DIRECTORS AND OFFICERS** Every officer and director of the Association shall be, and hereby is, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgements, decrees, fines, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such officers or directors 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 in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of settlement, the indemnification herein shall only apply when the Board of Directors of the Association approves such settlement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which such director or officer may otherwise be entitled. Funds to cover such expenses, including fees of counsel, may be advanced by the Association prior to 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 the recipient is not entitled to indemnification hereunder. Sponsor has an obligation to defend any suits or proceedings arising out of Developer's acts or omissions and to indemnify the Board of Directors therefore.

**Section 3.09. DEVELOPER'S WRITTEN CONSENT NECESSARY FOR CERTAIN ACTIONS TAKEN BY BOARD OF DIRECTORS** Notwithstanding anything to the contrary contained in this Declaration, so long as the Developer holds title to any Lot, the Board of Directors of the Association may not, without the Developer's written consent, which consent must not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property; (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial

budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of recording of this Declaration; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Developer holds title to any lot, this Section shall not be amended without the written consent of the Developer. The Developer shall not, so long as the Developer is in control of the Board of Directors of the Association, use its position of control to (i) reduce the level of services described in the budget filed with the application to the New York State Department of Law and to all purchasers of Lots from the Developer; (ii) prevent capital repairs of the Association Property; or (iii) prevent expenditures required to comply with applicable laws or regulations.

## ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

**Section 4.01. DEDICATION OF ASSOCIATION PROPERTY** The Developer intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Owners. Said tracts of land conveyed to the Association shall hereinafter be referred to as *Association Property*. The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

**Section 4.02. RIGHT AND EASEMENT OF ENJOYMENT IN ASSOCIATION PROPERTY** Subject to the right of the Association as set forth in Section 4.03 below, every Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Section 4.03 below. Such easement shall be in common with the other owners of such Lots and shall be for ingress and egress by vehicle or on foot and for the installation, use, repair, maintenance and replacement of any utility lines located within such roadways. These easements will be subject to the rights of the Association as set forth in Section 4.03 below, provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Lot Owner for ingress and egress. These easements for ingress and egress shall terminate upon the conveyance of such roadways to the Town of South Valley, in the event that such conveyance should occur. The easements set forth in this Section 4.02 shall be appurtenant to and shall pass with the interests of a Lot Owner, as defined in Article I, Section 1.01 hereof.

**Section 4.03. RIGHTS OF ASSOCIATION** With respect to the Association Property owned and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

- a. to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and conveyance 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 Lot Owners;
- b. to grant easements of rights-of-way, with or without consideration, to any public or private utility corporation, coaxial cable company or similar entity, governmental agency or political subdivision;
- c. to dedicate, encumber (except for any 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



Lot Owners) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Lot Owners who shall vote by written ballot which shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than 30 days nor more than 50 days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots 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.

**Section 4.04. RIGHT OF ASSOCIATION TO CONTRACT DUTIES AND FUNCTIONS** The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other community associations.

**Section 4.05. DISTRIBUTION OF CONDEMNATION AWARDS** In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, such surplus shall be part of the general funds of the Association to be used as the Association deems appropriate.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear 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.

**Section 4.06. HEARING PROCEDURES** Where the Board of Directors of the Association is required, in accordance with the provisions of this Declaration, to hold a 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 30 days 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 Lot Owners as their names appear on the books and records of the Association, not less than 10 nor more than 40 days prior to the dated of the Hearing. 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 on the Property or in a place reasonably accessible to a majority of the Lot Owners. All Lot 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 the 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. ASSOCIATION'S EASEMENTS AND RIGHT OF ACCESS FOR MAINTENANCE, REPAIR AND REPLACEMENT** The Association (and its employees, contractors and agents) shall, upon reasonable

notice of the Lot Owner(s) directly involved, if any, have an easement and right of access to any Lot to permit the maintenance, repair or replacement of any Association Property, and the improvements thereon, except that in an emergency, the Association shall have such access right without notice. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

## ARTICLE V ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

**Section 5.01. IMPOSITION, PERSONAL OBLIGATION, LIEN** Each Lot Owner, by becoming a Lot 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 annual assessments or charges for the maintenance and operation of Association Property for services performed by the Association which are hereinafter 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 as the time the Assessment falls due.

