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DEED AGREEMENT

Saratoga County Clerk

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

**OF  
  
PLANT ROAD ESTATES HOMEOWNERS' ASSOCIATION, INC.**

**DECLARANT:**

**MALTA LAND COMPANY, LLC  
100 MADISON AVENUE, SUITE 3  
BALLSTON SPA, NEW YORK 12020**

**DATE OF DECLARATION: NOVEMBER 8, 2016**

**Ianniello Anderson, P.C.  
Attorneys for Declarant  
805 Rt. 146, Northway Nine Plaza  
Clifton Park, New York 12065  
Phone: (518) 371-8888**

**DECLARATION  
Of  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
Of  
PLANT ROAD ESTATES HOMEOWNERS' ASSOCIATION, INC.**

**THIS DECLARATION**, made this 8<sup>th</sup> day of November, 2016, by Malta Land Company, LLC, having offices at 100 Madison Drive, Suite 9, Ballston Spa, New York, 12020, being referred to hereinafter as the "Declarant".

**WITNESSETH**

**WHEREAS**, Declarant is the owner of the property located in the Town of Halfmoon, County of Saratoga, New York described in Article II of this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration"), which the Declarant intends to develop into a residential community known as Orchard Pointe (also known as Plant Road PDD), consisting of one hundred four (104) residential townhome units and forty (40) townhome units for those purchasers age fifty five (55) and over to be located in fifty (50) buildings within approximately 54.65 +/- acres of land and a homeowners' association known as the Plant Road Estates Homeowners' Association, Inc.; and

**WHEREAS**, the Declarant desires that the areas described in Schedule "B" to this Declaration be available for use by the residents of the Orchard Pointe residential community; and

**WHEREAS**, the Declarant desires to provide for the maintenance, repair and replacement of those areas so described in Schedule "B" (the "Association Property") and, to this end desires to subject the Property described in Schedule "A" to this Declaration, each and all of which is and are for the benefit of said Property and the Owners or occupants of the Homes thereof; and

**WHEREAS**, the Declarant has deemed it desirable to create an agency to which should be delegated and assigned the powers of: (i) maintaining the Association Property; (ii) administering and enforcing this Declaration and (iii) collecting and disbursing the Assessments and charges hereinafter created; and

**WHEREAS**, on February 11, 2015, the Plant Road Estates Homeowners' Association, Inc., was formed under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

**NOW, THEREFORE**, the Declarant, for itself, its successors and assigns, declares that the real property described in Article II hereof is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration.

## ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** The following words, when capitalized and used in this Declaration, the By-Laws, the Rules and Regulations, the Offering Plan or in any instrument supplemental to this Declaration, the By-Laws, the Rules and Regulations, or the Offering Plan, shall, unless the context otherwise prohibits, have the following meanings:

- a. **Assessments:** Charges for the maintenance of the areas described in Schedule "B" to this Declaration, the operation of Association, including Special Assessments for capital improvements, and any other charges deemed to be Assessments pursuant to this Declaration and the By-Laws.
- b. **Association:** Plant Road Estates Homeowners' Association, Inc. (the "Association").
- c. **Association Property:** All land and other facilities and properties, personal or mixed, heretofore and hereafter owned by the Homeowners' Association.
- d. **Authorized Votes:** There shall be only one vote for each Authorized Voting Owner regardless of the number of Homes owned by such Owner.
- e. **Authorized Voting Owner or Member:** The Owner of a Home and/or Lot. In the event a Home and/or Lot is owned by more than one person, the Authorized Voting Owner shall be the person named in a certificate signed by all Owners of such Home and/or Lot and filed with the Secretary of the Board of Directors. If such certificate is not on file, the person or entity first named on the deed by which title is obtained shall be the person considered the Authorized Voting Owner.
- f. **Board of Directors or the Board:** The Board of Directors elected by the Members and/or appointed by the Declarant (subject to initial control by the Declarant) to administer the affairs of the Association.
- g. **By-Laws:** The By-Laws of the Association set forth in the Offering Plan as the same may be supplemented, extended or amended from time to time.
- h. **Offering Plan:** Offering Plan filed with the New York State Department of Law relating to Plant Road Estates Homeowners' Association, Inc.
- i. **Declaration:** This document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of the Homeowners' Association as it may, from time to time, be supplemented, extended or amended in the manner provided for herein.

- j. **First Mortgage:** The first mortgage granted by an Owner of a Home and/or Lot to a bank, federal savings and loan association, life insurance company, pension fund, trust company or other institutional lender, licensed mortgage banker or broker, an individual or the Declarant.
- k. **First Mortgagee:** The holder of a First Mortgage on a Home pursuant to instruments duly recorded in the office of the Saratoga County Clerk.
- l. **Home:** A home situated on a Lot (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Halfmoon), including a garage appurtenant to a home. Unless the context clearly indicates otherwise, the term "Home" shall be deemed to include the term "Lot".
- m. **Lot:** Any portion of the Property (with the exception of the Association Property) subject to this Declaration, as shown on the subdivision map which was filed in the office of the Saratoga County Clerk on April 18, 2014, as Map No. M2014082, as amended by map filed June 8, 2015, as Map No. 2015092.
- n. **Member:** Each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.
- o. **Mortgagee:** Any mortgagee, its representatives, assigns, servicing agent or other holder of a mortgage on a Home.
- p. **Owner:** The holder of record title, whether one (1) or more persons or entities, of fee simple title to any Home and/or Lot and shall include the Declarant with respect to any Unsold Home and/or Lot. An Owner may be one or more individuals, corporations, partnerships or trusts, or any other legal entity or any of the foregoing. All such Owners are collectively called "The Owners".
- q. **Property:** All properties as are subject to this Declaration which may be supplemented, extended or amended.
- r. **Purchaser:** A person who has executed a Purchase Agreement which has also been executed by the Declarant.
- s. **Rules and Regulations:** The Rules and Regulations of the Association governing the use and care of the Property as may be set forth in this Declaration, the By-Laws or such as may be promulgated from time to time by the Board of Directors.
- t. **Site Plan:** The Site Plan or Plans as filed in the office of the Saratoga County Clerk.
- u. **Declarant:** Malta Land Company, LLC, its successors and assigns.

- v. **Transfer of Control Date:** The date on which: (i) the Declarant has transferred title to all Homes; or (ii) ten (10) years from transfer of title to the first Home, whichever first occurs.
- w. **Residences Designated to those 55 and over:** Those forty units dedicated to residents 55 years or older, each unit will contain a deed restriction limiting the sale of the unit to those 55 or older.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.01. Property.** The real property to be held, transferred, sold, conveyed by deed and occupied subject to this Declaration is located in the Town of Halfmoon, County of Saratoga and State of New York, and is more particularly described on Schedule "A" hereto.

**Section 2.02. Merger.** Upon a merger or consolidation of the Association with another association as provided in the Association's Certificate of Incorporation, this Declaration, the By-Laws, or New York State Law, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving or consolidated association and may administer the Covenants, Conditions, Restrictions, Easements, Charges and Liens established by this Declaration within the Property, together with the Covenants, Conditions, Restrictions, Easements, Charges and Liens established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants, Conditions, Restrictions, Easements, Charges and Liens established by this Declaration upon the Property, except as hereinafter provided.

## ARTICLE III THE ASSOCIATION: STRUCTURE AND MEMBERSHIP

**Section 3.01. Formation of the Association.** Pursuant to the Not-for-Profit Corporation Law of the State of New York, on February 11, 2015, Plant Road Estates Homeowners' Association, Inc., was formed to own and maintain the Association Property, manage the affairs of the Association, enforce this Declaration and the By-Laws and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration, the Certificate of Incorporation and the By-Laws of the Association, as such may be supplemented, extended or amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the By-Laws, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

**Section 3.02. Membership.** The Association shall have as Members only Owners of Homes within the Property as described in Schedule "A" of this Declaration. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no

other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definition of the word "Owner" as found in Article I of this Declaration. Ownership of a Home and/or Lot shall be the sole qualification for membership. There shall be a maximum of one hundred forty four (144) Members.

**Section 3.03. Holder of Security Interest.** Any person or entity which holds an interest in a Home merely as security for the performance of an obligation shall not be a Member and shall have no voting rights.

**Section 3.04. Declarant's Written Consent Necessary for Certain Actions Taken by Board of Directors.**

- a. Notwithstanding anything to the contrary contained in this Declaration, after the Transfer of Control Date the Board of Directors may not (i) make any addition, alteration or improvement to Association Property; (ii) assess any amount for the creation of, addition to, or replacement of all or part of a reserve, contingency or surplus fund in excess of the amount provided for in the initial budget, except for such improvements not in existence or owned at the time of the initial budget; (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association; (iv) enter into any service or maintenance contract for work not provided for in the initial budget, except for the maintenance of an improvement not in existence or owned by the Association at the time of the recording of this Declaration; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of the services or maintenance of the Property, after transfer of control without the Declarant's prior written consent, which consent will not be unreasonably withheld, so long as the Declarant has Unsold Lots and/or Homes, except for necessary alterations, additions or improvements required by law or by any government agency or Board of Fire Underwriters
- b. So long as the Declarant has Unsold Homes and/or Lots, this Section shall not be amended without the prior written consent of the Declarant.

#### **ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**

**Section 4.01. Dedication of Association Property.**

- a. Subsequent to the recordation of this Declaration, and at or prior to the conveyance of the first Home, the Declarant shall convey to the Association by deed, and record such deed in the office of the Saratoga County Clerk, the Association Property as described in Schedule "B" of this Declaration for the use and enjoyment of the Owners, their guests, lessees, licensees and invitees.

- b. The Association must accept any such conveyance made by the Declarant provided such conveyance is made without consideration. No portion of the Association Property shall be subject to the rights and easements of enjoyment and privileges hereinafter granted unless and until the same shall have been conveyed to the Association by deed and such deed recorded in the office of the Saratoga County Clerk.

**Section 4.02. Right and Easement of Enjoyment in and to Association Property.** Every Owner and such Owner's guests, licensees, lessees and invitees shall have a right and easement of enjoyment in and to all Association Property. Such easement shall be appurtenant to and shall pass with the interests of an Owner. Such rights, easements and privileges shall be subject, however, to the rights of the Association as set forth in Section 4.03 herein and the rights of the Declarant as set forth in Section 4.07 and the rights of Owners as set forth in Section 4.08 herein.

**Section 4.03 Rights of Association.** With respect to the Association Property, and in accordance with the Certificate of Incorporation, this Declaration and the By-Laws, the Board of Directors shall have the right:

- a. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision, or cable television franchisee, with or without consideration.
- b. Except as set forth in Section 4.03 (a) above, to dedicate or transfer all or any part of the fee title to the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee, subject to the following:
  - (1) such a conveyance shall require the consent of Owners by an affirmative vote of sixty-seven percent (67%) of Authorized Votes, other than of the Declarant, at a regular or special meeting of Owners; and
  - (2) any conveyance by the Association prior to the transfer of title to all Homes by the Declarant, shall also require the prior written approval of the Declarant unless the Declarant waives such right in a written agreement recorded in the office of the Saratoga County Clerk.
- c. To borrow funds, and in conjunction therewith, mortgage its properties. Such mortgage, however, shall be subject to any and all prior easements set forth herein and/or which may be of record. The amount, terms, or rate of all borrowing and the provisions of all agreements with note holders 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.

