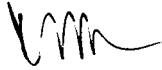


SARATOGA COUNTY CLERK
COUNTY CLERK'S RECORDING PAGE

RECEIPT NO.: 187797

INDEXED BY:



SCANNED BY:

BOOK OF DEEDS

BOOK 01500 PAGE 00752

NO. PAGES 29

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RECORDING:	
RECORDING PAPER FEES	95.00
EDUCATION FEE	5.00
DEEDS - EA-5217	0.00
FILING FEE	0.00
TOTAL:	100.00

*****NOTICE: THIS IS NOT A BILL*****

STATE OF NEW YORK
SARATOGA COUNTY CLERK

RECORDED ON 10/14/98 AT 10:09 AM
IN BOOK DEEDS PAGE 00752 OF 01500

Kathleen A. Marchione
SARATOGA COUNTY CLERK

THIS PAGE IS PART OF THE INSTRUMENT

980332795

DECLARATION OF
PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS,
CONDITIONS, CHARGES AND LIENS

HIGHPOINTE AT MALTA HOMEOWNERS ASSOCIATION, INC.

RJR

LEE J. ROSEN, ESQ.
MALTA RIDGE
DEVELOPMENT CORP.
163 DELAWARE AVE
DELMAR, N.Y.
12054

BOOK 1500 752

**Declaration of Protective Covenants, Restrictions,
Easements, Conditions, Charges and Liens**

Declaration made as to this 4th day of September, 1998, by Malta Ridge Development Corp., a New York Corporation, having an office at 163 Delaware Avenue, Delmar, New York 12054, and Robert Marini Builders, Inc., a New York Corporation, having an office at 16 Petra Lane, Albany, New York 12205.

RECITALS

WHEREAS, Malta Ridge Development Corp. is the owner of certain real property containing 152.2 acres of land located on the West side of Route 9, Town of Malta, County of Saratoga, State of New York; and

WHEREAS, Robert Marini Builders, Inc. is the contract vendee of single family residential building lots contained within the 152.2 acres; and

WHEREAS, all approvals from the Town of Malta to subdivide such acreage into 150 single family residential building lots have been received; and

WHEREAS, the subdivision is more particularly delineated in a Final Plat (hereinafter the "Final Plat") entitled "HIGHPOINTE AT MALTA PLANNED UNIT DEVELOPMENT, US Route 9, TOWN OF MALTA, COUNTY OF SARATOGA, NEW YORK", prepared by L. Sipperly & Associates dated June 27, 1997 and filed on July 9, 1998, in the office of the Clerk of the County of Saratoga, State of New York as Map No. H-269 A thru F; and

WHEREAS, Robert Marini Builders, Inc. desires to provide for the preservation of the values and amenities in said community and for the maintenance of open spaces located within the subdivision, and to this end, desire to subject the real property contained within the subdivision and described in Article 2 to the covenants, restrictions, easements, charges and liens, herein set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Robert Marini Builders, Inc. has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community property and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Highpointe at Malta Homeowners Association, Inc. has been incorporated under the Not-For-Profit Corporation Laws of the

State of New York for the purposes of exercising the above stated functions.

NOW, THEREFORE, Malta Ridge Development Corp., for itself, and its successors and assigns, and Robert Marini Builders, Inc., for itself, and its successors and assigns, declare that the real property described in Article 2 is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE 1

DEFINITIONS

The following words, phrases or terms when used in this Declaration or any Supplemental Declaration unless otherwise defines therein, shall have the meanings set forth below:

- 1.1 "Association" shall mean and refer to Highpointe Homeowners Association, Inc. a New York Not-For-Profit Corporation, incorporated on the 15th day of September, 1998.
- 1.2 "Association Property" shall mean and refer to the lands, improvements and other properties now or hereafter owned by or in the possession of Highpointe at Malta Homeowners Association, Inc.
- 1.3 "Highpointe" shall mean and refer to the planned community developed in the Town of Malta, New York and which may or may not include lands other than the Property.
- 1.4 "Common Properties" shall mean and refer to certain areas of lands shown and designated on the Final Plat as "H.O.A. Parcel".
- 1.5 "Declarant" shall mean and refer to Malta Ridge Development Corp. having an office at 163 Delaware Avenue, Delmar, NY 12054.
- 1.6 "Declaration" shall mean and refer to this document of Protective Covenants, Restrictions, Easements, Conditions, Charges and Liens as it may from time to time be supplemented, extended or amended.
- 1.7 "Sponsor" shall mean and refer to Robert Marini Builders, Inc. a New York Corporation, having an office at 16 Petra lane, Albany, New York 12205 and also referred to as Builder.
- 1.8 "Improvements" shall mean and refer to any thing or device (other than trees and shrubbery less than 2 feet high). The placement of which upon the Property may affect the appearance of the Property including, by way of illustration and not of limitation, any building, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes lines, radio or television antenna, fence, curbing,

paving, wall, trees and shrubbery more than two feet in height, signboards, or any temporary or permanent living quarters (including any mobile home) or any other temporary or permanent improvement to the Property. "Improvement" shall also mean:

- 1.8.1 any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of surface waters to, from, upon or across the Property or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel to, from, upon or across the Property; and
- 1.8.2 any change in the grade of any portion of the Property of more than six inches.
- 1.9 "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article 3.
- 1.10 "Owner" shall mean and refer to the record owner of fee simple title to any Home, including the Sponsor with respect to any unsold Units. Every Homeowner shall be treated for all purposes as a single owner for each Unit held, irrespective of whether such ownership is joint, in common, or tenancy by the entirety.
- 1.11 "Property" shall mean and refer to all land described in Schedule "A" attached to the Declaration and incorporated by reference, and the improvements thereon covered by this Declaration and such additions as may be made thereto from time to time, pursuant to Section 2.2.
- 1.12 "Unit" shall mean and refer to an improved or vacant unimproved lot situated upon the Property, but not upon the Common Property.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1 Property Subject to Declaration. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and is located in the Town of Malta, County of Saratoga, State of New York, and is more particularly described in Schedule "A" attached hereto and made a part hereof.