**Section 5.02. PURPOSE OF ASSESSMENTS** The purpose of the Assessments shall be to fund the maintenance, preservation, operation and improvement of the Association Property, including but not limited to, the payment of (i) any taxes on Association Property, (ii) the premiums for any liability and other insurance covering the Association Property and the Association's officers, directors and members and employees, obtained pursuant to Article IX of this Declaration, and (iii) the cost of the maintenance, repair and replacement of all Association Property and facilities, and (iv) the cost of such other needs as may arise. The amount of any reserves shall not be less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots.

**Section 5.03. DATE OF COMMENCEMENT AND NOTICE OF ASSESSMENTS** The Assessments provided for herein shall commence on such date as determined by Developer. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Assessments shall be due and payable semi-annually unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least 30 days before due. Written notice of the annual Assessments shall be sent to every Lot Owner subject to Assessments.

**Section 5.04. ASSESSMENTS FOR SPECIFIC LOTS** Once Assessments have commenced pursuant to Section 5.03 above, the Owner, including Developer, of each Lot subject to this Declaration shall be liable for the payment of Maintenance Assessments.

**Section 5.05. BASIS FOR ASSESSMENTS; DEVELOPER SUBSIDY** Once Assessments have commenced pursuant to Section 5.03, above the Owner of each Lot shall be liable for all Assessments assessed against such Owner's Lot. Assessments shall be equal for all Lots.

**Section 5.06. CHANGE IN BASIS OF ASSESSMENTS** The Association may change the basis of

determining Assessments by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Lot Owners, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least 40 days in advance of the date or initial date set for voting thereon, except that: (i) so long as Developer holds title to any Lot on lands covered by this Declaration, but no longer than 12 years from the date of recording of this Declaration, any change in the basis of Assessments which adversely affects a substantial interest or right of Developer with respect to unsold Lots shall require the specific consent of Developer in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgagees on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certificate of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of Cattaraugus County.

**Section 5.07. NON-PAYMENT OF ASSESSMENT** If an Assessment, or installment payment thereof, is not paid on the due date established pursuant to Section 5.03 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 property which shall bind such property. In addition to such lien, the then Owner of the Lot may be held personally liable for the payment thereof (including interest, penalties and costs of collection).

If the Assessment or any installment thereof is not paid within 10 days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 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 Lot Owner personally obligated to pay the same or foreclose the lien against the Lot of such Owner, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once the Assessment is deemed delinquent as described above, any payments received from the Lot 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 or other services furnished by the Association shall, under no circumstances, entitle any Lot 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 of a Lot 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 Board's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

**Section 5.09. RIGHT TO MAINTAIN SURPLUS** The Association shall not be obligated in any

calendar year to spend all the surplus of 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 surplus 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 an Owner or lessee with respect to a Lot which such Owner owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), 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, lessee 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 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 such Lot from liability for any Assessments thereafter becoming due, nor from the lien on any such subsequent Assessment.

**Section 5.12. 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 discretion of the Board of Directors acting in its absolute discretion.

While Developer is in control of the Board of Directors, no mortgage liens will be placed on the HOA property without the consent of at least Fifty-One Percent (51%) of the Lot Owners, excluding Sponsor or Sponsors nominees.

**Section 5.13. REPAYMENT OF MONIES BORROWED** In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Assessments hereunder;
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

- (1) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.05 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 THE ASSOCIATION** The Association shall have the responsibility, at its cost and expense, to undertake all maintenance and repair of and replacement to Association Property. Subject to the provisions of Section 6.02 below, the cost of all maintenance repairs performed by the Association shall be funded from Assessments. The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.05 of this Declaration.