- d. Except as may be prohibited by law, the Certificate of Incorporation, this Declaration or the By-Laws, to contract with any person for the performance of its management and other duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with trusts, condominiums, cooperatives or other homeowners' associations, both within and without the Property.

**Section 4.04. Maintenance of Association Facilities.** The Association shall, at all times, maintain and keep the Property and all other facilities of the Association, if any, in good repair.

**Section 4.05. Common Utility and Conduit Easement.**

- a. All pipes, wires, conduits and public utility lines and cable television lines located within a Lot and serving only such Home and/or Lot shall be owned, maintained, repaired and replaced by the Owner of such Home and/or Lot. Every Owner shall have an easement in common with the Owners of other Homes to maintain and use all pipes, wires, conduits, sump laterals, grinder pumps, distribution boxes, water, sewer and other public utility lines and cable television lines located within other Lots or within the Association Property and servicing such Owner's Home. Each Lot shall be subject to an easement in favor of the Owners of other Homes to maintain and use the pipes, wires, conduits, sump laterals, grinder pumps, distributions boxes, water, sewer and other public utility lines and cable television lines with said Lot and serving other Homes.
- b. The Association shall have the right of access to each Lot for the maintenance, repair or replacement of any pipes, wires, conduits, public utility lines or cable television lines located in any Lot and servicing any other Home and/or Lot. Such right shall be exercised at a reasonable time upon reasonable notice to the Owner and/or occupant, provided, however, that in an emergency such right may be exercised at any time and without notice. The cost of such repair, maintenance or replacement shall be a common expense which shall be the responsibility of the Association, except that, if such repair, maintenance or replacement is occasioned by negligent or willful act or omission of an Owner and/or occupant, it shall be considered a special expense allocable to the responsible Owner and such cost shall be added to the Assessment of such Owner and, as part of that Assessment, shall constitute a lien on the Owner's Lot and/or Home to secure the payment thereof.

**Section 4.06. Environmental Considerations.** In carrying out its responsibilities in enforcing the provisions of this Declaration, 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 activities which could have an adverse environmental impact or take affirmative action to improve the quality of the environment, and shall comply with all applicable laws, rules and regulations.



**Section 4.07. Rights of Declarant With Respect to Association Property.**

- a. With respect to the Property, the Declarant shall have the right, until the marketing and sale of all Homes is complete, provided the rights of the Owners are not substantially and materially restricted (except for temporary inconvenience), to:
- (1) grant and reserve easements and rights-of-way for the installation, maintenance, repair, and replacement of utility lines, wires, pipes and conduits, including, but not necessarily limited to gas, electric, telephone, drainage and cable television, to serve any property brought under the scope of this Declaration;
  - (2) connect with and make use of the utility lines, wires, pipes, conduits and related facilities located on the Property for the benefit of any property set forth in Schedule A hereof and/or as shown on the Site Plan as a part of the total proposed development;
  - (3) permit contractors ingress and egress for construction purposes and for the storage of building materials;
  - (4) operate a sales center and/or permit the sales agent to operate a sales center, to have prospective purchasers and others visit such sales center and use other portions of the Property;
  - (5) maintain, or permit a contractor to maintain, a construction office on the Property;
  - (6) grant to itself or to others such easements and rights-of-way as may be reasonably needed for the orderly development of the property set forth in Schedule A of this Declaration; and

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon, and for the benefit of, the Association, the Declarant and their successors and assigns.

- b. With respect to its exercise of the above rights, the Declarant agrees: (i) to repair any damages resulting from construction within a reasonable time after the completion of development or when such rights are no longer needed by the Declarant or a contractor, whichever first occurs; and (ii) until development has been completed, to hold the Association harmless from all liabilities which are directly caused by the Declarant's exercise of its rights hereunder.

**Section 4.08. Rights and Easements to Owners.** Every Owner shall have an easement for pedestrian ingress and egress over and to all Association Property and a further easement

for ingress and egress of the builder of such Owner's Home on his or her Lot. However, the repair of any damages to the Association Property resulting from the construction of such Owner's Home shall be made within a reasonable time of the occurrence of such damage and shall be the sole responsibility of the Owner of such Home.

a. Every owner of a center unit Townhome shall have a ten foot (10') easement for ingress and egress over the rear boundary of the adjoining units to allow access to the rear yard of the center unit. Every end unit Townhome shall also contain said easement over their rear boundary for the benefit of the center unit, together with four feet (4') of an eight foot (8") wide ingress and egress easement centered along the Great Lot line.

**Section 4.09. Distribution of Condemnation Awards.** In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed to the Owners in equal amounts.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceedings to all Mortgagees whose names appear in the Association's records, if any.

In the event of any dispute with respect to the allocation of the surplus of such proceeds of such award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

## **ARTICLE V**

### **ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW**

**Section 5.01. Creation of the Lien.** The Declarant, for each Unsold Home having a Certificate of Occupancy within the Property, hereby covenants and agrees, and each Owner of any Home and/or Lot, by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association:

- a. Annual Assessments for the maintenance and operation of the Property;
- b. Special assessments for capital improvements ("Special Assessments"); and
- c. Special assessments that may become necessary as a result of a casualty loss of Association Property, such as an ice storm or extraordinary snow or rain storm, not otherwise covered by insurance and creating a budget deficit for the fiscal year.

The Maintenance Assessments and the Special Assessments are together hereinafter referred to as "Assessments".

The Assessments shall be fixed, established and collected annually as hereinafter provided or at such other intervals as may be established by resolution of the Board of Directors. While the Declarant is in control of the Board, Assessments will be payable monthly, due on the first day of each month. Except to the extent prohibited by law, the Board of Directors, on behalf of all Owners, shall have a lien on each Home for unpaid Assessments, with interest thereon at the statutory rate established for judgments in the State of New York, assessed against such Home.

**Section 5.02. Basis for Assessments.** The Association's Board of Directors shall, from time to time, but at least annually, determine the budget for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Owner at least ten (10) days prior to assessing the Owners thereon. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and capital improvements approved by the Board. While the Declarant is control of the Board, the Declarant shall be responsible for any deficits.

The total annual requirements and any supplemental requirements shall be allocated among, assessed to, and paid by the Owners. Each Owner shall pay an equal share of the expenses based on the number of Homes and/or Lots subject to this Declaration. After Association Assessments have been levied on one or more Owners who have closed title to their Homes, the Declarant will be obligated for Assessments for Unsold Homes having a Certificate of Occupancy, which shall be equal to, but in no event greater than the amount levied on Owners who have closed title to their Homes, as projected in the Association's current budget. The sum due the Association from each Owner shall constitute an Assessment by the Board of Directors.

**Section 5.03. Purpose of Assessments.** The purpose of the Assessments shall be to fund the administrative expenses, maintenance, repair, replacement and improvement of the Association Property and all other expenses of the Association relating to the Property, including, but not necessarily limited to:

- a. The payment of taxes on the Association Property, if any;
- b. Any utility services to the Property which are commonly metered or billed, if any;
- c. All insurance obtained pursuant to Article VII of this Declaration;
- d. Accounting and record keeping of all Association financial transactions;
- e. Legal, architectural, engineering, management and other professional fees and disbursements;

- f. To fund the maintenance, repair, replacement and improvement of the Property, which said expenses shall be the responsibility of the Association; and
- g. Such other expenses of the Association which the Board of Directors deems necessary;

**Section 5.04. Date of Commencement and Notice of Assessments.** The Assessments provided for herein shall commence on the day on which the first Home is conveyed by the Declarant to the initial Purchaser.

**Section 5.05. Change in the Basis of Assessments.**

- a. The Association may change the basis of determining the Maintenance Assessments by obtaining the consent of Owners by an affirmative vote of not less than sixty-seven percent (67%) of Authorized Votes, or such other voting limits as may be set forth in Article IV, Section 4.07 of the By-Laws, at a regular or special meeting of Owners, excluding those of the Declarant, except that, until all Homes are sold to initial Purchasers, any change in the basis of Assessments which adversely affects a substantial interest or right of the Declarant with respect to Unsold Homes shall require the specific prior written consent of the Declarant, which consent shall not be unreasonably withheld.

Written notice shall be sent at least ten (10) days and not more than fifty (50) days in advance of the date or initial date set for voting thereon to all Owners. A written certification of any such change shall be executed by the Board of Directors and recorded in the office of the Saratoga County Clerk as an Amendment to this Declaration.

- b. Any change in the basis of Assessments shall be equitable and nondiscriminatory.

**Section 5.06. Special Assessments for Capital Improvements.** In addition to the annual Maintenance Assessment, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction, replacement or repair of a capital nature to the Property, including the necessary fixtures and personal property related thereto. Any Special Assessment for the construction (rather than reconstruction or replacement) of any capital improvement, or for any Special Assessment amounting to more than five thousand dollars (\$5,000.00) the consent of Owners shall be evidenced by an affirmative vote of sixty-seven percent (67%), or such other voting limits as may be set forth in Article IV, Section 4.07 of the By-Laws, of the Authorized Voting Owner cast in person, by mail (absentee ballot) or by proxy at a regular or special meeting duly called for this purpose.

Written notice of such meeting shall be sent to all Owners at least ten (10) days and not more than fifty (50) days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special

Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date. So long as the Declarant has Unsold Homes, the Association may not levy any Special Assessments or make any capital improvements without prior written consent of the Declarant.

**Section 5.07. Special Assessments for Emergency Conditions or for Loss Due to Casualty.** In addition to the annual Maintenance Assessment, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of repairs or replacement of Association Property or budget deficit resulting from emergency conditions or loss due to casualty, including without limitation, the construction, reconstruction, replacement or repair of Association Property, including the necessary fixtures and personal property related thereto, resulting from a casualty, such as an ice storm or extraordinary snow or rain storm, not otherwise covered by insurance. Any such Special Assessment shall not require the consent of Owners. The Board shall establish one or more due dates for each payment or partial payment of such Special Assessment and shall notify each Owner thereof, in writing, at least thirty (30) days prior to the first such due date. The Declarant will pay its proportionate share based on the Homes having Certificates of Occupancy to which title has not transferred.