Section 2.2 Additional Property. The Association by affirmative vote of not less than two-thirds (2/3) of its members, shall have the right to bring Additional Property within the scheme of this Declaration.

The additions shall be made by recording a supplemental declaration which shall extend the scheme of covenants, conditions and restrictions of this Declaration to such Additional Property and thereby subject to such additional property to assessment for its fair share of the expenses of the Association. The extended declaration may contain such complementary additions and modifications of the covenants, condition and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Property that is not inconsistent with the provisions of this Declaration.

Nothing contained in this Declaration, however, or in any recorded or unrecorded plot, map, picture, drawing, brochure or other representation of a scheme of development shall be constructed as requiring the Association to subject any other land now or hereafter owned by it to the provisions of this agreement similar or identical to the provisions of this Declaration.

ARTICLE 3
HIGHPOINTE ASSOCIATION - STRUCTURE:
MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.1 Formation of Highpointe at Malta Homeowners Association, Inc. Pursuant to the Not-For-Profit Corporation Law of New York, Highpoint Homeowners Association, Inc. has been formed to own, operate and maintain the Association Property, to enforce the covenants, conditions, and restrictions set forth in the declaration and to have such other specific rights, obligations, duties and functions as are set forth in the Declaration and in the Certificate of Incorporation or By-laws of the Association, as the same may be amended from time to time. The provisions of the Certificate of Incorporation or By-Laws of the Association may not conflict or be inconsistent with the provisions of the Declaration, and may nor be amended in any way which would so conflict without also amending the declaration. Subject to the additional limitations provided in the Declaration and the Certificate of Incorporation, the Association shall have 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 3.2 Membership. The Association shall have one class of members. Only Unit owners shall be members. Each Unit owner upon the date that title to the Unit is transferred to said Unit owner shall be deemed automatically to be a member and there shall be no other qualification for membership. Membership as a Unit owner shall terminate when such owner transfers title to the Unit. In the event a unit is owned by more than one person, the owners of such Unit shall be deemed to have one (1) membership interest,

i.e., the owners of each Unit shall be collectively considered one (1) Member of the Association.

Section 3.3 Voting Rights of Members. Each member shall have one vote in the Association. Directors shall be elected by a plurality of the votes cast at a meeting of Members by the Members entitled to vote in the election. In addition, whenever any corporate action, other than the election of directors, is to be taken under this Declaration by vote of the Members, it shall, except as otherwise required by the Certificate of Incorporation, this Declaration or the By-Laws, be authorized by a majority of the votes cast at a meeting of Members by the Members entitled to vote therein. Except as provided in the preceding sentence, any reference to corporate action at a meeting of Members by "majority vote" or "two-thirds vote" shall require the action to be taken by such proportion of the votes cast in favor of any such action shall be at least equal to the quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

Section 3.4 Assigning Right to Vote. Any Member of the Association shall be entitled to assign his or her right to vote, by power of attorney, by proxy or otherwise, to any other Member, provided that such assignment is made pursuant to the By-Laws of the Association.

Section 3.5 Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation and By-Laws of the Association and applicable law, as it deems advisable, in regard to proof of age, proof of membership, evidence of right to vote, the appointment and duties of inspectors of votes, registration of members for voting, voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.6 Directors: Selection and Term. The business and affairs of the Association shall be managed by a Board of Directors. There shall be no less than three nor more than nine directors. Directors shall be selected as follows:

- (a) Robert Marini Builders, Inc. hereby appoints Robert Marini Sr., Robert Marini Jr. and Steven Marini To the first Board of Directors of the Association (the "Appointed Directors"). This first board shall hold office and exercise all powers of the Board of Directors until the sooner of: (1) the fifth annual meeting of the Association members, or (2) the annual meeting of the Association members immediately following the date of the closing and transfer of title to 75% of the homes or lots. The first meeting of the Board shall be held within six months of the first closing.

- (b) Following the term of the first Board of Directors of the Association as provided in (a) above Appointed Directors shall be replaced by directors elected in accordance with the procedures set forth in the By-laws of the Association.
- (c) Elected Directors shall serve for two-year terms and shall be voting members of the Association.

Section 3.7 Vacancies. Any vacancy of an Appointed Director shall be filled by appointment by Sponsor. Any vacancy of an Elected Director shall be filled at the next meeting of the Board of Directors by the affirmative vote of a majority of the remaining Elected Directors or by a sole remaining Elected Director, or, if not previously so filled, shall be filled at the next succeeding annual meeting of the members. Any Director appointed or elected to fill a vacancy shall serve as such until the expiration of the term of the vacated position.

Section 3.8 Removal of Directors. Sponsor may, at its discretion, remove any Appointed Director at any time and may appoint the successor to fill the unexpired term of the removed Director.

At a duly called meeting of Members, the Members may, by the affirmative vote of two-thirds of all Members, remove any Elected Director (or Director appointed to fill the vacancy of an Elected Director) from office. The Members may thereafter elect the successor to fill the unexpired term of the Elected Director.

Section 3.9 Quorum. At all meetings of the Board of Directors, two-thirds of all Directors shall constitute a quorum for the transaction of business. Except in cases in which it is by statute, the Declaration, the Certificate of Incorporation or the By-Laws of the Association otherwise provided, a vote of majority of those in attendance at a duly constituted meeting shall be sufficient to elect and pass any measure.

Section 3.10 Directors: Powers and Duties: The Board of Directors may exercise all of the powers of the Association, except such as are by statute, the Declaration, the Certificate of Incorporation or the By-Laws of the Association conferred upon or reserved to Members or the Sponsor.