**Section 6.02. REPAIRS AND MAINTENANCE WHICH ARE NOT THE RESPONSIBILITY OF THE ASSOCIATION** Any maintenance, repair or replacement necessary to preserve the appearance and value the Association Property or Property which the Association is obligated to maintain, repair or replace, made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner (including (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee (i) any member of such Owner's family or (ii) any family member of the tenant of such Owner) shall be made at the cost and expense of such Owner. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to the Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot of such Owner, to secure the payment thereof.

**Section 6.03. QUALITY AND FREQUENCY OF MAINTENANCE AND REPAIRS** All maintenance, repair and replacement of any Improvement, 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 any Association Property or of any Improvement 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 improvement and the enhancement and preservation of the appearance and value of the Property.

## ARTICLE VII GENERAL COVENANTS AND RESTRICTIONS

The provisions of this Article shall apply to all property in the subdivision including Lots as defined in Article I of this Declaration together with subdivision Lots 13, 14, 15, and 16. The covenants contained in this Article shall expire on January 1, 2018 unless two-thirds (2/3) of the Owners of Lots covered by this Article shall record in the Cattaraugus County Clerk's Office written consent to retain the covenants on an agreed upon and consistent bases thereafter.

**Section 7.01.** Any Lot may be used only for residential purposes by individuals.

**Section 7.02.** No more than one (1) dwelling shall be constructed on any Lot. Said dwelling shall have a minimum of six hundred (600) square feet of enclosed space exclusive of porches, carports, garages and out-buildings which may be constructed.

**Section 7.03.** No mobile homes, buses, other vehicles or garages shall be occupied as living quarters. Camping units, if of a temporary nature and use, shall be permitted.

**Section 7.04.** The exterior of any construction, once begun shall be completed within a twelve (12) month period.

**Section 7.05.** None other than licensed and currently inspected vehicles shall be parked on any Lot and there shall be no parking of any vehicle on joint-use rights-of-way.

**Section 7.06.** All rubbish, trash, garbage and other waste shall be kept in sanitary containers.

**Section 7.07.** No parcel may be further subdivided except by Developer. This provision is not intended to preclude the subdivision of a Lot between two adjoining Lot Owners for the purpose of making each such portion part of the adjoining Lot.

**Section 7.08.** Easements and rights-of-way over Lots in the subdivision are expressly reserved for the creation of, construction and maintenance of all utilities including, but not limited to, natural gas, electric and telephone. Such utilities may be provided as aerial, surface or subsurface and shall be constructed so as not to preclude the reasonable development of a Lot or to interfere with improvements on a lot at the time of the initial installation of such utility service.

**Section 7.09.** Any sewage system installed on a Lot shall be installed in accordance with the requirements of the Cattaraugus County Health Department and any other applicable governmental law or regulation.

## ARTICLE VIII

### ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

**Section 8.01. 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 this 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 this 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 8.02. ENFORCEABILITY**

**a. Actions at Law or Suits in Equity** The provisions of this 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 its members), and by any Lot 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 monetarily the

damages which may accrue to the beneficiaries hereof by reason of a violation of this 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 rules and regulations of the Association or of 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 a Lot Owner or occupant of a Lot shall be deemed an Assessment against the Owner of such Lot and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration

**Section 8.03. No WAIVER BY FAILURE TO ENFORCE** The failure of any beneficiary hereof to enforce any provision of this Declaration shall in no event be construed as a waiver of the right by the beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior to subsequent thereto. No liability shall attach to the Association (or any officer, director, employee, member, agent, committee or committee member of the Association) or to any other person or organization for failure to enforce the provisions of this Declaration.

**Section 8.04. OBLIGATION AND LIEN FOR COST OF ENFORCEMENT** 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 of a Lot, or (2) any family member, tenant, guest or invitee of the Owner of a Lot, or (3) a family member or guest or invitee of the tenant of the Owner of a Lot, or (4) a guest or invitee (i) any member of the family of the Owner of a Lot, or (ii) any family member of the tenant of the Owner of a Lot, such costs shall also be a lien upon the Lot of such Owner.

