

FOR SETTLEMENT PURPOSES ONLY: CONFIDENTIAL MODOCK SPRINGS VALUE PROTECTION PLAN

Background

The New York State Department of Environmental Conservation (“DEC”) completed a remedial investigation, feasibility study, and remediation plan in 2008-2010 to evaluate the release of contamination into Modock Springs. Information relating to DEC’s investigation is available at the Town of Victor’s (“Town”) website. As part of the remedial investigation, feasibility study, and remediation plan the DEC analyzed groundwater samples and tested for soil vapors in the sub-slabs of all of the homes within the Modock Springs aquifer area that was the subject of DEC’s investigation.

In response to the data obtained and evaluated by DEC, four homes were connected to the public water supply, and sub-slab vapor depressurization systems were installed in six homes where DEC determined there was the potential for vapor intrusion. Thirty-three other homes received sub-slab depressurization systems made possible through a grant arranged by New York State Senator Nozzolio. In addition, the DEC, Syracuse Sand & Gravel (“SS&G”), and the Town also made public water available to the remaining homes using private wells in the area. As a result of these actions and in conjunction with their findings, DEC has determined that the Modock Springs aquifer area does *not* represent a risk to the health of the residents of the area.

Despite the determination by DEC that there are no current risks to human health as the result of the environmental condition of Modock Springs, the investigation and the resulting media publicity may have an adverse impact on the resale value of the homes in the area. It is in the best interest of the entire community to take steps to respond to those circumstances with a plan to protect the values of the affected homes.

Home Owners’ Value Protection Assurance

General Provisions for Reimbursement for a Resident’s “loss” upon the sale of a home.

In general, the owners of the fee interest in the residences listed in Schedule A and who otherwise meet the eligibility requirements of this Plan and comply with all the requirements and procedures set out in this Plan are eligible for compensation of a “loss.” For purposes of this Plan, and related documents, such individuals will be referred to as “Residents”. For purposes of this Plan and related documents, the term “loss” is the loss in property value a Resident incurs upon the sale of the Resident’s home caused by or resulting from the environmental condition of the Modock Spring’s investigation area. Determination of “loss,” procedures for making claims for reimbursement of part or all of such “loss,” and other related information are described in this Plan.

In general, for a period of ten (10) years from the date of this Value Protection Plan (“Plan”), Residents who meet the eligibility requirements of this Plan and follow the procedures of this Plan will be reimbursed all or in part for any “loss” in property value upon sale of their homes. The amount of a Resident’s “loss” will be computed as the difference between the fair market

value of the home, as determined according to the process described in this Plan, and the actual purchase price that the Resident receives to sell and/or transfer the home in a *bona fide*, arms length transaction seeking fair market value. (For example, the Resident with a home with a fair market value of \$300,000 that the Resident sells for \$280,000 will have a “loss” of \$20,000, and may seek payment of such “loss” per the process and procedures of this Plan.)

The Town will be responsible for managing the Plan for a term of ten (10) years. In full settlement of Resident’s allegations of “loss”, the Plan will pay the Resident, and any of the other settling Residents listed in the attached Schedule A, who establishes, per the procedures and requirements of this Plan, a “loss” in property value related to the environmental condition of the Modock Spring’s investigation area a settlement amount as follows: (1) if the “loss” is less than or equal to five thousand dollars (\$5,000), the full amount of the “loss” as soon as the money becomes available in the Value Protection Plan Fund (the “Fund”), on a first come first serve basis; (2) if the “loss” is greater than five thousand dollars (\$5,000), the Resident can elect to receive a payment of five thousand dollars (\$5,000) as soon as the money becomes available, on a first come first serve basis; or (3) if the “loss” is greater than five thousand dollars (\$5,000) and the Resident waits and has not elected to receive a five thousand dollars (\$5,000) payment, the Resident will receive at the end of the Plan’s term of ten (10) years the lesser of an amount equal to the full amount of the “loss” or an amount equal to the proportion which the adversely affected owner’s “loss” bears to all such remaining “losses.” See Schedule B of the Release and Covenant Not to Sue (“Release”) for examples.

The Town shall establish a Value Protection Plan Panel that will review applications by eligible Residents per the process and requirements of this Plan. The Value Protection Plan Panel will make recommendations to the Town for payment of such applications.

Once the moneys in the Fund have been distributed to pay for claims made by eligible Residents pursuant to the requirements and procedures of this Plan, no further claims by any eligible Resident or any other person may be made. If, at the end of the ten year term of this Plan, and after making all payments of claims by eligible Residents made for “losses” pursuant to the terms of this Plan, there are any unexpended moneys remaining in the Fund, such unexpended moneys shall be returned to SS&G and the Town in proportion to the contributions such parties made.

Every eligible Resident that desires to participate in this Plan must enter into the Release and Covenant Not to Sue (“Release”), a copy of which is attached, with respect to any and all allegations the Resident may have as part of a global settlement with SS&G, the Town and the State in order to allow the Resident to qualify potentially for compensation in the form of a settlement amount from the Plan. The Release, and this Plan, will not become effective unless at least ninety percent (90%) of the Residents listed in Schedule A have entered into the Release, and judicial approval of the Release has been granted.