Among the duties of the Board of Directors shall be the following:

- (a) To provide for the maintenance and operation of all Association Property and to adopt and publish rules and regulations governing their use.

- (b) To levy, assess and collect the assessments provided for in the Declaration.
- (c) To maintain the Association books and records in accordance with generally accepted accounting principles and procedures.
- (d) To prepare the annual operating budget of the Association and to submit the same to the Members.
- (e) To protect the rights of Members by enforcing the covenants, conditions and restrictions set forth in the Declaration.
- (f) To otherwise enforce and carry out the provisions of the Declaration.

Section 3.11 Annual Meetings. The first annual Association meeting of members shall be held within 30 days after the first meeting of the Board of Directors of the Association. Thereafter, annual meetings shall be held on the anniversary date thereof in each succeeding year; except that if such date is a Saturday, Sunday or legal holiday, the annual meeting shall be held on the next succeeding business day.

Section 3.12 Additional Control by Sponsor. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor shall continue to own 10 or more homes or lots, but in no event later than eight (8) years from the closing of title to the first Unit, the Members and the Board of Directors of the Association shall not, without Sponsor's prior written consent:

- (a) make any addition, alteration or improvements to the common properties (or to any Unit), the foregoing not to include necessary and maintenance work;
- (b) assess any charges for the creation of, addition to, or replacement of all or part of a reserve, contingency or surplus fund;
- (c) hire any employee in addition to the employees referred to in Sponsor's no-action offering literature of the Association;
- (d) enter into any service or maintenance contract for work not covered by contracts in existence on the date the said plan is declared effective;
- (e) borrow money on behalf of the Association; or
- (f) levy a special assessment.

Irrespective of the number of homes or lots owned by the Sponsor, the Members and Board of Directors of the Association shall not, without the prior written consent, take any action which impairs Sponsor's sales program or continued use of the property subject to this Declaration in connection with such program. The provision of this Section 3.12 shall not be amended without the written consent of the Sponsor.

Section 3.13 Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Unit owner for any mistake of judgement, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board of Directors against all liability to others arising from their acts as, or by reason of the fact that such person was, a member of the Board of Directors. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association within the scope of their authority. It is also intended that the liability of any Owner arising of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such percentage equal to the fraction, the numerator of which is the number of lots owned by such Owner and the denominator of which is the aggregate number of lots in the Association. Every agreement made by the Board of Directors or by the managing agent on behalf of the Association shall provide that the members of the Board of Directors, or the managing agent, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners), and that any liability of an Owner thereunder shall be limited as aforesaid.

ARTICLE 4

ASSOCIATION PROPERTY RIGHTS AND POWERS

Section 4.1 Dedication of Association Property. The Sponsor shall convey or cause to be conveyed to the Association, certain portions of the Property, with or without improvements thereon. The Association must accept any such conveyance made or caused to be made by the Sponsor provided such conveyance is made without consideration. The Association may also, from time to time, acquire or lease certain other portions of the Property or other properties for the use and enjoyment of its Members. Properties, with improvements, if any, conveyed to, acquired by, or in the possession of the Association shall hereinafter be referred to as "Association Property". The Sponsor may retain the fee title to those portions of the Property until such time as, in the opinion of the Sponsor, the Association is able to maintain the same.

Section 4.2 Right and Easement of Enjoyment in Association Property. Every Member shall have a right and easement of enjoyment in and to all Association Property. Except if restricted pursuant to Section 4.6 hereof. All such rights, easements and privileges shall be

subject, however, to the right of the Association, through its Board of Directors, to:

- (a) Adopt and promulgate reasonable rules and regulations pertaining to the use of the Association Property.
- (b) Promulgate rules and regulations relating to the operation and maintenance of the Association Property.

Section 4.3 Right to Contract. The Association may contract with any person, corporation, firm 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 local associations or trusts, condominiums, cooperatives and other homeowners' or residents' associations, both within and without the Property.

Section 4.4 Hearing Procedure. Where the Board of Directors is required in accordance with the provisions of the declaration to hold a public hearing prior to taking a certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.4 (the "Hearing Procedure") shall be followed. The hearing on the proposed action (the "Proposal") shall be held not less than 30 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be posted on the Property, one such Notice to be posted for each Unit in a conspicuous public place convenient to such Unit for not less than 20 days prior to the date of the Hearing. The Notice shall also be published once in a newspaper of general circulation in Malta not less than 10 nor more than 20 days prior to date of Hearing. The Notice shall describe in detail the Proposal, the Hearing Procedure set forth herein as well as any other procedures applicable thereto as may be imposed by other Sections of the 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 the Property. All Members 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 4.5 Acquisition, Conveyance, Improvements and Changes in Use of Association Property. Subject to the limitations set forth in Subparagraphs A through C below, the Board of Directors of the Association, on such terms and conditions as it deems appropriate, may authorize:

- (a) the acquisition, through purchase, gift lease or any combinations thereof, of land or Improvements or any combination thereof, for the use as an Association facility (subject to the obligation of the Board of Directors to accept a conveyance from through the Sponsor as set forth in Section 4.1 hereof);
- (b) the transfer, conveyance, donation, lease or other disposition of Association Property or portion thereof;
- (c) the construction of Improvements on Association Property or the making of additions, modifications or alterations to, or the demolition of, Improvements on Association Property.
- (d) The change in the use of any Association Property.

A. Upon the affirmative vote of the Board of Directors proposing:

- (a) a transfer, conveyance, donation, lease or other disposition of an Association Property (a "Transfer") the effect of which will be to deprive or substantially limit the use and enjoyment of such Association Property by some or all Members; and/or
- (b) a change in use of Association Property (including, without limitation, construction of Improvements such as to convert passive open space to active use), which change in use will be a material alteration or abridgement to the use of such Association Property (hereinafter referred to as "Material Change in Use");

The Board of Directors shall hold a hearing on the Proposal in accordance with the Hearing Procedure set forth in Section 4.4 hereof. In addition to such Hearing Procedure, not less than 20 days prior to the date of the Hearing, the Board of Directors shall cause a copy of the Notice to be mailed or delivered to all Members. Not less than 15 nor more than 45 days after the Hearing the Board of Directors shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three-fourths of the entire Board of Directors shall be required for approval; provided, however, that any Material Change in Use shall be in accord with Section 9.9 of this Declaration.