**Section 5.08. Assessments: Personal Obligation of the Owner and Lien on the Home.** The Assessments shall be paid when due. All sums assessed by the Board of Directors, but unpaid, together with any accelerated installments, late charges of five dollars (\$5.00) per month for each month Assessments remain unpaid, and including fees for violations of Rules and Regulations, shall be the personal obligation of an Owner and shall constitute a lien upon the Owner's Home prior to all other liens except: (i) tax or assessment liens on the Home by the taxing authority of any governmental unit, including, but not limited to, state, county, town and school district taxing agencies; and (ii) all sums unpaid on any First Mortgage of record encumbering any Home. Assessments shall be levied on an annual basis and shall be due and payable: (i) if annually, on the first day of the start of the Association's fiscal year; or (ii) if monthly, then on the first of each month commencing with the start of the Association's fiscal year; or (iii) if the Board of Directors establishes other periods of payment, as then may be established by the Board. If an installment of Assessments due is not paid within thirty (30) days from the date due, the Board may accelerate the remaining installments for the fiscal year, upon notice thereof to the delinquent Owner. All costs and expenses incurred in collection of past due Assessments, including reasonable attorneys' fees, shall be added to and shall constitute an Assessment payable by such Owner.

**Section 5.09. Foreclosure of Lien for Assessments.** A lien for past due Assessments may be foreclosed by the Association in accordance with the laws of the State of New York, in like manner as a mortgage on real property, and the Association shall also have the right to recover all costs incurred by it in pursuing such right, including, but not necessarily limited to, accelerated payments, if any, late charges, and reasonable attorneys' fees. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Assessments, the unpaid balance shall be charged equally to all Owners. The Purchaser of a Home at a foreclosure sale of a First Mortgage, including the First Mortgagee or a first mortgage holder obtaining title by conveyance in lieu of foreclosure, their successors or assigns, shall not be liable for Assessments unpaid up to the date

of such foreclosure sale or conveyance. Nothing contained in this Section with regard to the right of the Association to enforce its lien by foreclosure shall prohibit the Association from obtaining a money judgment against the Owner or Owners and issuing execution for a sheriff's sale.

**Section 5.10. Notice of Default.** The Board of Directors, when giving notice to an Owner of a default in paying Assessments, may, at its option, or shall, at the request of a Mortgagee, send a copy of such notice to each such Owner's Mortgagee whose name and address appears in the records of the Association. The Mortgagee shall have the right to cure the Owner's default with respect to the payment of said Assessments at any time prior to the time title is conveyed pursuant to Section 5.08 above.

**Section 5.11. No Exemption or Waiver of Assessments.** Every Owner shall pay the Assessments assessed against his or her Home and/or Lot when due and no Owner may exempt himself or herself from liability for the payment of Assessments so assessed by waiver of the use or enjoyment of any of the Property, or by the abandonment of his or her Home and/or Lot. However, no Owner shall be liable for the payment of any Assessments accruing subsequent to a sale, transfer or other conveyance by him or her of such Home and/or Lot made in accordance with the provisions of this Declaration and the By-Laws.

**Section 5.12. Grantee to be Liable with Grantor for Unpaid Assessments.** In any conveyance of a Home and/or Lot either by voluntary instrument, or by operation of law or judicial proceedings, the Grantee of the Home and/or Lot, and the Grantee's successors, heirs and assigns, shall be jointly and severally liable with the Grantor for any unpaid Assessments against the latter, assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to receive from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Board of Directors setting forth the unpaid Assessments against the Grantor and the Grantee shall not be liable for, nor shall the Home and/or Lot conveyed be subject to, a lien for any unpaid Assessments against the Grantor in excess of the amount therein set forth. "Grantee" as used herein shall not include the First Mortgagee of record, its successors, heirs and assigns, or a purchaser of a Home and/or Lot at a foreclosure sale of a First Mortgagee or holder of title, its successors, heirs and assigns, obtained by conveyance in lieu of foreclosure.

**Section 5.13. Exempt Property.** Property subject to the Declaration shall be exempt from Assessment Charges and liens created herein, to the extent of any easements or other interests therein that are dedicated to and accepted by any local governmental authority and devoted to public use.

**Section 5.14. Right to Maintain Surplus.** The Association shall not be obligated in any calendar or fiscal year to spend all the sums collected in such year by way of Assessments or otherwise, and may carry forward as surplus any balances remaining. Nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors, in its absolute discretion, may determine to be desirable.

**Section 5.15. Assessment Certificates.** Upon written demand of an Owner, Mortgagee, lessee, or title insurer of a Home (or any prospective purchaser, lessee, Mortgagee, or title insurer of such Home), the Board of Directors, or the managing agent if there be one, shall, within fifteen (15) days of receipt of such written demand, issue and furnish a certificate in writing, signed by an Officer or designee of the Association, setting forth with respect to such Home, as of the date of such certificate: (i) whether all Assessments have been paid; (ii) the amount of such Assessments, including interest, late charges, and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g., for the cost of extinguishing a violation of this Declaration, the By-Laws, and/or Rules and Regulations.

A reasonable charge, as determined by the Board of Directors, or the managing agent if there be one, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide Purchaser, Mortgagee, lessee of, or title insurer of the

Home with respect to which such certificate has been issued.

## **ARTICLE VI MAINTENANCE BY THE ASSOCIATION**

**Section 6.01. Repairs and Maintenance which are the Responsibility of the Association.** The Association shall be responsible for, and the cost thereof shall be an expense of the Association, the following:

- a. Except as specifically otherwise provided in this Section 6.01, all repair, replacement, reconstruction, and maintenance of the Association Property;
- b. Maintenance, repair and replacement of all pipes, wires, conduits, utility lines and cable television lines servicing more than one Home, whether or not on the Association Property, unless such is the responsibility of the utility or cable television company;
- c. Landscaping, lawn care and snow removal from driveways and sidewalks located on each lot upon which a home is situated; and
- d. Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded by Assessments.

**Section 6.02. Repairs and Maintenance which are the Responsibility of Owners.**

- a. Except as provided in Section 6.01 above, each Owner shall be responsible for the maintenance, repair or replacement of any pipes, wires, conduits, utility lines, cable television within such Owner's Home or utility meters serving such Home;

- b. Each Owner shall be responsible for the maintenance, repair or replacement of such Owner's Home and the removal of all debris from such Owner's Lot whether or not improved.

**Section 6.03. Quality and Frequency of Maintenance and Repairs.** All maintenance, repair and replacement, whether performed by the Association or an Owner, shall be of a quality and appearance consistent with the original construction so as to enhance and preserve the appearance and value of the Property and the Homes.

**Section 6.04. Access for Repairs.** The Association (and its employees, contractors and agents), shall, upon reasonable notice to the Owner and/or occupant, have the right to enter upon any portion of a Lot, at any reasonable hour and upon reasonable notice, to carry out its functions as provided for in this Declaration, except that, in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property or a Lot to make necessary repairs or to prevent damage to any other Home or any portion of the Property. The repair of any damage caused in gaining access in an emergency shall be undertaken by the Association at its expense.

## **ARTICLE VII INSURANCE AND RECONSTRUCTION**

**Section 7.01. Insurance to be Carried by the Association.** The Board of Directors of the Association shall obtain and maintain the following types of insurance coverage: (i) general liability insurance; (ii) Directors' and Officers' liability insurance; and (iii) fidelity bond, with coverages to be as follows:

- a. **General Liability.** The liability insurance shall cover the Board, the officers and directors, the managing agent, if there be one, and all Owners, but not the liability of an Owner arising from occurrences from such Owner's Home and/or Lot. The policy shall include the following endorsements: (i) comprehensive general liability, including libel, slander, false arrest and invasion of privacy; (ii) personal injury; (iii) medical payments; (iv) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to any Owner because of negligent acts of the Association or any other Owner; (vi) contractual liability; (vii) hired and non-owned vehicle coverage; (viii) liability for the property of others; (ix) host liquor liability coverage with respect to events sponsored by the Association; (x) deletion of the normal products exclusion with respect to events sponsored by the Association; (xi) a provision that the policy may not be cancelled, substantially modified, invalidated or suspended, without at least thirty (30) days written notice to all of the insured, including all Mortgagees of Homes reported to the insurance carrier or its agent, any deductible shall apply only to each occurrence rather than to each item of damage, except for the non-payment of premiums,



which shall be cause for cancellation upon ten (10) days written notice; and (xii) a provision that adjustment of loss shall be made with the Board. The limit shall be no less than \$1,000,000.00.

- b. **Umbrella (Excess) Liability.** The Board may obtain a policy with a minimum of \$1,000,000.00 Excess Liability. This policy should include, if available, excess Directors' and Officers' Liability and provide \$10,000.00 Retained Limit.
- c. **Directors' and Officers' Liability.** The Directors' and Officers' liability insurance shall cover the "wrongful" acts of a Director or Officer of the Association. The policy shall initially be in the amount of \$1,000,000 and be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors and any deductible provision shall apply only to each occurrence rather than to each item of damage. The policy shall provide for "participation" by the Association or by the members of the Board or officers of the Board only to the minimum extent permitted by law or applicable governmental regulation. This coverage shall be no less than \$1,000,000.00.
- d. **Fidelity Bond.** The fidelity bond may cover all Directors, Officers and employees of the Association, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association at any given time, but in no event less than a sum equal to six months aggregate assessments on all Homes, plus the reserves and other funds on hand. In the event a property manager is employed or retained by the Association as an agent for the Association, such property manager shall also be named on the Association's fidelity bond. Initially the bond shall be in the amount of \$25,000.
- e. **Other Insurance.** The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time, including additional "umbrella" coverage.

In the event the Association shall, at any time, own any structures, a fire and casualty policy shall cover the interests of the Association, the Board of Directors and all Owners and Mortgagees as their interest may appear, for all improvements.

- f. **Workers' Compensation.** In the event the Association has employees, Workers' Compensation insurance shall be obtained covering such employees of the Association.

The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Article VII or for any loss or damage resulting from such failure, if such failure is due to the prohibitive cost of such coverages from reputable insurance companies.

The deductible, if any, on any insurance policy purchased by the Board of Directors may be the subject of an Assessment. The Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Home and/or Lot involved, shall constitute a personal obligation of such Owner and shall be collectible in the same manner as Assessments under Article V of this Declaration.

The Board of Directors shall review all insurance policies and coverage provided thereby at least annually to assure adequacy of coverage.

No portion of the Property is located in a Flood Hazard Zone. However, in the future, if any portion of the Property is determined to be located in an area subsequently identified by the Federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program, or one hundred percent (100%) of the value of the insurable property.

**Section 7.02. Restoration or Reconstruction After Fire or Other Casualty.** In the event of damage to or destruction of any Association Property, insurance proceeds, if any, shall be payable to the Association. The Board of Directors shall be responsible for the disbursement of the proceeds to contractors engaged in the repair and restoration of such Association Property. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute an Assessment and the Board of Directors shall assess all the Owners for such deficit and for the cost of a performance bond, and a labor and materials payment bond, if required, as part of the Assessments.