**Section 8.05. NOTIFICATION TO ASSOCIATION OF MORTGAGEES AND DEFAULT NOTICES TO BE SENT TO MORTGAGEES** The Association may be notified by the Owner of each Lot or by such Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Lot. 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 8.06. AMENDING OR RESCINDING**

**A.** The Developer may, at any time, make amendments to this Declaration to correct omissions or errors, provided such amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent.

**B.** Except as otherwise specifically provided for herein, the Board of Directors on its own initiative, or pursuant to a written petition signed by the Owners of not less than 25 Percent (25%) of the Lots subject to this Declaration, may propose an amendment to this Declaration. The Board of Directors shall hold a Hearing in accordance with Section 4.06 herein for the purpose of considering such proposed amendment. Notice shall be given as pursuant to such Section 4.06. Not less than 30 nor more than 45 days after the Hearing, the Lot Owners shall vote on the proposed amendment. 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 and a form of ballot shall be mailed or delivered by the Board of Directors to all Lot Owners not less than 14 days prior to the date or initial date set for the canvass thereof. The affirmative vote of Owners not less than two-thirds (2/3) of the total number of Lots shall be required for approval of a proposed amendment. In addition to the approval of the Lot Owners provided for herein, no amendment or rescission which substantially adversely affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on one-third (1/3) or more of the Lots advise the Association in writing, prior to the date or initial date 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 or rescission which adversely affects the interest of any lending institution or first mortgagee shall be sent to all such lending institutions or 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 or rescission. The provisions of this section shall not apply to Article VII of this Declaration.

**Section 8.07. OWNER RESPONSIBILITY FOR TENANTS AND GUESTS** Any lease of a Lot or any Improvement thereon shall provide 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 a Lot owner is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Lot which such tenant or guest occupies in writing by certified mail, return receipt requested or by telephone. If the violation is not promptly cured, or eviction proceedings promptly commenced against the tenant 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 8.02 of this Declaration.

**Section 8.08. WHEN AMENDMENT OR RESCISSION BECOMES EFFECTIVE** Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the Office of the Cattaraugus County Clerk. Such instrument need not contain the written consent of the required number of Lot 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 8.09. DURATION** Except as otherwise provided for herein, this Declaration shall continue wherever with full force and effect unless terminated by an amendment pursuant to this section or Section 8.06 herein. Specific references made to the termination provisions in Article VII, the Association, and all provisions of this Declaration applicable to the operation of the Association shall terminate upon the dedication of the road in the subdivision to the Town of South Valley. Not less than 30 nor more than 45 days after the Hearing, the Lot Owners shall vote on the proposed termination. Notice of such vote, containing the date, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Lot Owners not less than 14 days prior to the date or dates for the canvass thereof. The affirmative vote of not less than Seventy-Five Percent (75%) of the total number of Lot Owners shall be required for termination. Any approved termination to the Declaration shall become effective only when an instrument describing such termination has been duly recorded in the Cattaraugus County Clerk's Office and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such termination. Such instrument need not contain the written consent of the required number of Lot Owners but shall contain a certification by the Board of Directors that the consents required for such termination have been received and filed by the Board.

**Section 8.10. CONSTRUCTION AND INTERPRETATION** The Association shall have the right to



construe and interpret the provisions of this Declaration except with respect to the provisions of Article VII and, in the absence of an 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 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 findings, determinations, rulings or orders 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 Lot Owners and to the end that the Property shall be preserved and maintained 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 immediate preceding paragraph hereof.

**Section 8.11. 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 8.12. 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 8.13. INVALIDITY OF AGREEMENT OR DECLARATION** The determination by any court that any provision hereof is unenforceable invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE IX GENERAL

**Section 9.01. HEADINGS AND CAPTIONS** The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

**Section 9.02. NOTICE** Any notice required to be sent to the Owner or mortgagee of a Lot 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 who appears as such Owner or mortgagee on the records of the Association.

**Section 9.03. 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, trustees or other governing board 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