- B. If a proposed acquisition of land or improvements or the construction of Improvements or the making of an addition, modification or alteration to, or the demolition of an Association Facility, will result in the change of the Maximum Assessment, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedure set forth in Section 4.4, and the provisions of Section 5.5 or Section 5.6 as the case may be, prior to finally authorizing such action.

C. Prior to:

- (a) the making of an addition, modification or alteration to the Association Property, or
- (b) the demolition of any building or other structure an Association Property, or
- (c) the authorizing of a material change in Use of Association Property,

the Board of Directors shall first secure a majority vote of the Members approving such measure.

Section 4.6 Use and Maintenance of Certain Association Property. Notwithstanding any other provision herein to the contrary, if the Sponsor determines that any portion of the Property proposed to be conveyed to the Association will primarily benefit one or more Owner(s) because of proximity to and principal use of such portion of the Property, or if the Board of Directors of the Association so determines with respect to existing or proposed Association Property or Properties, the Sponsor or Board of Directors after holding a hearing thereon pursuant to Section 4.4 hereof, may either:

- (a) formally restrict or limit the use of such Association Property(ies) to such Owner(s) and require that maintenance and operation of such Association Property(ies) and the cost thereof be the direct responsibility of such Owner(s), provided, however, that no such determination with respect to any Property(ies) shall be valid unless a similar nature or type and which primarily benefit one or more Owner(s) in a substantially similar manner; or
- (b) without formally restricting or limiting the use of such Association Property(ies) to such Owner(s), provide that maintenance and operation of such Facility(ies) be the direct responsibility of such Owner(s), but only if each such owner consents in writing thereto.

Section 4.7 Rights to Borrow and Mortgage. Except as provided in Section 3.12, the Association may borrow funds and in conjunction therewith may mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with lenders shall be determined by the Board of Directors acting in its absolute discretion, subject only to the ability of the Association to repay such borrowed funds from assessments.

Section 4.8 Right of Association to Use Utility Lines. For the purpose of maintaining, improving or repairing Association Property, the

Association may use water or electricity from outdoor taps or sockets located anywhere on the Property. Promptly after each such usage, the Association in writing shall so notify the Owner to occupant of the Unit upon which the tap or socket is located, setting forth the date of such usage, as well as any other pertinent information. The Association shall reimburse the Owner or occupant of the Unit upon which such tap or socket is located, for that portion of the Owner's or occupant's charges for water or electricity attributable to the use by the Association, such proportionate allocation to be as the Association reasonably determines.

Section 4.9 Environmental Consideration. In carrying out its responsibilities to enforce the provisions of the Declaration, the Board of Directors of the Association shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may in its discretion establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10 Non-Discrimination by Association. Neither the Association nor any officer, director, agent, committee, member, or committee member or employee thereof shall make unavailable or deny the occupancy or use of any Facility to any person or person(s) or take any other actions which discriminate on the basis of race, religion, color, sex, sexual orientation or national origin. This covenant shall run with the land and shall remain in effect without any limitation in time.

ARTICLE 5

ASSOCIATION - ASSESSMENTS

Section 5.1 Imposition, personal Obligations Lien. Each Owner of a Unit (other than the Declarant) on becoming the Owner by the acceptance of a deed or otherwise, whether or not the deed or any other instrument pursuant to which title is obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges ("Maintenance Assessments"),
- (b) special assessments for capital improvements ("Special Assessments"), and
- (c) property tax assessments for all real property taxes on the Common Areas, if not included in the Maintenance Assessments, together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from their Due Dates(s) as described in Section 5.4 below. Each Assessment (or installment payment thereof), together with such interest thereon

and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Unit or underlying portion of the Property against which the Assessment is made and shall also be the personal obligation of the Owner of such Unit on such Due Date.

Section 5.2 The Sponsor's Obligation for Association Assessments. After Association charges have been levied on one or more owners who have closed title to their homes or lots, the Sponsor's obligation for Association charges for unsold homes or lots shall be the lesser of the following:

- (a) The common charges levied on unsold units or lots as projected in the annual Budget of the Association, as the same may be amended from time to time; or
- (b) The difference between actual Association expenses as provided for in the Association's budget, and the Association charges levied on owners who have closed title to their homes or lots.

Section 5.3 Annual Rate and Maximum Rate of Maintenance Assessment. The Maintenance Assessment for each Unit shall be the Annual Rate for the entire Association as fixed by the Board of Directors divided by the number of Units brought within the scheme of the Declaration (150).

The Annual Rate shall be determined for each fiscal year by the Board of Directors, but shall not exceed in any fiscal year the maximum Annual Rate ("Maximum Rate"), likewise to be determined by the Board of Directors each fiscal year.

The Annual Rates for each fiscal year shall be set forth in the Assessment Notice referred to in Section 5.4 below.

Section 5.4 Establishment of Maintenance Assessment; Assessment Notice. For each fiscal year, prior to commencement thereof, based on the Association's budget for such year and in accordance with Section 5.3 above, the Board of Directors of the Association shall:

- (a) fix the Annual Rate or Rates for such fiscal year,
- (b) fix the Maintenance Assessment for each unit;
- (c) establish the due date or dates ("Due Dates") for payment of the Maintenance Assessment or installments thereof; and
- (d) so notify the Owner of each Unit in writing (the "Assessment Notice").