Process to establish the amount of the Resident's "loss".

Within 30 days before a home is listed for sale, the Resident shall obtain an appraisal from an independent, licensed real estate appraiser who has inspected the home and who understands that the appraisal will be submitted to the Value Protection Plan Panel for its review. The appraisal shall estimate the fair market value of the Resident's home based on generally accepted criteria for the appraisal of personal residences, *exclusive* of any diminution in the value of the home that may be caused as the result of the environmental condition of the Modock Springs' investigation area or any stigma associated with that environmental condition.

Prior to listing the home for sale, the Resident shall submit the appraisal to the Value Protection Plan Panel for its review and acceptance. If the Value Protection Plan Panel accepts the appraisal and does not require another appraisal, the estimated value in the accepted appraisal shall be deemed the "appraised value" for purposes of this Plan.

The Value Protection Plan Panel at its option may accept the appraisal of the home established in the appraisal provided by the Resident or, in the alternative, it might request a second appraisal of the fair market value based on the same criteria. If the difference between the appraisals is less than 10%, the average of the appraisals should be used to determine the "appraised value" of the home. If the difference between the appraisals is 10% or more, a third appraisal shall be obtained. The three (3) appraisals shall be averaged together to determine the "appraised value" and/or impaired values of the home. All appraisal costs can be added to the total "appraised value" of the home. If a third appraisal is required, the resident will receive an additional \$200 added on to whatever compensation the Resident receives to help defray this cost.

Process to determine compensation for "Loss" and to make a claim on the Fund.

If a Resident sells a home for an amount that equals or exceeds the "appraised value" (as defined above), the transaction will be presumed to be for fair market value for the purpose of this Plan and no compensation from the Fund is due. If the Resident sells the home for an amount that is less than the "appraised value," the Resident's "loss" for purposes of this Plan is the difference in the actual selling price and appraised value that is attributable to the environmental condition of the Modock Springs' investigation area or any stigma associated with that environmental condition. In order to establish the amount of "loss," the Resident must complete and sign an Application in which the Resident affirms that the Resident meets all of the eligibility requirements of this Plan, that the Resident used all reasonable efforts to sell the home for the "appraised value" but was not able to do so, that the sale or transfer was a *bona fide* arms-length transaction, and that the Resident suffered a "loss" as defined in this Plan. In addition, in the Application the Resident will state the amount of "loss" (as defined in this Plan) for which the Resident is seeking reimbursement from the Fund. The Resident also will provide a copy of the appraisal (as described in this Plan), and a copy of the final, written agreement with the Buyer regarding the sale of the home, including the final purchase price.

Notwithstanding anything to the contrary in this Value Protection Plan, Residents listed in Schedule A who sold their house from April 2007 until the effective date of this Plan, but who

were not able to comply with the majority of procedures of this Plan, are listed in Schedule B and must comply with the requirements described in Schedule B in order to be compensated from the Fund.

With regard solely to other Residents who meet the eligibility requirements of this Plan and who sold their homes between April 2007 and the effective date of this Plan, the Value Protection Plan Panel may, in its discretion, recommend reimbursement from the Fund, if in the opinion of the Value Protection Panel, the Resident substantially complied with this Plan's processes for establishing "loss," for determination for compensation for "loss," and making a claim on the Fund. As an example only, an eligible Resident who complied with all of the processes in this Plan but was not able to submit the appraisal to the Value Protection Panel before the sale of the home (because such Panel had not yet been established) should be considered to have "substantially complied" with the processes of this Plan.

Eligibility requirements for Residents:

The Resident must be, or have been, the owner of the home on the official list of qualifying residences listed in Schedule A.

The Resident must have entered into the Release, and the Release must be effective as described above in this Plan.

The Resident's home must be connected to the public water system.

The sale and/or transfer of ownership of a home must be a *bona fide*, arms length transaction.

The Resident must follow all the procedures and submit the documentation required by this Plan to be compensated for a "loss" (as defined in this Plan).

In the case of a sale and/or transfer of a home within or among a family during the ten-year period of this Plan, the Resident's benefits under this plan are transferable to the family member(s) who purchase and/or obtain ownership of the home for the duration of the Plan.

Other Terms of the Plan.

All disputes arising from or relating to this Plan, including but not limited to the interpretation of the terms and conditions of this Plan, the requirements for eligibility, the determination of whether the sale or transfer of a home is a *bona fide*, arms-length transaction and evaluation of appraisals shall be determined by the Value Protection Plan Panel. The determination of the Panel regarding all matters relating to this Plan will be binding, final and non-reviewable.

All requests for payment of benefits under this Plan must be accompanied by appropriate documentation supporting the request for benefits.

This Plan replaces entirely any prior Value Protection Plan, previously approved in draft or final form, by the Town Board of the Town of Victor.

The date of this Plan is April 19, 2011.