

**DECLARATION  
OF  
COVENANTS, CONDITIONS and RESTRICTIONS**

**Windsor Square Homes Association I, Inc.  
Penfield, New York**

**As Amended**

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by O'Brien Planned Communities, Inc., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the Town of Penfield, County of Monroe, State of New York, which is more particularly described as:

ALL THAT TRACT OR PARCEL OF LAND situated in Town Lot No. 26, Township 13, Range 4 in the Town of Penfield, County of Monroe, State of New York, all as shown on a "Map Showing Proposed Rezoning", prepared by Sear, Brown, Schoenberger & Costich, Consulting Civil Engineers, on February 25, 1969, said parcel being more particularly bounded and described as follows:

BEGINNING at a point in the boundary line between Towns of Penfield and Perinton, said point being 150 feet westerly, measured at right angles, from the westerly right-of-way line of Fairport Nine Mile Point Road; thence

(1) Northerly, along a line parallel to said westerly right-of-way of Fairport Nine Mile Point Road and 150 feet westerly therefrom, a distance of approximately 1207 feet to a point in the southerly line of parcel now or formerly owned by A. and C. E. Singer; thence

(2) Westerly along the southerly boundary line of said Singer parcel and the westerly extension, a distance of approximately 2,250 feet to a point which is 180 feet easterly, measured at right angles from the easterly boundary lines of parcel owned by M. and G. H. Sander; thence

(3) Southerly, parallel to said easterly boundary line of parcel now or formerly owned by M. and G. H. Sander and 180 feet easterly therefrom, a distance of approximately 1,205 feet to a point in the boundary lines between Towns of Penfield and Perinton; thence

(4) Easterly, along the southerly boundary line of Town of Penfield, said line also being the northerly boundary line of Town of Perinton, a distance of approximately 2,230 feet to the point of beginning, containing approximately 62 acres of land.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

**Section 1. "Association"** shall mean and refer to Windsor Square Homes Association I, Inc., its successors and assigns.

**Section 2. "Owner"** shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3. "Properties"** shall mean and refer to that certain real property hereinbefore described, including the areas to be occupied by townhouse units, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4. "Common Area"** shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: all streets and private drives, pedestrian malls, play areas, clubhouse and other recreational facilities including the swimming pool and related equipment as may be shown on a map of Phase I of the subdivision to be filed with the Monroe County Clerk.

**Section 5. "Lot"** shall mean and refer to any plot of land shown upon a recorded subdivision map of the Properties with the exception of the Common Area.

**Section 6. "Declarant"** shall mean and refer to O'Brien Planned Communities, Inc., its successors and assigns if such successors or assigns should acquire more than one developed Lot from the Declarant for the purpose of development.

**Section 7. "Member"** shall mean and refer to every person or entity who holds membership in the Association.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment through the Association in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded;
- (d) the right of the Association to limit the number of guests of members;
- (e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof the mortgage on said properties shall be subordinate to the rights of the homeowners hereunder.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, except that any owner who has delegated his right of enjoyment of the Common Area and facilities to others forfeits his own right of enjoyment during any period that he does not reside on the property.

**Section 3. Regulation of Uses.** The Association reserves the right to regulate the use of the Townhouses, the Common Area and facilities, and the personal conduct of members and their guests through the establishment of rules and regulations.

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Association Membership.** Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Voting Rights.** Every Owner, regardless of how many Lots are owned by such Owner, is entitled to one vote. When more than one person or entity holds an interest in any Lot, they shall be deemed to be a single Owner, entitled to a single vote.

## ARTICLE IV

### **COVENANT FOR MAINTENANCE, SPECIAL AND PROPERTY TAX ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments or charges, (2) special assessments for capital improvements, and (3) property tax assessments for state and local real property on the common areas, such assessments to be established and collected as hereinafter provided. The annual maintenance, special and property tax (Common Area) assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Each deed shall contain the following covenant:

"And the party of the second part (his, her, their) heirs, grantees and assigns further covenants that the property herein conveyed shall be subject to an annual maintenance charge in such amount as shall be determined by Windsor Square Homes Association I, Inc., its successors and assigns, not to exceed \$480.00 per Lot, and in addition state and local real property taxes on common areas, not to exceed \$180.00 per Lot per year, and subject to special assessments as set forth in Article IV, Section 4 of the Declaration, which sums shall be paid monthly, in advance on the 1<sup>st</sup> day of each month, and on each monthly date such charges shall become liens upon the land and so continue until fully paid and the party of the second part does hereby authorize and empower said Windsor Square Homes Association I, Inc., its successors and assigns, to bring any and all actions and legal proceedings in the name of Windsor Square Homes Association I, Inc., its successors and assigns, for the obligation of such charges and the enforcement of such liens. Such charges shall be payable to Windsor Square Homes Association I, Inc., its successors and assigns, and shall be devoted exclusively to promote the recreation, health, safety, and welfare of owners and for the improvement, maintenance and payment of real property taxes of the common area, and for the improvement and maintenance of the units upon the Properties."

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement, maintenance and payment of real property taxes of the Common Area, and for the improvement and maintenance of the homes situated upon the Properties.



**Sect. 3. Maximum Annual Maintenance Assessment.** The maximum annual maintenance assessment may be increased each year. The increase shall be no more than the greater of either: (a) three percent (3%), or (b) the rise, if any, of the Consumer Price Index, (published by the U.S. Department of Labor) for the preceding month of April.

- (a) The Board of Directors may fix the annual maintenance assessment each year at an amount not to exceed the maximum without a vote of the membership.
- (b) The maximum annual maintenance assessment may be increased above that established by this formula (three percent or Consumer Price Index rise) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 4. Special Assessment for Capital Improvements.** In addition to the maintenance assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or 4.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 nor more than 60 days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of sixty percent (60%) of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Rate of Annual Maintenance and Special Assessments.** Both annual maintenance and special assessments must be fixed at a uniform rate for all Lots.

**Section 7. Property Tax Assessment.** The state and local real property taxes assessed on the common area real property and improvements will be paid through the Association by all the owners. Each Lot will be assessed by the Association for an equal pro-rata share of the real property taxes on the common area, real property and improvements.

**Section 8. Date of Commencement of Annual Maintenance Assessments: Due**

**Dates.** The annual maintenance assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual maintenance assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual

maintenance assessment for each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual maintenance assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from the owner of each Lot one-twelfth (1/12) of the annual maintenance assessment for such Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such Certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 9. Date of Commencement of Property Tax Assessments.** The property tax assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. Upon transfer of title to a townhouse unit, the state, town and county taxes shall be adjusted and apportioned on a calendar year beginning January 1 and ending December 31. School taxes shall be adjusted and apportioned for the fiscal year beginning July 1 and ending the following June 30. In addition to the adjustment of taxes at the time of transfer of title to a townhouse unit, a purchaser shall deposit in escrow with the Homeowners Association a sufficient sum to pay his pro-rata share of the next due property taxes on the Common Area.

**Sect. 10. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum prevailing rate per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Windsor Square Homes Association I, Inc., or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on a real property and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The Lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot owners. The Association, acting on behalf of the Lot owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 11. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter become due or from the lien thereof.

**Section 12. Exempt Property.** All properties dedicated to and accepted by a local public authority, and the Common Area, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 13. Management Agreements.** Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each owner.

Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled prior to its expiration date by an affirmative vote of sixty percent (60%) of the members of the Association who are voting in person or by proxy at a meeting at which a quorum, as defined in Article IV, Section 5, is present. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

**Section 14. Insurance Assessments.** The Board of Directors, or its duly authorized agent, shall obtain and maintain, to the extent reasonably obtainable and determined by the Board of Directors to be appropriate or relevant:

- (1) fire and casualty insurance on all buildings, including all townhouses, and all Association property;
- (2) liability insurance on all Association property;
- (3) directors' and officers' liability insurance;
- (4) fidelity bond or surety bond, and
- (5) such other insurance as the Board of Directors shall deem necessary or desirable, including "umbrella" catastrophe insurance.