**Section 7.03. Insurance To Be Carried By Owners.** Each Owner shall, at such Owner's expense, obtain adequate insurance for full replacement cost of such Owner's Home and liability insurance for occurrences within such Home and/or on the Lot of such Owner. If requested by the Board of Directors in writing, evidence of such insurance shall be provided the Board of Directors annually, upon the anniversary date of the policy or policies, together with the name and address of the insurance agency issuing such policy or policies.

In the event of damage or destruction of any Owner's Home or other improvements on such Owner's Lot, prompt repair and restoration shall be arranged by the Owner. "Prompt repair and restoration" as used herein, shall mean repair and restoration to begin, weather permitting, not more than sixty (60) days from the date of receipt of the insurance proceeds by the Owner, providing that if new or revised permits from a municipal authority are required, a reasonable time will be allowed to procure such permits.

**Section 7.04. Actions Which May Increase Insurance Rates Prohibited.** Under no circumstances shall an Owner permit or suffer anything to be done on the Property or omit to

do anything which will increase insurance rates on Association Property. The penalty for any and all violations shall be an Assessment against the Owner violating this provision in an amount equal to the increased rate and/or increased premiums.

#### ARTICLE VIII

### GENERAL COVENANTS AND RESTRICTIONS

#### Section 8.01. General Covenants and Restrictions.

1. No Lot may be further subdivided.
2. No Lot shall be used except for Townhome/single family residential purposes and no portion of any residence may be rented other than the entire Home.
3. All structures, or any part thereof, shall be erected, placed or permitted to remain on any Lot only in accordance with the front, side and back Lot set-back restrictions as designated by the Town of Halfmoon, unless a Town variance is approved, and, subsequent to the initial construction of the Home, be subject to the approval of the Architectural Committee as set forth in Article XII herein.
4. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat/subdivision map and/or easements of record granted to a utility company. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a municipality, public authority or utility company is responsible.
5. Any construction commenced on any Lot shall be completed not later than twelve (12) months after the date of commencing said construction on the final unit in that building. All grading, seeding, and landscaping shall be completed not later than seven (7) months after the date of completion of the construction. Any portion of any Lot being used as a driveway or parking area shall be paved.
6. Fencing shall be allowed upon a lot provided that said fencing shall only be located in the rear of any home and shall be upon a line constituting an extension of the sidewalls of the home rearward to a point no closer than ten feet (10') from the rear boundary line. Each fence shall contain a gate no less than five feet (5') in width to provide access to the fenced

area for lawn maintenance. All fences shall be constructed of a material in general conformity with materials used in the construction of the Townhome Units and shall be no more than six feet (6') in height. All fencing must be approved by the Declarant so long as Declarant owns any lots, and thereafter by the Architectural Committee.

7. No swimming pools shall be allowed on any Lot.
8. No clear cutting or poisoning of any trees shall be permitted upon any Lot other than to allow for houses, driveways, walkways, sheds or garages. All dead trees may be removed from the site. No trees in excess of four-inches (4") in diameter shall be cut from the site other than to allow for the above mentioned uses.
9. There shall be no burning of leaves, brush, trees, shrubs, wood or debris of any kind in this subdivision. Burning barrels are prohibited.
10. Recreational vehicles, including but not limited to boats and trailers, may only be stored within an enclosed garage. Mini bikes, snow mobiles, motorized or recreational vehicles shall be stored out of view and shall not be operated within the development.
11. No unregistered vehicle shall be permitted on any Lot unless it is continuously stored inside the garage. No commercial vehicle, inclusive of recreation vehicles, over a one-ton capacity shall be stored or parked on any Lot. No heavy commercial equipment or commercial operation shall be allowed on any Lot on a regular basis. Notwithstanding the foregoing, this shall not prohibit the use of such equipment on a Lot in the course of initial or subsequent construction.
12. No signs, billboards, or advertising devices, shall be placed or otherwise installed on any Lot, Home, garage or other structure.
13. Not more than two (2) cords of firewood may be stored on any Lot and such firewood shall be stored in areas not visible from any roadway.
14. Any repair work on any motor vehicles, boats, trailers or other equipment of any kind shall be done only within a garage and shall be performed in an unobtrusive fashion so as not to be offensive to the neighborhood. By way of example, but not limitation, no loud engine racing, smoke or fume generation or similar offensive activity is permitted. Any fluids or other materials related to such activity shall be stored and disposed of in strict conformity with applicable environmental laws, rules or regulations.
15. No Lot shall be used or maintained as a dumping ground for rubbish.

Trash, garbage or other waste shall not be kept except in animal-proof, sanitary containers. Refuse containers and recycling material bins may only be placed within view of the street for pickup by the refuse contractor and shall be removed from the street before noon of the day after pickup:

16. No clotheslines are allowed unless fully screened from view.
17. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Forms of outdoor animal containment are permitted provided they are installed in the rear of the Home and are built in an unobtrusive fashion so as not to be offensive to the neighborhood and are properly maintained. Any fencing for pets shall conform to fencing requirements in Paragraph 6 of these restrictions. The so-called "invisible fence" shall be allowed. Pets shall be kept on a leash or within an animal containment at all times. No pets shall be walked on any vacant Lots other than on a Lot owned by the owner of the pet. Owners shall be responsible for immediate cleanup of conditions caused by their pet(s).
18. No incomplete structure or any structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used or erected on any Lot at any time as a residence.
19. Each Lot Owner shall keep all Homes and/or Lots owned by him or her, and all improvements thereon, in good order and repair and free of debris so as to maintain the overall attractiveness, character and integrity of the development.
20. A. For the purposes of this section, the following definitions shall apply:
  - (i) Antenna: Any device used for the reception of video programming services, including direct broadcast satellite (DBS), television broadcast, and multipoint distribution service (MDS). A reception antenna that has limited transmission capability designed for the viewer to select or use video programming is a reception antenna provided that it meets FCC standards for radio frequency emission. A mast, cabling, support, guy wire, conduit, wiring fastener or other accessory necessary for the proper installation, maintenance and use of a reception antenna shall be considered a part of the antenna.
  - (ii) Mast: A structure to which an antenna is attached which raises the height of the antenna.

(iii) Transmission Only Antenna: Any antenna used solely to transmit radio, television, cellular or other signals.

(iv) Owner: Any homeowner of the Association. For the purposes of this provision only, Owner shall include a tenant who has the written permission of the homeowner-landlord to install antennas.

(v) Telecommunications Signal: Signals received by DBS, television broadcast, and MDS antennas.

B. Installation, Maintenance and Camouflaging:

(i) DBS and MDS antennas one meter or less may be installed. Television broadcast and Transmission Only Antennas which assist reception antennas may be installed. Any antenna not in compliance with the Telecommunications Act of 1996, adopted October 14, 1996, and subsequent rulings and interpretations, including the Order on Reconsideration released September 25, 1998, by the Federal Communications Commission and which subject is more specifically known as the Over-the-Air Reception Devices (OTARD) Rule, is prohibited.

(ii) Antennas may be installed only on the Owner's Lot. No such installation shall encroach upon the Common Areas or any other Owner's Lot. An antenna shall be installed in a location which minimizes its general visibility while maintaining an acceptable quality signal. To the extent possible, the antenna shall be located in the rear of the Dwelling Unit, and as close to ground level as possible, so as to minimize its visibility from the front of the Home.

(iii) The installation and maintenance of the antenna shall be at the sole expense of the Owner. The Owner shall ensure that any antenna is properly installed in accordance with all applicable laws, regulations and manufacturer's instructions.

(iv) The Owner shall provide such maintenance, as and when necessary, as to ensure that the antenna is continuously maintained in good aesthetic condition. An antenna no longer in use, operable and/or serving its intended purpose shall be immediately removed.

(v) Provided that it can be done at a reasonable expense, and without limiting an acceptable quality signal, the antenna shall be screened from general view by use of, among other things, shrubbery, decorative, ornamental fencing and/or painting.

21. Out buildings shall have the siding and roofing that matches the Home and may not be placed or constructed in the front or side yard and shall be in accordance with the Town of Halfmoon building code, if applicable.
22. No portable air conditioners shall be allowed in any windows or cutouts.
23. No business of any kind shall be conducted in any residence, except as otherwise may be allowed by the Town of Halfmoon zoning, with the exception of the Declarant's business of developing all of the lots and the construction of Townhomes and the sale of lots within the subdivision.
24. A portion of the premises has been identified as containing federally designated wetlands. All deeds and/or leases conveying a portion of the premises shall contain a notification that the premises are subject to a Declaration of Restrictive Covenants recorded in the Saratoga County Clerk's Office as Instrument Number 2015007659.
25. All deeds shall contain a notice that the PDD land borders agricultural land to the south. Said notice shall read, "An existing agricultural operation is located to the immediate south of this project. The Purchaser is hereby notified that farming activities may include, but are not limited to, activities that cause noise, dust, smoke and odors.
26. All deeds shall contain a notice that the PPD land borders a working apple orchard. Said notice shall read, "A working apple orchard and farming operation is located on the west side of Plant Road in the vicinity of this property. Typical activities for this type of operation may occur during the day and night, may include but are not limited to noise from equipment, wind machines, lights, spraying of herbicides, pesticides, fertilizer and the use of seasonal farm workers. "
27. Portions of the PDD have been identified as containing Department of Environmental Conservation wetlands and as such activities within these areas are restricted without further approval by the Department of Environmental Conservation.
28. Those 40 units designated for residents age 55 or older shall contain a deed restriction limiting future sales to subsequent purchasers 55 years of age or older.

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**ARTICLE IX**  
**DURATION, ENFORCEMENT AND AMENDMENT OF DECLARATION**

**Section 9.01. Duration.** This Declaration shall continue until: (i) terminated by casualty loss, condemnation or eminent domain; or (ii) such time as withdrawal of the Property from the provisions of this Declaration is authorized by an affirmative vote of at least sixty -seven percent (67%) of Authorized Voting Owners.

**Section 9.02. Declaration Runs with the Land; Enforceability.** The provisions of this Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of, and be enforceable by, the Declarant, the Association (being hereby deemed the agent for all of the Owners), and by any Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of this Declaration, and monetary damages will not adequately compensate for violations of this Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

In addition, or as an alternative, to an action at law or suit in equity, the Board of Directors may, with respect to any violation of this Declaration, the By-Laws or Rules and Regulations of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against an Owner or lessee of an Owner shall be deemed an Assessment against the Home of such Owner and, as such, shall be a charge and continuing lien upon such Home, and shall constitute a personal obligation of the Owner and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Each person or entity acquiring an interest in a Home or other portion of the Property, or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to this Declaration) covenants and agrees for himself or herself and for his or her heirs, successors and assigns, to observe, perform and be bound by the provisions of this Declaration, including personal responsibility for the payment of all charges which may become liens against his or her property and which become due while he or she is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Home or other portion of the Property.