Section 5.5 Commencement of Obligation to Pay Assessments on Specific Unit. With respect to each Unit, the current Owner thereof shall become initially liable for the payment of

Assessments commencing on the first day of the month following the earlier of:

- (a) the date the Unit is occupied, or
- (b) the date title to said Unit is initially transferred to the Owner.

If such obligation with respect to a Unit commences at a time other than the beginning of the Association's fiscal year, the annual Maintenance Assessment due for the balance of such fiscal year shall be pro-rated accordingly.

Section 5.6 Special Assessment for Capital Improvements. In addition to the Maintenance Assessments, and in accordance with the provisions of this Section 5.6, the Board of Directors may levy in any fiscal year a Special Assessment, payable in that year or in the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including, without limitation, the construction, reconstruction or replacement of, or repairs of a capital nature to, Association Property. Before levying such Special Assessments, the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedures set forth in Section 4.4 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall vote on the proposed Special Assessment or a Special Assessment of a lesser amount, and the affirmative vote of not less than eighty (80%) percent of the entire Board of Directors shall be required for approval. Each Unit shall pay that portion of a Special Assessment which bears the same ratio to the total amount of the Special Assessment as that Unit's Maintenance Assessment for such fiscal year bears to the total of the Maintenance Assessments levied by the Association for such fiscal year, such ratio to be determined for each Unit as of the date such Special Assessment is approved by the Board of Directors. The Board shall establish a due date or due dates ("Due Dates") for payment of each Special Assessments or installments thereof and shall notify each Owner thereof in writing at least 30 days prior to its Due Date or the first such Due Date if Payable in installments. Each notice shall set forth the total amount of such Special Assessment, the amount to be paid by the Owner, and the manner in which said Owner's share was determined.

Section 5.7 Effect of Non-Payment of Assessment. If a Maintenance of Special Assessment or Installment payment thereof with respect to a Unit, is not paid by the Due Date established pursuant to Section 5.4 or Section 5.6 hereof for the payment of such Maintenance or Special Assessment, or installment payment, then such payment shall be deemed delinquent and shall (together with interest, at the prime rate set forth in the Wall Street Journal plus three 3% per annum from the Due Date, penalties or cost of collection including attorney's fees as may be fixed from

time to time by the Board of Directors) be a lien on the Unit in which the Unit is situated. In addition to such lien, the then Owner of the Unit may be held personally liable for the payment thereof (including interest, penalties and costs of collection). Such personal liability with respect to delinquent payment shall remain the personal liability of the then Owner until paid and shall be required to be assumed by any successors in interest to the Unit. The Association may bring legal action for payment against the Owner(s) personally liable or may foreclose on the lien as it deems advisable.

Section 5.8 Use of Funds. The Assessments shall be used exclusively for the benefit of the Members of the Association and the Owners of the Property, to promote the recreation, health, safety and welfare of said Members and Owners, to preserve, protect and enhance the value of the Association Property and the Property, and to insure the enjoyment of rights, privileges and easements with respect to the Association Property.

Section 5.9 Right to Maintain Surplus and Reserves. The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of Assessments, or otherwise, and may allocate such funds to any reserves for repair or replacement of the Association Property or additions thereto (which the Association, through its Board of Directors, may establish and maintain) or carry such sums forward as surplus. The Association shall not be obligated to apply any such surpluses to the reduction of the Maintenance Assessment 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 Certificate. Upon the written request of an Owner, lessee, mortgagee or occupant or any prospective Owner, lessee, mortgagee or title insurer of a Unit, the Association shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Assessment Certificate") signed by an officer or designee of the Association setting forth with respect to such Unit or Units, as of the date of said Certificate, (i) whether the Assessments, if any, have been paid, (ii) the amount of such Assessments, including interest, penalties and costs, if any, due and payable as of such date and (iii) any other amounts owing to the Association. When the request for the Certificate is made by a person or entity other than the Owner, a copy of the Certificate shall also be sent to the Owner. A reasonable charge as determined by the Board of Directors, may be made for the issuance of such Certificate. Any such Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and

any bona fide purchaser or new lessee of, or lender of, or title insurer of, the Unit or Units in question.

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 mortgages or mortgage now or hereafter placed upon any unit or other portion of the Property subject to said 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 Unit or other portion of the Property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such Unit or other portion of the Property from any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessments.

Section 5.12 Association Funds and Assets - No Right to Assign, Encumber, Hypothecate or Pledge. Although all funds and other assets of the Association, and any profits derived therefrom, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, encumber, hypothecate, pledge or in any manner transfer his membership or interest in or to said funds or assets, except as appurtenance to his Unit. When an owner of a Unit shall cease to be a member of the Association by reason of divestment of ownership of said Unit, by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

ARTICLE 6

CONTROL

Section 6.1 Control by Association. Subject to the provisions of Section 6.2, enforcement of the Declaration with respect to control over any change in use or any additions, modifications, or alterations, to any Improvement on or portion of the Property shall be the responsibility of the Association.

Section 6.2 Rights of Sponsor. Notwithstanding anything to the contrary contained herein, the Sponsor, and their designees, contractors, agents, employees, successors and/or assigns, shall at all times have the absolute right to make improvements, additions, exterior modifications or alterations to any Improvements or any proposed change in the use of a Unit or any other portion of the Property (including Association Property), including, but not limited to the installation of infrastructure improvements, the construction of dwelling units and accessories thereto, etc., without securing the prior approval of the Association. The provisions of this Section 6.2 shall not be amended without the prior written consent of the Sponsor.

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ARTICLE 7
GENERAL COVENANTS AND RESTRICTIONS

Section 7.1 Maintenance. All exterior surfaces and lawns requiring periodic painting, cleaning, washing, mowing, fertilizing or other maintenance shall be promptly given such required maintenance or repair for the preservation of the values and aesthetics of the community. All exterior painted surfaces, including but not limited to doors, door frames, garage doors, garage door frames and any other painted surface shall be as nearly the same as existed at the time of original conveyance by the Builder. It being the intent of this paragraph that the original architectural design and color patterns used in the construction of the homes within the community shall not be materially altered.