Coverage shall be in an amount equal to the full replacement value of the buildings without deduction for depreciation, covering the interests of the Association and all Owners and their mortgagees, as their interests may appear. Coverage shall include all buildings, partitions, floors and ceilings within the buildings together with all service and

other machinery contained therein, (but not including wall, ceiling or floor decorations or coverings or furniture, equipment, betterments, furnishings or other personal property supplied or installed by Owners or tenants of Owners).

Premiums for all such insurance shall be a common expense, fixed at a uniform rate for all Lots. The Association shall collect each month from the Owner one-twelfth (1/12) of the annual premium. This debt owed by the Owners shall be paid within twenty (20) days after notice of such debt and shall be collectible by any lawful procedure permitted by the laws of the State of New York. If said debt is not paid within twenty (20) days after notice of such debt such amount shall automatically become a lien upon such owner's lot and townhouse and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgagee and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

In addition to the aforesaid insurance required to be carried by the Association, any owner may, at his own expense, insure his own townhouse unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense, to provide as he sees fit, homeowner's liability, theft, and other insurance covering personal property damage and loss, including any deductible provisions of the insurance carried by the Association that may be billed back to him.

In the event of damage or destruction by fire or other casualty to any individual townhouse(s) covered by insurance written in the name of the Association, the Association shall at its discretion bill the prorated amount of the policy deductible to each owner of such damaged property. However, in the event that said damage to more than one townhouse is determined to be caused by any willful or negligent act of any owner, his family, guests, tenants, or invitees, the Association shall bill the amount of the policy deductible to the responsible owner(s). The Association shall have a lien securing the payment of same identical to that provided above in this Section securing the payment of insurance premiums; and subject to foreclosure as above provided.

The Board of Directors shall, upon receipt of the insurance proceeds and with the concurrence of the mortgagee, if any, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstructions or rebuilding of such destroyed building or buildings.

In the event that insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged townhouses in such proportions

as the Board of Directors deem fair and equitable in the light of the damage sustained by such townhouses to make up any deficiency, except that the special assessment shall be levied against all townhouse owners, as established by Article IV, Section 4, above, to make up any deficiency for repair or rebuilding of the common area not a physical part of a townhouse unit.

In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners in such proportions as the Board of Directors deem fair and equitable in the light of damage sustained by such townhouses. Such payments shall be made to all such owners and their mortgagees as their interests may appear.

Notwithstanding the forgoing provisions of this Section 14, it is further provided that the requirement for the maintenance of insurance on a townhouse shall not apply to any townhouse acquired by the Veteran's Administration or Federal Housing Administration under a mortgage foreclosure during the period of ownership by either of said Veteran's Administration or Federal Housing Administration.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

**Section 1. Additions and Alterations.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition, change, or alteration be made to any part of the Properties until written approval has been received from the Board of Directors of the Association, or from an architectural committee composed of three (3) or more representatives appointed by the Board. If an owner wishes to make such additions or alterations, detailed plans and specifications showing the nature, kind, shape, height, materials, and location of the same, must be submitted to the Board of Directors or its architectural committee, pursuant to the rules and regulations of the Association.

#### **Section 2. Compliance**

- (A) In the event that the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.
- (B) In the event that any addition or alteration is made to any part of the Properties before written approval of said Board or its designated committee is received, or in the event that completed additions or alterations differ from the approved specifications for same, the Owner will be required to undo the work or otherwise bring it into compliance at his own expense.
- (C) Responsibility for compliance with applicable building and zoning codes rests solely with the Owner, however possession of a town or county permit does not waive

the need for prior approval from the Board of Directors or the architectural committee, nor does it guarantee approval.

**Section 3. Expiration of Approval.** Any approval granted by the Board of Directors or the architectural committee for any addition or alteration does not extend to a future replacement or change to the approved plan, in whole or in part. Future replacements, additions or alterations may not be undertaken until specific approval has been received.

## **ARTICLE VI**

### **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in equal proportions to such use, excepting only the privacy fences, which are maintained by the Association. However, repair of any damage caused by the willful or negligent act of the Lot Owner, his family, guests, tenants, or invitees shall be billed to the responsible Owner.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rules of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such

arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

## **ARTICLE VII**

### **EXTERIOR MAINTENANCE**

**Section 1. Common Area Maintenance.** The Association shall repair and maintain all of the Common Area Common Area, including the trees, shrubs, grass, walks, drives, and recreational facilities.