**Section 9.03. No Waiver by Failure to Enforce.** The failure of any beneficiary hereof to enforce any provision of this Declaration shall in no event be construed as a waiver of the right by that beneficiary, or any other, to do so thereafter as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Declarant, the Association (or any officer, director, employee, managing agent, committee, committee member or Owners)



or to any other person or organization for failure to enforce the provisions of this Declaration.

**Section 9.04. 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 this Declaration, the By-Laws or rules and regulations promulgated hereunder or thereunder, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is: (i) an Owner; or (ii) any family member, lessee, guest or invitee of the Owner; or (iii) a family member or guest or invitee of the lessee of the Owner; or (iv) a guest or invitee of any member of such Owner's family or any family member of the lessee of such Owner, such costs shall also be a lien upon the Home or other portion of the Property owned by such Owner, if any. This lien shall be subsequent to a first mortgage.

**Section 9.05. Amending.** Subject to the provisions of this Declaration, this Declaration may be modified, altered or amended at any duly called meeting of Members, provided that written notice of the meeting, containing a full statement of the proposed modification, alteration or amendment has been sent to all Owners at their last known place of residence, no less than ten (10) days nor more than fifty (50) days prior to the date of the meeting; and provided further that at least fifty-one percent (51%) of the total Authorized Voting Members approve the change.

When Owners are considering termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property, at least sixty-seven percent (67%) of the total Authorized Voting Members must approve the termination and an instrument evidencing the change must be duly recorded in the office of the Saratoga County Clerk. Such instrument need not contain a written consent of the required number of Members, but shall contain a certification by the Board of Directors that the consents required by this Section for such change have been received and filed with the Board of Directors.

So long as the Declarant has Unsold Lots and/or Homes, the prior written consent of the Declarant shall be required for any amendment.

The provisions in this Section notwithstanding, the Declarant may execute, acknowledge and record in the office of the Saratoga County Clerk amendments to this Declaration which may be required to bring this Declaration into conformity with any subsequent requirements of the Planning and/or Zoning Board of the Town of Halfmoon. The Declarant, during the time the Declarant has any Unsold Lots and/or Homes, may also make amendments to this Declaration to correct errors or omissions without a vote of Owners. Any such amendments shall not adversely modify the substantial rights of any Owner. Any such amendments shall be recorded in the office of the Saratoga County Clerk and the Declarant shall send copies to all Owners and Purchasers.

**Section 9.06. Conflict with Municipal Laws.** The Covenants, Conditions, Restrictions, Easements, Charges and Liens set forth herein shall not be taken as permitting any action or thing prohibited by the enforceable, applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority or by specific enforceable restrictions imposed by any

deed or lease.

**Section 9.07. Attorneys' Fees.** Any party to a proceeding who succeeds in enforcing the Covenants, Conditions, Restrictions, Easements, Charges and Liens set forth herein, or enjoining the violation of any of the Covenants, Conditions, Restrictions, Easements, Charges and Liens against an Owner (or such Owner's lessee, licensee or invitee), shall be entitled to reasonable attorneys' fees against such Owner.

**Section 9.08. Change of Conditions.** No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

**Section 9.09. Owner Responsible for Lessees.** The Owner of a Home shall provide that the lessee shall comply in all respects with the terms of this Declaration, the By-Laws and rules and regulations of the Association. If a lessee is in violation of this Declaration, the By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of such Home which such lessee occupies, in writing. If the violation is not cured or eviction proceedings are not commenced by the Owner against the lessee within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies which it may have by law or pursuant to this Declaration.

## **ARTICLE X COMPLIANCE AND ARBITRATION**

**Section 10.01. Compliance with Rules of the Association Pursuant to This Declaration and the By-Laws.** Should any Owner, member or members of such Owner's family, his employees, guests, lessees, licensees or other invitees, fail to comply with any of the provisions of this Declaration, the By-Laws, the Certificate of Incorporation or the rules and regulations, as such may be amended from time to time, the following procedures may be followed to obtain compliance:

- a. A committee of three (3) people shall be appointed by the Board of Directors and designated as the Compliance Committee to serve at the pleasure of the Board of Directors.
- b. The Compliance Committee shall first undertake to obtain compliance informally, by discussing the violation or violations with the violator, and seeking to obtain future compliance or cessation of the ongoing violation or violations.
- c. Should such notice obtain the requested compliance that will dispose of the matter, unless the same or a similar violation thereafter reoccurs.
- e. Should such notice not obtain the requested compliance within the specified time, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

## **ARTICLE XI GENERAL**

**Section 11.01. Headings and Captions.** The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

**Section 11.02. 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.

**Section 11.03. Gender.** The use of masculine gender herein shall be deemed to include the masculine, feminine and neuter, and the use of the singular shall be deemed to include the plural whenever the context so requires.

**Section 11.04. Right Reserved to Impose Additional Protective Covenants.** The Declarant reserves the right to record additional Covenants, Conditions, Restrictions, Easements, Charges and Liens affecting the Property prior to the conveyance of any Homes subject to this Declaration.

**Section 11.05. Notice.** All notices hereunder shall be in writing, and, unless otherwise expressly provided, shall be sent by postpaid, first class mail, addressed, if to the Board of Directors, to the office of the Board of Directors, and if to an Owner or Mortgagee, to the address of such Owner or Mortgagee as appears in the records of the Association, and if to the Declarant, to the address of the Declarant as such appears on the books of the Association. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of this Declaration, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent of such notice. A person entitled to receive notices may request in writing that such notice or notices be sent to them electronically at an e-mail address provided by them in writing.

**Section 11.06. Right of Association to Transfer Interest.** Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation. Upon such assignment, the successor corporation shall have all the rights and be 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 had been an original party and all references herein to the Board of Directors shall be deemed to refer to the Board of Directors of such successor corporation. Any such assignment shall be accepted by the successor corporation under a written agreement pursuant to which the successor corporation expressly assumes all

the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation, the Covenants, Restrictions, Easements and Liens imposed hereunder shall, nevertheless, continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation to take over the duties and responsibilities of the Association, such corporation to exist subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation.

**Section 11.07. Right of Association to Transfer Functions.** Unless otherwise specifically prohibited herein, or within the Certificate of Incorporation or the By-Laws of the Association, any and all functions of the Association shall be fully transferable, in whole or in part, to any other homeowners' association or similar entity.

## **ARTICLE XII**

### **ARCHITECTURAL CONTROL AND STANDARDS**

**Section 12.01. Control by Association.** After transfer of title by the Sponsor to any Home, or to a completed portion of the Property, enforcement of those provisions of this Declaration pertaining to the exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvements on said Home or Home site, or to other portion of the Property, shall be the responsibility of the Association, acting through the Architectural Committee as provided in Section 12.02 herein.

**Section 12.02. Composition and Function of Architectural Committee.**

(a) The Architectural Committee shall be a permanent committee of the Association. It shall serve in an advisory capacity to the Board of Directors, with final approvals and/ or enforcement resting solely with the Board of Directors.

(b) The Board of Directors shall appoint the Committee which shall consist of at least three (3), but no more than five (5) persons; however, the Sponsor retains the right to appoint all members of the Committee until one hundred percent (100%) of the Homes have been developed and conveyed to purchasers in the normal course of development and sale. The Committee shall have exclusive jurisdiction over all exterior painting, original construction, modifications, additions, or alterations made on or to existing Homes pursuant to the Architectural Standards. Moreover, the Committee shall have the right to revise, amend and update the Architectural Standards by a majority vote of the Committee, in order to respond to future changes. Upon revising, amending or updating the Architectural Standards, the Committee shall provide notice of the changes to the Board of Directors and the Members of the Association, and the Committee will make the corresponding changes in the Architectural Standards. Each Committee shall be appointed for terms of two (2) years, subject to removal, with or without cause, by the affirmative vote of three-fourths (3/4) of the entire Board of Directors.

- (c) The Architectural Committee shall advise the Board of Directors on the following:
  - (i) all proposed additions, modifications or alterations to Association Property;
  - (ii) all proposed additions, modifications, alterations or exterior painting of the Homes; and
  - (iii) Perform such other functions as may be assigned by the Board of Directors from time to time.

**Section 12.03. Submission of Plans to Architectural Committee.** After transfer of title to a Home, or to any other portion of the Property, by the Declarant, no exterior addition, modification or alteration shall be made on or to such Home or such other portion of the Property, or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, shall have been submitted to and reviewed by the Architectural Committee and approved by the Board of Directors. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for review, including any fees and reasonable expenses which may be charged by architects, engineers or attorneys retained by the Board of Directors in connection with the review of such plans.

**Section 12.04. Basis for Recommendation of Disapproval of Plans by Architectural Committee.** The Architectural Committee may recommend disapproval of any plans submitted for any of the following reasons:

- (a) Failure of such plans to comply with the Covenants and Restrictions contained in this Declaration;
- (b) Failure to include information in such plans as reasonably requested by the Architectural Committee;
- (c) Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses within the Property;
- (d) Failure of the applicant to furnish to the Architectural Committee proof that insurance in the form and amount satisfactory to the Architectural Committee has been obtained and will be maintained for the appropriate period of time by the applicant;
- (e) Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, and rules and regulations; or
- (f) any other matter which, in the reasonable judgment of the Architectural Committee, would render the proposed improvement use or uses inconsistent or

incompatible with the general plan of improvement of the Property, including any possible adverse impact on the use and enjoyment of the Property by any other Owner or occupant.

**Section 12.05. Recommendation of Architectural Committee.**

(a) Upon recommendation to the Board of Directors for approval or qualified approval by the Architectural Committee of any plans submitted pursuant to this Article, the Board of Directors shall vote upon such recommendations and notify the applicant, in writing, of its decision. Upon an affirmative vote by the Board for approval, or qualified approval, the notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved in the Association's permanent records (together with such qualifications or conditions, if any) and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans shall not be deemed a waiver of the Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are submitted for approval by other Owners.

(b) Once plans have been approved for a Home, they may not be revoked unless the Board of Directors determines that: (1) the work currently being performed is not in substantial conformity with the approved plans; (ii) adequate insurance is not being maintained by the applicant; (iii) appropriate permits have not been obtained, maintained and/or complied with; or (iv) a period of six (6) months has passed from date of approval of the plans and the alterations, modifications or improvements have not been commenced.

**Section 12.06. Written Notification of Disapproval.** In any case where the Architectural Committee recommends disapproval of any plans submitted, and the Board of Directors votes in agreement of such disapproval, the Board of Directors shall notify the applicant in writing, accompanied by a statement of the grounds upon which such action was based as set forth in Section 9,04 hereof. In any such case, the Architectural Committee shall, if requested and if practicable, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

**Section 12.07. Failure of Board of Directors to Act.** If any applicant has not received notice from the Board of Directors approving (including qualified approval) or disapproving any plans within sixty (60) days after submission thereof, said applicant may notify the Board of Directors of that fact in writing. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board of Directors twenty (20) days after the date of receipt of such notice if no decision is rendered by the Board of Directors within said twenty (20) day period.