Section 7.2 Advertising and Signs. Except for signs erected by or with the permission of the Builder in connection with the development, sale or lease of homes, no additional sign of any kind shall be placed for display to the public view on any home, any lot, in any window of any home or other portion of the property.

Section 7.3 Animals. No kennel or stables shall be maintained on a lot and no livestock or farm animals shall be allowed on a lot. Dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.

Section 7.4 Prohibitions. The following are prohibited:

- a) No permanent receptacles shall be stored outside of the home or garage. Receptacles may be placed at curbside for refuse collection, but not more than twenty-four (24) hours prior to the collection time and must be removed from curbside after collection by the end of such day and stored out of sight from any street.
- b) There may not be maintained on any portion of a lots any type of clothes or wash line
- c) No air conditioning units shall be placed in the windows or walls of any home where such is visible from the street
- d) No outside television or radio satellite dish larger than 24 inches in diameter or antenna, for any transmission or receiving purposes may be erected on any portion of a lot or home
- e) Basketball hoops and backboards shall not be placed nearer to the street than the front corner of the garage.
Separately paved areas for basketball hoops and tennis shall be placed behind the home and screened from the street and adjacent homes
- f) No above ground swimming pools shall be permitted to be placed on any lot unless placed behind the home and screened from the street and adjacent homes.

Section 7.5 Protective Screening and Fences. No fence shall be maintained about a lot except as follows:

- a) A properly maintained wood picket fence or hedge no to exceed six (6) feet in height on the sides behind the structure and at the rear of the premises;
- b) A patio, deck or pool enclosure at the rear of the structure not to exceed five (5) feet in height;
- c) A front courtyard entry fence or hedge not to exceed four (4) feet in height and enclosing no more than 200 square feet;
- d) A chain link fence having a black vinyl coating on all post, post rails and fencing not to exceed five (5) feet in height on the sides behind the structure and at the rear of the premises. Privacy slats for chain link fence is prohibited.

Section 7.6 Storage of Materials. No lot shall be used for the storage of building materials, except as stored by the Builder during construction, or in conjunction with an authorized addition to the home, automobiles or automobile parts, nor shall any nuisances be maintained on any lot which may be in any manner dangerous or noxious or offensive to the neighboring inhabitants. No lot or portion thereof shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste which shall not be kept in sanitary containers. No lot or portion thereof shall be used or maintained for the storage of landscape materials such as soil or mulch.

Section 7.7 Residential Use. The lots shall be used for residential purposes only and only one residence shall be erected and maintained for the occupancy of not more than one family. No mobile home, neither temporary or permanent, modular home, tent or shack shall be permitted to be used on any lot at any time as a residence either temporarily or permanently. No business, professional or commercial building may be erected on any lot or any business, professional practice or commercial enterprise may be conducted from any home, except as such may be conducted entirely from within the home and which would not result in an inordinate amount of traffic or parking of vehicles in or around the home, and there shall be no exterior indication of such business within the home or any variation from the residential appearance of the home. Further, there shall be no signs indicating the existence of such business placed in any window of such home or anywhere on the exterior of the home or lot. However, prior to the transfer of title by the Builder to all of the lots, the Builder and/or sales agent may use one (1) or more lots for a sales office and/or construction office, either or both of which may be a "trailer".

Section 7.8 Garages. Garages may be used for vehicular parking and storage of personal property only and may not be modified for any other use. Occupants of homes shall be required, to the extent practicable, to park motor vehicles owned by them, or under their control, in the garage and shall cause the garage door

or doors to be kept in a closed position, except for ingress and egress, whenever possible.

Section 7.9 Snowmobiles. Except for such vehicles and equipment used in connection with the construction or sale of Lots and/or Homes by the Builder, the following shall not be permitted to remain overnight on any lot or other portion of the property:

- a) Any oversized, commercial and/or unlicensed vehicle which cannot fit into the garage of the home and
- b) Any recreational vehicles, including , but not limited to, all terrain vehicles, motor bikes, motorcycles, minibikes, snowmobiles, boats and boat trailers, campers or other such vehicles, unless contained within the garage of the home.

Section 7.10 Additions and Alterations. Any alteration and/or addition commenced on any home or lot shall be completed not later than ten (10) months after the date of commencement of such alteration and/or addition.

Section 7.11 Minor Violations. Minor violations of the building setback, sidelines may be waived at any time by the Builder and such action on the part of the Builder shall be binding upon, and be considered the act of all Owners.

Section 7.12 Violation or Breach. The violation or breach of any of the covenants or restrictions contained herein shall give the Builder or any owner the right to obtain an injunction or court order or any other legal remedy to abate and or remove, at the expense of the violation Owner, the thing or condition that may be or exists thereon, contrary to the intent and meaning of the provisions hereof. The persons so entering shall not be liable or thereby deemed guilty for any trespass, for such entry, abatement and removal.

Section 7.13 Right to Modify. The Builder reserves the right to modify, and or amend any of the terms of the declaration of covenants, easements and restrictions as deemed necessary as long as the Builder has any unsold Lots or Homes. After such time as the Builder no longer has any unsold lots or homes, this Declaration may be amended by the Association in accordance with Section 9.6 below.

Section 7.14 Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Unit or other portion of the Property.

Section 7.15 Depositing Ashes, Snow, Ice, Stones, Sticks, Et Cetera Upon the Roads. No owner or resident shall deposit or throw loose stones in the gutter or grass adjoining a road, or shall

deposit or throw upon a road, ashes, papers, snow, ice, stones, sticks or other rubbish.