**Section 2. Lot Maintenance.**

(A) The Association shall provide maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, and privacy fences. The Association shall maintain the exterior above-ground building surfaces with the following limitations:

Doors: The Association shall have no responsibility for maintenance of doors, screen or storm doors, door fixtures or hardware, door jambs or weatherstripping, except that the Association shall provide for painting of the front door of each townhome and the overhead door of each garage.

Windows: The Association shall have no responsibility for maintenance of windows, screens, window fixtures or hardware.

Patios: The Association shall have no responsibility for maintenance of patios or plantings within the patio areas.

(B) Each Lot Owner shall be responsible for maintaining doors and windows in a condition not to detract from the appearance or value of the Property.

(C) Each Lot Owner shall be responsible for maintenance and repair of all interior surfaces, fixtures, and equipment installed within a Townhouse, commencing at the point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse. The Owner is responsible for maintenance and repair of any improvements to the patio area, including repair of damage caused by utility companies exercising their right of easement. Any exterior maintenance on said lot that is not provided by the Association as specified above shall be the responsibility of the Owner.

**Section 3. Maintenance Costs.** Maintenance provided by the Association shall be a common expense covered by the annual maintenance assessment or, under the provisions established in Article IV, Section 4, a special assessment. However, in the event that the need for maintenance or repair is caused through the willful or negligent

act of any lot owner his family, guests, tenants or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such lot owner is subject.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

**Section 1. Residential Use.** Said property is hereby restricted to residential dwellings for residential use. All buildings or structures erected upon said Property shall be of new construction and no buildings or structures shall be moved from other locations onto said Property and no subsequent buildings or structures other than townhouse apartment buildings, being single family townhouses joined together by a common exterior roof and foundation, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of said Property at any time as a residence either temporarily or permanently.

*(Note: Sections 1.01 thru 1.04 added by amendment. Recorded with the Monroe County Clerk in March, 2012)*

**Section 1.01. Limit on Leasing of Townhomes.** No more than 10% of the Homes in the Association (14 Homes) may be leased at any time. The Board of Directors must approve any lease of a Townhome before the lease is executed.

**Section 1.02. Lease of Entire Townhome Only.** An Owner shall not lease any portion of a Townhome other than the entire Home.

**Section 1.03. Initial Term of Lease of a Townhome.** Lease of a Townhome shall be for an initial Term of no less than 12 months.

**Section 1.04. Owner Responsible for Tenants and Guests.** Any lease of a Townhome shall contain a clause by which the tenant agrees to abide by the Association's Rules and Regulations and this Declaration, and acknowledges his responsibility to insure that his family and guests also abide by these documents. If the tenant, his family or guests, are in violation of the provisions of these documents the Association shall notify the Owner in writing of said violations. If the violation is not corrected within fourteen (14) days after the Owner has received such notice, the Association may pursue any remedies or penalties which it may have pursuant to these documents.

**Section 1.05. Owner Occupancy Before Leasing.** Townhomes must be Owner occupied for a minimum period of five (5) years after the date of purchase before leasing the townhome, and can only lease with Board approval, which approval will not be unreasonably withheld. Townhomes purchased for occupancy by family members are exempt from this leasing restriction. Family members are defined as parents, parents-in-law, children, and siblings of the Unit Owner. The Board of Directors, in its sole discretion, may grant exceptions to the minimum occupancy



period for extenuating circumstances.

**Section 2. Conveyance.** Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

**Section 3. Temporary Structures.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Association or its duly delegated representative to maintain, during a period of construction for maintenance or capital improvement, such temporary facilities reasonably required to support such construction activities.

**Section 4. Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The number of animals that may be kept on any Lot is limited to two (2), only one (1) of which may be a dog. In determining the number of permitted animals on any Lot, any of the following caged or contained animals shall not be counted: fish, birds, reptiles and amphibians.

Uncaged animals of any kind must be leashed and attended when outside the Lot boundary lines or must be under complete voice control and not more than forty (40) feet from the person in control. No animals that present a danger to or disturb the peace of owners and residents shall be kept on any Lot. Owners must comply with Penfield Town Ordinances with respect to the keeping and sheltering of animals on their property.