**Section 12.08. Liability.** No action taken by the Architectural Committee, or any member of a subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect

to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any building or other portion of the property. Neither the Association, the Board of Directors, the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval, or to any Owner or any other person, in connection with a submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, to defend, indemnify and hold harmless the Association, the Board of Directors and the Architectural Committee (or any officer, member of a subcommittee, employee or agent thereof) from any action, proceeding, suit or claim arising out of, or in connection with such submission.

**Section 12.09. Architectural Standards Compliance Certificate.** Upon written request of any Owner, Mortgagee, lessee, licensee or title insurer (or any prospective Owner, Mortgagee, lessee, licensee or title insurer) of a Home or other portion of the Property, title to which has been previously transferred from the Declarant, the Board of Directors shall, within fifteen (15) days, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Standards Compliance Certificate"), signed by a member of the Board of Directors stating, as of the date of such Certificate, whether or not the Home or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to the exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, determined by the Board of Directors, may be imposed for issuance of such Architectural Standards Compliance Certificate. Any such Architectural Standards Compliance Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such certificate was issued.

**Section 12.10. Completion of Work by the Board of Directors.** In the event the Board of Directors deems it necessary to complete work previously commenced by an Owner, or to otherwise protect the appearance, value or structural integrity of the Property, such amounts expended in connection with such repair shall become a binding personal obligation of the Owner and in additional assessment payable by such Owner and shall become a lien against his Home, subject to the provisions of Article V herein.

**Section 12.11. Inapplicable to Sponsor and Approved Contractors.** Notwithstanding anything contained herein to the contrary, improvements of any nature made or to be made by Sponsor or approved Contractors to or on any portion of the Property shall not be subject to the review of the Board of Directors or the Association.

**Section 12.12. Application for Building Permits.** No application for permits for any improvements requiring permit approval from the Town of Halfmoon may be submitted by any person other than Declarant or an approved Contractor without a copy of written approval from the Board of Directors for said improvement.

### **Section 12.13. Architectural Standards.**

a. Garages. All Homes constructed within the Property shall provide for a garage with a minimum capacity of one (1) automobile. No garage shall be constructed separate from the main structure, nor be allowed to encroach on the front setback line of a Home site as delineated on the Subdivision Plan. Garages shall be architecturally integrated with the main structure, using similar massing, roof slopes, facade treatments and materials. All garage windows and exterior door treatments shall be consistent with window and door treatments throughout the main structure. All overhead doors shall remain closed when not in active use.

b. Driveways. Driveways, turnarounds and guest parking areas must be constructed with high quality asphalt. Driveways shall be designed to carry water away from structures and into the Lot's drainage system or onto the roads. Should a driveway be used in common with an abutting Owner, the costs of maintenance, repair and snow removal shall be shared equally by the Owners using said common driveway.

c. Site Lighting.

(1) In general, site lighting shall be low glare lighting designed and compatible with the upscale image of Orchard Pointe. All replacement lighting fixtures on a given Home site shall be the same as originally installed. If said fixtures shall no longer be available, replacement fixtures shall be as approved by the Board of Directors acting through the Architectural Committee.

(2) Exterior lights should only, be used to accent entrances and special features, driveways, parking and pedestrian walkways. High levels of light are not desirable. Light intensity should be no greater than the minimum required for automobile and pedestrian safety.

(3) A single pole-mounted yard light shall be required on each Home site in the front yard of the Home site. All other exterior house lighting, for security or aesthetic purposes, shall be kept close to the house. Light fixtures shall be carefully oriented to avoid directing unwanted light towards adjacent properties and the adjoining street with the exception of motion activated security lighting.

(4) Light sources may be of a concealed type or ornamental visible type. The design and style of poles, bollards and fixtures shall be consistent and complementary to the architecture and site work design. Wherever possible, cutoff luminaire lighting design should be used to avoid glare on adjacent properties. Uplighting of trees and fountains, accent lighting of shrubs and entrances and silhouette lighting may be used to create special effects in selected areas so long as such lighting does not disturb adjacent properties.



- (5) Colored, moving or flashing lights are not permitted except for temporary display during holidays.
- d. Signage and House Numbers. No free-standing or building mounted signage is permitted on Home sites, except for signs approved by the Declarant during construction. Signage is further restricted by the terms of the Declaration. House numbers throughout Orchard Pointe shall be of a consistent size and dimension and displayed only on the facade of the Home. House numbers shall be a maximum of six (6") inches; however, font style may vary.
- e. Exterior Permitted and Not Permitted Material/Colors All Homes shall be constructed on all sides as follows:
- (1) Non-reflective finishes shall be used on exterior surfaces with the exception of hardware items and the raised seam metal roofing used in the construction of the Townhomes.
- f. Doors, Windows, Awnings, Shutters.
- (1) Doors and windows shall be of a style and material to compliment the overall building. Any replacement doors and/or windows which do not match those originally installed by the Builder must be approved by the Architectural Committee.
- (2) Doors shall be constructed of fiberglass.
- (3) Windows shall be single hung, double hung, awning, casement or fixed glass windows. Frames and hardware are to be of anodized or painted aluminum or wood clad with vinyl or aluminum or all vinyl.
- (4) Awnings shall only be installed on the rear of any Home and must be approved by the Architectural Committee and permitted by the municipality.
- (5) Shutters should be of a style and material to complement the overall building style and all shall be constructed of either wood or vinyl with colors as pre-approved by the Planning Board of the Town of Halfmoon.
- i. Porches, Verandas, Screened Enclosures, Decks and Patios. If constructed subsequent to the initial transfer of title by the Declarant, approval of the Architectural Committee must be obtained and such structures will only be allowed if they are permitted under the current building and zoning regulations. In addition:
- (1) Porches, verandas, screened enclosures, decks and patios shall be constructed of materials complimentary to the building style.

- (2) Acceptable materials for these structures are pressure treated wood, stucco covered masonry, and brick or stone. All screening shall be gray-tones and non-sagging. All structures shall either be painted to compliment the main structure or, in the case of wood, stained with an appropriate stain.
  - (3) All structures shall be attached to the main housing structure and shall adhere to the setbacks and building criteria as dictated by local codes.
  - (4) All structures, with the exception of a non-screened front porch that is integral to the design of the Home, shall be constructed on the rear facade of the Home.
- j. Landscape Walls: If constructed subsequent to the initial transfer of title by the Declarant, approval of the Architectural Committee must be obtained. In addition:
- (1) Wall design must harmonize in character and color with the house and shall be made of materials consistent with those of the main house structure. Walls shall not exceed five (5) feet in height above finished grade (in one continuous section). Gates and other features should be of compatible design and color to the wall treatment.
  - (2) Acceptable materials for walls shall be brick, fractured block, stone, stucco-covered masonry, or landscape shrubbery. Colors shall be consistent or complimentary to colors used on the Home.
  - (3) Any wall visible from the road and surrounding properties must be screened with appropriate landscape plantings,
- k. Landscaping.
- (1) Except for foundation plantings and plantings in ornamental landscape beds, all evergreen trees used for screening or otherwise shall be a minimum of five (5) to eight (8) feet tall as measured from the base of the tree to the top of the tree.
  - (2) Except for foundation plantings and plantings in ornamental landscape beds, all deciduous trees used for screening or otherwise shall be a minimum of two and one-half (2.5) inch caliper.

**Section 12.14. Improvements by Declarant and Declarant's approved Contractor and Architectural Standards.** Notwithstanding anything to the contrary contained in this Declaration, any and all improvements made by Declarant and/or any approved Contractor acting in such capacity shall be deemed to be in compliance with the terms and conditions of this Article IX.

## **ARTICLE XIII PARTY WALLS**

**Section 13.1 Party Walls.** Each wall which is built as part of the original construction of the Homes, whether or not such wall is on the dividing line between two adjacent Homes or Lots, and which serves as the exterior limits of such Homes, shall be considered a Party Wall. The general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 13.02 Maintenance of Party Walls.** Each Owner of a Home containing a Party Wall shall have an easement to enter upon the Home with which the Party Wall is shared to effect necessary repairs or maintenance of such Party Wall. Subject to Section 13.03 and 13.05 hereof, it shall become necessary to make substantial repairs to, or rebuild, a Party Wall, such right shall be exercised upon reasonable notice to the adjoining Owner and/or occupant, shall be limited to reasonable times and shall be exercised so as not to unreasonably impair the right of the adjacent owner and/or occupant to the use and quiet enjoyment of said adjacent Home.

**Section 13.03. Exposure of Wall.** An Owner, who, by 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, and the necessary repair resulting because of such act.

**Section 13.04. Materials Used.** If and when any Party Wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar material as the original wall.

**Section 13.05. Destruction of the Wall.** In the event of destruction of a Party Wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of either Home which used the wall may restore it. The Owner who undertakes such rebuilding shall be entitled to a contribution (equaling one-half (1/2) the cost of such restoration) from the Owner owning the adjacent Home sharing such wall. Such right to contribute shall not be construed, however, to limit in any degree, the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions. Each owner is not only responsible for maintaining property and fire insurance but is required to maintain a policy and may be required to produce the same upon notice.

**Section 13.06. Party Wall Rights Run with the Land.** The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of same, which are described in this Article, shall run with the land and shall bind the heirs, successors and assigns of each Owner.

**Section 13.07. Arbitration.** In the event of any dispute arising under the provisions of this Article XIII, procedures as set forth in Article X of this Declaration shall be used to arbitrate such dispute.

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**IN WITNESS WHEREOF**, the undersigned, has caused this declaration to be signed by its duly authorized member the day and year first above written.