Section 7.16 Association's Consent to Amend Maps. The Association consents that any maps filed with the Town of Bethlehem or County of Albany may be amended accordingly without any further consent of the Association will, if requested, execute, that the Association will execute, acknowledge and deliver, without charge, a deed or deeds reconvening to The Sponsor, its successors and, assigns, any lands conveyed to the Association so that map may be delivered to the Association.

Section 7.17 Reservation of Easements, Licenses, Rights and Privileges by Sponsor. The Declarant and the Builder and their respective successors and assigns reserve the easement licenses, rights and privileges of a right-of-way in, through, over, under and across the property subject to this Declaration, for the purpose of completing their work in the development of said property and, towards this end, reserve the right to grant and reserve easements and rights-of-way in, through, over, under and across said property for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electricity and other utilities and for other materials or services necessary for the completion of such work. Declarant and the Builder and their respective successors and assigns reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the street and roads or other areas of said property. Declarant and the Builder and their respective successors and assigns reserve the right to continue to use the Common Properties and any sales office or pavilions, model homes, signs and parking spaces located on the said property, to market homes constructed or to be constructed thereon. The conveyance of any Association property by the Declarant shall be, and hereby is, made expressly subject to the foregoing reservations. This paragraph shall not be amended without the express written consent of Declarant and the Builder.

Section 7.18 Storage Sheds. Storage sheds shall be permitted provided that they do not exceed 252 square feet and one story in height. All storage sheds shall be of wood construction with either wood or vinyl siding and shingled roof so as match the color of materials used in constructing the exterior of the home. All metal and/or vinyl sheds are prohibited.

Section 7.19 No Build/No Cut Zones. "No Build/No Cut" zones have been established for lots 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67 Bayberry Drive as shown on the Final Plat. These zones are meant to provide a buffer between the Property and abutting properties. No clear cutting will be allowed in these zones and no live trees over three inches in diameter as measured at the base will be allowed to be cut. No building,

including driveways, sheds, or any other type of construction will be allowed in the "No Build/No Cut" zones.

ARTICLE 8

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 9.1 Declaration Runs With the Land. Except as otherwise provided in this Section 9.1 each person or entity acquiring an interest in a Unit or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and for him, her itself, and for her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, and also covenants and agrees to incorporate the Declaration by reference in any deed, lease or other instrument further transferring an interest in such Unit or other portion of the Property.

Section 9.2 Enforceability. The provisions of the Declaration shall bind the Property and shall be constructed as running with the land and shall inure to the benefit of and be enforceable by the Association (the Association being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors, and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 9.3 No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or similar violation occurring prior or subsequent thereto. No liability shall attach to the Association (or to any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 9.4 Obligation and Lien for cost of Enforcement by Association. If the Association successfully brings an action to extinguish a violation or otherwise enforce the provisions of the 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 an Owner, such cost shall also be a lien upon the Unit or portion of the Property owned by such violators, if any.

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Section 9.5 Inspection and Entry Rights. An agent of the Association may at any reasonable time or times enter upon such Unit or other portion of the Property to inspect the Improvements thereon for the purpose of ascertaining whether the maintenance, construction or alternation of structures or other Improvements thereon comply with rules and regulations issued pursuant thereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Association determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is detrimental or potentially detrimental to persons or property or obscures the view of street traffic, the Association shall notify the owner of the Unit who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within seven (7) days after such notice is given, then the Association may take such remedial action to rectify the condition. The cost of such work shall be assessed against the Unit upon which the services are performed and shall be added to and become part of the annual maintenance and shall assessment or charge, it shall be a lien and obligated of the owner in all respects, except that payment for any work performed pursuant to this section, shall be due upon presentation to the Owner, either in person or by regular mail, or the Association's invoice therefor. Default in prompt and full payment within ten (10) days from the date the invoice is sent, shall entitle the Association to twelve (12%) percent per annum interest on the amount due from the date of the invoice, which interest shall also constitute a lien upon the Unit and obligation of the owner thereof.

Section 9.6 Amending. Except as otherwise specifically provided for herein, the Board of Directors on its own initiative, or pursuant to a written petition signed by not less than 25 percent of the total Members of the Association, may propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 5.4 herein for the purpose of considering such proposed amendment. In addition to the Notice required to be given pursuant to such Section 5.4, notice of the Hearing shall be mailed or delivered to all Members not less than 10 nor more than 30 days prior to the date set for such hearing.

Not less than 30 nor more than 45 days after the Hearing, the Members 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 Directions shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be

mailed or delivered by the Board of Directions to all Members not less than 14 days prior to the date or dates set for the canvass thereof.

The affirmative vote or not less than two-thirds of the total number of Members shall be required for approval of a proposed amendment.

Any approved amendment to the Declaration shall become effective only when an instrument describing such amendment has been duly recorded in the Office of the Clerk of the County of Saratoga and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such amendment. Such instrument need not contain the written consent of the required number of Members 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 9.7 Duration. Except as otherwise provided for herein, the Declaration shall continue with full force and effect (unless terminated by an amendment to this Section 9.7 pursuant to Section 9.6 herein) for a period of period of thirty (30) years from the date these covenants are recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years unless the Board of Directors of the Association shall hold a Hearing in accordance with Section 4.5 herein for the Purpose of considering the termination of the Declaration. In addition to the Notice required to be given pursuant to such Section 4.4, notice of the hearing shall be mailed or delivered to all Owners, not less than 10 nor more than 30 days prior to the date set for such Hearing.

Not less than 30 nor more than 45 days after the Hearing, the members and 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 Members, not less than 14 days prior to the date or dates set for the canvass thereof.

Not less than a majority of the total number of Members voting for such termination, shall be required for termination.

Section 9.8 Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of the Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction or interpretation shall be binding as to all persons or property benefited or bound by the provisions thereof.