**Section 5. Business Use.**

(A) **Advertising.** No advertising signs (except two "For Rent" or "For Sale" signs of not more than five square feet, placed in the front window and garage door window), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on such Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Townhouse or any resident thereof.

(B) **Business Activities.** No business activities of any kind whatever shall be conducted in any building or in any portion of said Property until a permit has been issued by a Business Permit Committee composed of three (3) or more members appointed by the Board of Directors. Business permits shall be issued for a limited period and may be renewed, subject to review and approval by the business permit committee. If an owner or resident wishes to obtain a business permit, application must be made pursuant to the rules and regulations of the Association.

Business activities shall be in accordance with the Penfield Town Ordinance and with the following limitations:

- 1) The business shall be conducted only within the dwelling unit, not in any garage or accessory structure.

- 2) The business shall at all times be incidental and secondary to the primary use of the building as a dwelling.
- 3) The business shall be owned and operated by the resident(s) only and it shall have no on-site employee who is not a resident of the dwelling unit.
- 4) The business is of a character such that it does not require or invite employees, customers, clients, students, or other patrons to visit the townhome, nor does it generate more than one visit per business day by a delivery service, the period of each such delivery not to exceed one (1) hour.

(C) Association Business. The foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings of Windsor Square Homes Association I, Inc., a non-profit corporation, incorporated under the laws of the State of New York, its successors, and assigns, in furtherance of its powers and purposes as hereinafter set forth.

**Section 6. Clotheslines, Woodpiles, Trash.** All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Townhouses and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

**Section 7. Use of Property Outside Lot Boundary Lines.** Except in the individual patio areas appurtenant to a Townhouse, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representative. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Property outside the exterior building lines, patio and carport areas, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of lots in Windsor Square, Phase I, and is necessary for the protection of said Owners.

**Section 8. Structural Limitations.** An Owner shall do no act or work that will impair the structural soundness or integrity of any Townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

**Section 9. Antennas.** In accordance with Article V - Architectural Control, and with the rules and regulations of the Association, Owners desiring to erect an antenna must submit plans and specifications to the Board of Directors or its architectural committee prior to installation of any antenna. No antennas except those permitted under the Telecommunications Act of 1996 shall be allowed, placed or maintained upon any portion of the Property, nor upon any structure situated upon the Property.

**Section 10. Non-Discrimination.** No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

## **ARTICLE IX**

### **EASEMENTS**

**Section 1. Construction Encroachments.** Each Townhouse and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Townhouses is partially or totally destroyed, and then rebuilt, the owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse units or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

**Section 2. Blanket Easement: Utilities, Public Safety, and the Association.** There is hereby created a blanket easement upon, across, over and under all of said Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhouses. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and to enter any Townhouse to inspect and to perform the duties of maintenance and repair of the Townhouses or Common Area provided for herein to prevent damage to any other townhouse or the Common Area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter after approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article IX shall in no way affect any other recorded easement on said premises.

### **Section 3. Underground Electrical Service.**

- A. Underground single phase electric service shall be available to 136 residential townhouses on the aforesaid lots and to the recreation building to be constructed on the Common Area, and the metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have such easements as may be required along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service on the townhouse structure.
- B. For so long as such underground service is maintained, the electric service to each townhouse and the recreation building shall be uniform and exclusively of the type known as single Phase, 120/240 volt, 3 wire, 60 cycle alternating current.
- C. Easements for the underground service may be crossed by driveways and walkways provided the Declarant or Builder makes prior arrangements with the utility company furnishing electric service. Such easements for the underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing walkways or driveways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by such easements.

## **ARTICLE X**

### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot

Owners. Any amendment must be recorded.

**Sect. 4. Annexation of Additional Property.** Annexation of additional property shall require the assent of two-thirds (2/3) of the members at a meeting duly called for this purpose, written notice of which shall be sent to all members no less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

The presence of members or of proxies entitled to cast sixty percent (60%) of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds of the members are not present in person or by proxy, members not present may give their written consent to the action taken thereat.

**Sect. 5. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

O'BRIEN PLANNED COMMUNITIES, INC.

By \_\_\_\_\_  
Declarant