DECLARANT:

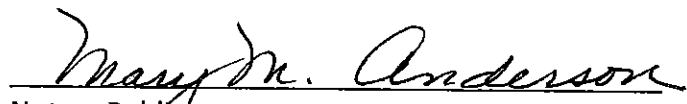
MALTA LAND COMPANY, LLC

By: 

Thomas J. Samascott, Managing Member

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

On the 8<sup>th</sup> day of November, 2016, before me, the undersigned, personally appeared THOMAS J. SAMASCOTT, personally known and known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
Commission Expires:

MARY M. ANDERSON  
Notary Public, State of New York  
Qualified in Saratoga County  
No. 5701700  
Commission Expires 7/31/ 2018

Record & Return:  
Ianniello Anderson, P.C.  
Attn: M. Anderson  
805 Rt. 146, Northway Nine Plaza  
Clifton Park, New York 12065

**EXHIBIT "A"**  
**Description of Orchard Pointe Subdivision**  
**(Also known as Plant Road Estates Subdivison)**

**ALL THAT TRACT OR PARCEL OF LAND**, situated in the Town of Halfmoon, County of Saratoga, State of New York, and bounded and described as follows:

**BEGINNING** at the southeast corner of said farm, and the northeast corner of lands formerly owned by John Davis, and later by John T. Davis, and running thence north, thirty minutes (30') west (30) chains and (30) links, to a white pine tree; thence south eighty-nine degrees (89 deg.) west thirty-six (36) chains to a chestnut tree at the northwest corner of lands formerly of Melburn VanVorrhees; thence south thirty minutes (30') east twenty (20) chains and eight (8) links to a yellow pine tree; thence south nineteen degrees (19 deg.) and thirty minutes (30') east, two (2) chains and sixty-two (62) links; thence south six (6 deg.) and fifteen minutes (15') east six (6) chains and seventy-nine (79) links; thence north eighty-nine degrees (89 deg.) east, twenty (20) chains; thence east, fourteen (14) chains and forty (40) links to the place of beginning, containing one hundred and five (105) acres, two roods, and fourteen (14) perches of land, be the same more or less, and being the same more or less, and being the same premises conveyed by William H. Wyatt and Ella E. Wyatt, his wife, to Edward I. Wrigley by deed dated February 17, 1912, and recorded in the Saratoga County Clerk's Office February 28, 1912, in Book No. 278 of Deeds at Page 532; and being the same premises conveyed by the said Edward I. Wrigley and his wife to Theodore Tamminga and Jannie Tamminga, his wife, by deed dated March 4, 1915 and recorded in the Saratoga County Clerk's Office in Book No. 290 of Deeds at Page 268.

**EXCEPTING AND RESERVING** from the above described premises all that tract or parcel of land conveyed by Lillie (aka Lillian M. Swatling) to Merrit W. DeVoe and Margaret DeVoe, his wife, by deed dated June 4, 1946, and which said premises are described in said deed as follows:

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Halfmoon, County of Saratoga and State of New York, and bounded and described as follows:

**BEGINNING** at the northeasterly corner of the lands of Meyer, formerly of Davis, and at a concrete marker set in the westerly boundary of the Town Highway and running thence northerly and northwesterly along the westerly boundary of said Town Highway, one thousand two hundred and thirty-two (1,232') feet, more or less, to another concrete marker set in the westerly boundary of said highway; thence westerly one thousand seven hundred and sixty-four feet (1,764') more or less, to another concrete marker; thence southerly, three hundred ninety-seven and five-tenths feet (397.5'), more or less, to another concrete marker; thence southerly and easterly, one hundred seventy-two and ninety-two one hundredths feet (172.92'), more or less, to another concrete marker; thence southerly four hundred eighty-eight and fourteen hundredths feet (488.14'), more or less, to another concrete marker; thence north, eighty-nine degrees (89 deg.) east, one thousand three hundred and twenty feet (1,320'), and thence east nine hundred fifty and four tenths feet (950.4') to the point of beginning, containing fifty acres (50), be the same more or less.

The premises being conveyed being more particularly bounded and described by a more modern description as follows:

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND** situate in the Town of Halfmoon, County of Saratoga, State of New York lying along the westerly and easterly lines of Plant Road, said parcel located approximately 0.3 miles northerly of Nadeau Road and being further bounded and described as follows:

**PARCEL LOCATED ALONG THE WESTERLY LINE OF PLANT ROAD:**

**BEGINNING** at a point marked with an iron rod found in concrete at the point of intersection of the westerly three (3) rod right-of-way line of Plant Road with the common division line of lands now or formerly of Lawrence W. DeVoe and Ava Vaughn DeVoe as conveyed in Book 953 of Deeds at Page 584 (Parcel No. 3) to the south and the parcel of land herein being described to the north; thence from said Point of Beginning along said common division line, South 89 deg. 31 min. 00 sec. West, 1,745.15 feet to a point marked with an iron rod found in concrete at the point of intersection of said common division line with the easterly line of said lands of DeVoe as conveyed in Book 953 of Deeds at Page 584 (Parcel No. 4); thence along the common division line of the common division line of said lands of DeVoe as conveyed in Book 953 of Deeds at Page 584 (Parcel No. 4), lands now or formerly of Pearl Emily Schanz and Jo-Anne Ruth Bailey as conveyed in Book 1428 of Deeds at Page 591, lands now or formerly of John F. Hoffman as conveyed in Book 1315 of Deeds at Page 386 and lands now or formerly of Anthony R. Casale as conveyed in Book 1734 of Deeds at Page 475 all to the west and the parcel of land herein being described to the east, North 00 deg. 28 min. 00 sec. East, 956.14 feet to a point in the southerly line of other lands now or formerly of Lawrence W. DeVoe and Ava V. DeVoe as conveyed in Book 821 of Deeds at Page 309; thence along the common division line of said lands of DeVoe as conveyed in Book 821 of Deeds at Page 309 and lands now or formerly of Arthur Hayner and Gale Hayner as conveyed in Book 737 of Deeds at Page 127 to the north and the parcel of land herein being described to the south, North 89 deg. 00 min. 00 sec. East, passing through a point marked with an iron pipe found at 446.89 feet, a total distance of 1,081.14 feet to the point in the southwesterly three (3) rod right-of-way line of Plant Road; thence along said southwesterly line and the westerly line of Plant Road the following five (5) courses and distances:

- 1) South 43 deg. 16 min. 00 sec. East, 154.11 feet to a point;
- 2) South 46 deg. 25 min. 00 sec. East, 196.36 feet to a point of curvature;
- 3) Along a curve to the right an arc length of 445.65 feet to a point of tangency, said curve having a radius of 1,025.00 feet and a chord length of South 33 deg. 57 min. 40 sec. East, 442.15 feet;
- 4) South 21 deg. 30 min. 20 sec. East, 152.58 feet to a point of curvature;
- 5) Along a curve to the left having a radius of 1,124.50 feet and a chord length of South 27 deg. 22 min. 00 sec. East, 229.65 feet and an arc length of 230.05 feet to the point or place of beginning containing 32.457± acres of land.

**PARCEL LOCATED ALONG THE EASTERLY LINE OF PLANT ROAD:**

**BEGINNING** at a point marked with an iron rod found at the point of intersection of the northeasterly three (3) rod right-of-way line of Plant Road with the common division line of lands now or formerly of Kurt R. Schneider as conveyed in Instrument No. 2007024555 to the south and the parcel of land herein being described to the north, said Point of Beginning located South 47

deg. 37 min. 00 sec. East, 460.38 feet from the iron rod found in concrete being the Point of Beginning of the westerly side parcel as described above; thence from said Point of Beginning along said northeasterly line and the easterly three (3) rod right-of-way line of Plant Road the following six (6) courses and distances:

- 1) North 43 deg. 51 min. 10 sec. West, 252.00 feet to a point of curvature;
- 2) Along a curve to the right an arc length of 419.32 feet to a point of tangency, said curve having a radius of 1,075.00 feet and a chord length of North 32 deg. 40 min. 50 sec. West, 416.67 feet;
- 3) North 21 deg. 30 min. 20 sec. West, 152.58 feet to a point of curvature;
- 4) Along a curve to the left an arc length of 467.17 feet to a point of tangency, said curve having a radius of 1,074.50 feet and a chord length of North 33 deg. 57 min. 40 sec. West, 463.50 feet;
- 5) North 46 deg. 25 min. 00 sec. West, 195.00 feet to a point;
- 6) North 43 deg. 16 min. 00 sec. West, 107.76 feet to the point of intersection of the northeasterly line of said Plant Road with the common division line of lands now or formerly of Ellis E. Hayner and Stasia S. Hayner as conveyed in Book 711 of Deeds at Page 396 to the north and the parcel of land herein being described to the south;

thence along said common division line, North 89 deg. 00 min. 00 sec. East, 1,227.97 feet to a point marked with an axle iron found at the point of intersection of said common division line with the westerly line of lands now or formerly of Boni Enterprises, LLC as conveyed in Book 1698 of Deeds at Page 267; thence along the common division line of said land of Boni Enterprises, LLC to the east and the parcel of land herein being described to the west, South 00 deg. 41 min. 30 sec, East, 480.44 feet to a point marked with an iron rod found at the point of intersection of the easterly line of the parcel of land herein being described with the common division line of said lands of Boni Enterprises, LLC to the north and lands now or formerly of John F. Sweeter as conveyed in Instrument No. 2008009751; thence along the common division line along line of said lands of Sweeter to the east and the parcel of land herein being described to the west, South 00 deg. 23 min. 04 sec. West, 777.03 feet to a point marked with an iron found to the point on intersection of said common division line with the northerly line of lands now or formerly of Kurt R. Schneider as conveyed in Instrument No. 2007024555; thence along the common division line of said lands of Schneider to the south and the parcel of land herein being described to the north, South 83 deg. 10 min. 45 sec. West. 300.98 feet to the point or place of beginning, containing 22.189± acres of land.

## **EXHIBIT "B"**

### **Description of the Plant Road Estates Homeowners' Association, Inc. Parcels**

#### **LOT 145:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York, lying along the northerly line of Empire Court and the easterly line of Plant Road, and identified as Lot #145 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015, as prepared by The Environmental Design Partnership, LLP, and filed in the Saratoga County Clerk's Office on June 8, 2015, as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011, as prepared by The Environmental Design Partnership, LLP, and filed in the Saratoga County Clerk's Office on April 18, 2014, as Map No. M2014082 and being further bounded and described as follows:

**BEGINNING** at a point in the northerly line of Empire Court identified as proposed concrete monument #1; Thence from said point of beginning along said northerly line along a curve to the right an arc length of 38.71 feet to a point of reverse curvature at the intersection of the northerly line of Empire Court with the easterly line of Plant Road, said curve having a radius of 30.00 feet and a chord length of North 72 deg. 10 min. 10 sec. West, 36.08 feet; Thence along the easterly line of Plant Road the following three (3) courses and distances; 1) Along a curve to the left an arc length of 210.32 feet to a point of tangency, said curve having a radius of 1,074.50 feet and a chord length of North 40 deg. 48 min. 30 sec. West, 209.99 feet; 2) North 46 deg. 25 min. 00 sec. West, 195.00 feet to a point; 3) North 43 deg. 16 min. 00 sec. West, 107.76 feet to the point of intersection of said easterly line of Plant Road with the common division line of Lot #145 to the south and lands now or formerly of Ellis E. Hayner and Stasia S. Hayner as conveyed in Book 711 of Deeds at Page 396 to the north; Thence along said common division line, North 89 deg. 00 min. 00 sec. East, 777.49 feet to a point in the common division line of Lot #145 to the west and Lot #30 to the east; Thence along said common division line, South 27 deg. 11 min. 50 sec. West, 194.87 feet to the point of intersection of the westerly line of Lot #30 with the common division line of Lot #145 to the north and Lot #33 to the south; Thence along the common division line of Lot #145 to the north and west and Lot Nos. 33, 32 and 31 to the south and east the following two (2) courses and distances;

- 1) South 89 deg. 37 min. 00 sec. West, 198.25 feet to a point,
- 2) South 03 deg. 38 min. 40 sec. West, 210.00 feet to a point in the northerly line of Empire Court,

Thence along said northerly line along a curve to the left having a radius of 230.00 feet, a chord length of South 82 deg. 15 min. 20 sec. West, 90.85 feet and an arc length of 91.45 feet to the point or place of beginning and containing 3.599 ± acres of land.