The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and

enforcement of the provisions of the Declaration. In so adopting and promulgating such rules and regulations, and in making any findings, determination, ruling, or orders or in the issuance of permits, authorizations or approvals, the Association shall take into consideration the best interests of the Owners and Members and of the Property to the end that the value and amenities of the Property shall be preserved and maintained.

Section 9.9 Conflict with Municipal Laws. The Declaration shall not be construed as permitting anything prohibited by the applicable zoning laws, or any other applicable laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease and no action may be taken hereunder which would so violate such applicable zoning laws, other laws, ordinance, rules, regulations or restrictions. In the event of any conflict, the more restrictive provision shall be deemed to govern and control or in the event of a direct contradiction or incompatibility, the applicable law ordinance, rule, or regulation of the governmental entity shall control.

Section 9.10 Invalidity of 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 9

General

Section 10.1 Heading and Caption. The headings and captions contained in the Declaration are for convenience only and shall not effect the meaning or interpretation of the content thereof.

Section 10.2 Notice. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postage prepaid, or otherwise delivered to the last know address of the person who appears as Member or Owner on the records of the Association.

Section 10.3 Right of The Sponsor to Transfer. Notwithstanding any other provision herein to the contrary, the Sponsor shall at all times have the absolute right to transfer, convey and assign any of their rights, benefits and obligations, hereunder to third parties, and upon such transfer, conveyance or assignment the successor shall have all of the right and be subject to all of the duties of the transferor as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions of this Declaration, to the same extent as if such successor had been an original party to this Declaration. Any such transfer shall be accepted by the successor in a written agreement pursuant to which such successor shall expressly assume all the duties and obligations of the transferor, however, a failure to

accept in writing shall in no way alter the obligation of the successor to be bound by all provisions of the Declaration.

Section 10.4 Right of Association to Transfer.

Notwithstanding any other provision herein to the contrary, the Association, by affirmative vote on not less than two-thirds of its Board of Directors, shall at all times have the absolute right to transfer, convey and assign its right, title and interest under the Declaration to any successor not-for-profit corporation, trust or governmental entity and upon such assignment the successor corporation, trust or governmental entity shall have all the rights and by subject to all the duties of the 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, trust or governmental entity had been an original party to this Declaration, and all reference herein to Board of Directors shall refer to the Board of Directors, Trustees or governing board of such successor corporation, trust or governmental entity. Any such assignment shall be accepted by the successor corporation, trust or governmental entity under a written agreement pursuant to which the successor corporation, trust or governmental entity shall expressly assume all the duties and obligations of the Association, however, a failure to accept in writing shall in no way alter the obligation of the successor to be bound by all provisions of this Declaration. If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, trust or governmental entity, the covenants, easements, charges and liens imposed hereunder, and under any supplemental declaration, trust agreement, or other agreement, shall nevertheless continue and any Owner or Member may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation, trust or governmental entity to take over the duties and the responsibilities of the Association subject to the conditions provided for in the Declaration.

IN WITNESS WHEREOF, the undersigned have caused their corporate seals to be hereunto affixed and this declaration to be signed by their duly authorized officers the day and year first above written.

MALTA RIDGE DEVELOPMENT CORP.

BY: Jerome Rosen

ROBERT MARINI BUILDERS, INC.

BY: [Signature]
Vice President

SEAL

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

On the 4th day of September in the year 1998 before me, the undersigned, a Notary Public in and for said State, personally appeared Jerome Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Janice E. Mann
NOTARY PUBLIC

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

2000

On the 4th day of Sept in the year 1998 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert V. Marini Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Melanie B. Greenspan
NOTARY PUBLIC

MELANIE B. GREENSPAN
Notary Public, State of New York
No. 4946771
Qualified in Albany County
Commission Expires February 6, 1999

SCHEDULE A

ALL THOSE CERTAIN LOTS, PIECES AND/OR PARCELS OF LAND situate, lying and being in the Town of Malta, County of Saratoga and State of New York, shown and described on that certain map entitled Highpointe at Malta, Planned Unit Development, dated June 27, 1997, made by L. Sipperly & Associates, and filed in the Office of the Saratoga County Clerk on July 9, 1998 in Drawer H as Map Number 269 A through F, EXCEPTING AND RESERVING THEREFROM the parcel of land more particularly described on Schedule A-1 annexed hereto and made a part hereof and those certain lots shown and described on the aforesaid map as the Senior Citizen Apartments Parcel, the Commercial Parcel, the Community Center Parcel and the roadways and possible further streets and easement areas to be dedicated to the Town of Malta.

Schedule A-1

All that tract, piece or parcel of land situate, lying and being located in the Town of Malta, County of Saratoga and State of New York, being more particularly bounded and described as follows:

Beginning at a point in the existing southerly line of Cramer Road at its intersection with the division line between Lands of Malta Ridge Development Corporation on the west and lands now or formerly of John Kodogiannis as described in Liber 1007 of deeds at page 195 on the east; running thence southerly along said division line South $10^{\circ} - 19' - 46''$ East, 13.51' to a point in the proposed southerly line of Cramer Road; thence westerly along the proposed southerly line of Cramer Road, the following three courses and distances:

- 1) South $82^{\circ} - 40' - 31''$ West, 1354.03' to a point; thence
- 2) South $83^{\circ} - 03' - 31''$ West, 337.30' to a point; thence
- 3) South $84^{\circ} - 41' - 10''$ West, 120.63' to a point; thence North $05^{\circ} - 18' - 50''$ West, 18.81' to a point in the existing southerly line of Cramer Road; thence easterly along the existing southerly line of Cramer Road, the following two corners and distances:

- 1) North $83^{\circ} - 16' - 33''$ East, 651.78' to a point; thence
- 2) North $82^{\circ} - 55' - 14''$ East, 1158.78' to the point or place beginning and containing 0.73 Acres, more or less.

And any portion of existing Cramer Road lying between the existing southerly roadway boundary line as described above and the centerline of Cramer Road.