#### **LOT 146:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the northerly line of Macoun Drive, the easterly line of Idared Lane and the westerly line of Plant Road and identified as Lot #146 as



shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the easterly line of Idared Lane with the common division line of Lot #34 to the north and Lot #146, the herein parcel being described, to the south as shown on said filed maps; Thence from said Point of Beginning along said common division line, North 59 deg. 48 min. 00 sec. East, 169.63 feet to a point in the westerly line of Plant Road; Thence along said westerly line of Plant Road along a curve to the right an arc length of 263.95 feet to a point of compound curvature at the intersection of said westerly line with the northerly line of Macoun Drive, said curve having a radius of 1,025.00 feet and a chord length of South 29 deg. 21 min. 50 sec. East, 263.22 feet; Thence along said northerly line of Macoun Drive the following three (3) courses and distances:

- 1) Along a curve to the right an arc length of 49.30 feet to a point of compound curvature, said curve having a radius of 30.00 feet and a chord length of South 25 deg. 05 min. 40 sec. West, 43.94 feet;
- 2) Along a curve to the right an arc length of 142.27 feet to a point of tangency, said curve having a radius of 470.00 feet and a chord length of South 80 deg. 50 min. 40 sec. West, 141.73 feet;
- 3) South 89 deg. 31 min. 00 sec. West, 48.54 feet to the point of intersection of the northerly line of Macoun Drive with the easterly line of Idared Lane;

Thence along said easterly line of Idared Lane the following three (3) courses and distances:

- 1) Along a curve to the right an arc length of 47.12 feet to a point of tangency, said curve having a radius of 30.00 feet and a chord length of North 45 deg. 29 min. 00 sec. West, 42.43 feet;
- 2) North 00 deg. 29 min. 00 sec. West, 38.59 feet to a point of curvature;
- 3) Along a curve to the left having a radius of 280.00 feet, a chord length of North 15 deg. 20 min. 30 sec. West, 143.61 feet and an arc length of 145.23 feet to the point or place of beginning and containing 1.217 ± acres of land.

#### **LOT 147:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the southerly line of Macoun Drive and the westerly line of Plant Road and identified as Lot #147 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the southerly line of Macoun Drive with the common division line of Lot #111 to the west and Lot #147, the parcel of land herein being described, to the east as shown on said filed maps; Thence from said Point of Beginning along the southerly line of Macoun Drive the following two (2) courses and distances:

- 1) Along a curve to the left an arc length of 67.49 feet to a point of reverse curvature identified as proposed concrete monument no. 4, said curve having a radius of 535.00 feet and a chord length of North 74 deg. 58 min. 10 sec. East, 67.45 feet;
- 2) Along a curve to the right an arc length of 45.63 feet to a point of tangency at the point of intersection of the southerly line of said Macoun Drive with the westerly line of Plant Road, said curve having a radius of 30.00 feet and a chord length of North 65 deg. 04 min. 30 sec. East, 41.35 feet;

Thence along said westerly line of Plant Road the following two (2) courses and distances;

- 1) South 21 deg. 30 min. 20 sec. East, 35.72 feet to a point of curvature;
- 2) Along a curve to the left an arc length of 230.05 feet to the point of intersection of said westerly line with the common division line of Lot #147 to the north and lands now or formerly of Devoe's Rainbow Orchards, LLC as conveyed in Instrument #2012048826 (parcel No. 4) to the south, said curve having a radius of 1,124.50 feet and a chord length of South 27 deg. 22 min. 00 sec. East, 229.65 feet;

Thence along said common division line, South 89 deg. 31 min. 00 sec. West, 173.13 feet to the point of intersection of the northerly line of said lands of Devoe's Rainbow Orchards, LLC with the common division line of Lot #147 to the east and Lot #111 to the west; Thence along said common division line, North 11 deg. 25 min. 00 sec. West, 243.40 feet to the point or place of beginning and containing 32,628 ± square feet of land.

#### **LOT 148:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the westerly line of Idared Lane and the northerly line of Macoun Drive and identified as Lot #148 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at a point identified as proposed concrete monument no. 11 at the point of intersection of the westerly line of Idared Lane with the common division line of Lot #144 to the north and Lot #148, the parcel of land herein being described, to the south as shown on said filed maps; Thence from said Point of Beginning along the westerly line of Idared Lane the following three (3) courses and distances:

- 1) Along a curve to the right an arc length of 95.31 feet to a point of tangency, said curve having a radius of 220.00 feet and a chord length of South 12 deg. 53 min. 40 sec. East, 94.57 feet;

- 2) South 00 deg. 29 min. 00 sec. East, 38.59 feet to a point of curvature;
- 3) Along a curve to the right an arc length of 47.12 feet to a point of tangency identified as proposed concrete monument no. 5 in the northerly line of Macoun Drive, said curve having a radius of 30.00 feet and a chord length of South 44 deg. 31 min. 00 sec. West, 42.43 feet;

Thence along said northerly line of Macoun Drive, South 89 deg. 31 min. 00 sec. West, 104.36 feet to the point of intersection of said northerly line with the common division line of Lot #112 to the west and Lot #148 to the east; Thence along said common division line, North 00 deg. 29 min. 00 sec. West, 108.20 feet to the point of intersection of said common division line with the southerly line of Lot #144; Thence along the common division line of Lot #144 to the north and Lot #148 to the south, North 64 deg. 41 min. 40 sec. East, 125.65 feet to the point or place of beginning and containing 17,812 ± square feet of land.

#### **LOT 149:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the westerly line of Macoun Drive and identified as Lot #149 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at a point identified as proposed concrete monument no. 6 at the point of intersection of the westerly line of Macoun Drive with the common division line of Lot #92 to the east and Lot #149, the parcel of land herein being described, to the west as shown on said filed maps; Thence from said Point of Beginning along said common division line, South 24 deg. 31 min. 10 sec. West, 313.31 feet to the point of intersection of said common division line with the northerly line of lands now or formerly of Devoe's Rainbow Orchards, LLC as conveyed in Instrument No. 2012048826 (parcel No. 4); Thence along said northerly line, South 89 deg. 31 min. 00 sec. West, 152.00 feet to the point of intersection of said northerly line with the common division line of Lot #149 to the east and Lot #82 to the west; Thence along the common division line of Lot #149 to the east and Lot Nos. 82, 83 and 84 to the west, North 19 deg. 15 min. 50 sec. West, 301.10 feet to the point of intersection of the easterly line of Lot #84 with the common division line of Lot #149 to the south and Lot #153, lands to be conveyed to the Saratoga County Sewer District #1, to the north; Thence along said common division line the following two (2) courses and distances:

- 1) North 68 deg. 30 min. 50 sec. East, 101.88 feet to a point;
- 2) North 48 deg. 34 min. 20 sec. East, 145.54 feet to a point in the westerly line of Macoun Drive;

Thence along said westerly line along a curve to the left having a radius of 530.00 feet, a chord length of South 53 deg. 27 min. 20 sec. East, 220.86 feet and an arc length of 222.49 feet to the point or place of beginning and containing 2.225± acres of land.

#### **LOT 150:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the southerly line of Idared Lane and the easterly line of Macoun Drive and identified as Lot #150 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the southerly line of Idared Lane with the common division line of Lot #129 to the east and Lot #150, the parcel of land herein being described, to the west as shown on said filed maps; Thence from said Point of Beginning along said common division line, South 00 deg. 29 min. 00 sec. East, 90.18 feet to the point of intersection of said common division line with the northerly line of Lot #132; Thence along said northerly line, South 67 deg. 44 min. 00 sec. West, 100.01 feet to a point in the easterly line of Macoun Drive; Thence along said easterly line of Macoun Drive the following two (2) courses and distances:

- 1) Along a curve to the right an arc length of 99.39 feet to a point of compound curvature, said curve having a radius of 270.00 feet and a chord length of North 11 deg. 43 min. 00 sec. West, 98.82 feet;
- 2) Along a curve to the right an arc length of 47.48 feet to a point of tangency at the intersection of said easterly line of Macoun Drive with the southerly line of Idared Lane, said curve having a radius of 30.00 feet and a chord length of North 44 deg. 10 min. 20 sec. East, 42.68 feet;

Thence along said southerly line of Idared Lane, North 89 deg. 31 min. 00 sec. East, 82.12 feet to the point or place of beginning and containing 11,724± square feet of land.

#### **LOT 151:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the northerly and westerly lines of Idared Lane and identified as Lot #151 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at a point identified as proposed concrete monument no. 13 at the point of intersection of the westerly line of Idared Lane with the common division line of Lot #65 to the south and Lot #151, the parcel of land herein being described, to the north as shown on said filed maps; Thence from said Point of Beginning along said common division line, North 78 deg. 32

min. 20 sec. West, 139.95 feet to the point of intersection of said common division line with the easterly line of lands now or formerly of John F. Hoffman as conveyed in Book 1315 of Deeds at Page 386; Thence along the common division line of Lot #151 to the east and said lands of John F. Hoffman and lands now or formerly of 1693 Route 9, LLC as conveyed in Instrument No. 2011011320 to the west, North 00 deg. 28 min. 00 sec. East, 355.45 feet to the point of intersection of the easterly line of said lands of 1693 Route 9, LLC with the common division line of Lot #151 to the south and lands now or formerly of Lawrence W. Devoe and Ava V. Devoe as conveyed in Book 821 of deeds at Page 309 to the north; Thence along said common division line, North 89 deg. 00 min. 00 sec. East, 175.71 feet to the point of intersection of the southerly line said lands of Devoe with the common division line of Lot #151 to the west and Lot #64 to the east; Thence along said common division line, South 31 deg. 58 min. 00 sec. East, 202.66 feet to a point identified as proposed concrete monument no. 12 in the northerly line of Idared Lane; Thence along said northerly line and the westerly line of Idared Lane along a curve to the left having a radius of 330.00 feet, a chord length of South 34 deg. 44 min. 50 sec. West, 260.92 feet and an arc length of 268.25 feet to the point or place of beginning and containing 1.787± acres of land.

#### **LOT 152:**

**ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the easterly and southerly lines of Idared Lane and identified as Lot #152 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said lot also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the easterly line Idared Lane with the common division line of Lot #82 to the south and Lot #152, the parcel of land herein being described, to the north as shown on said filed maps; Thence from said Point of Beginning along said easterly line and the southerly line of Idared Lane the following four (4) courses and distances;

- 1) Along a curve to the left an arc length of 96.73 feet to a point of reverse curvature, said curve having a radius of 75.00 feet and a chord length of North 40 deg. 01 min. 20 sec. West, 90.16 feet;
- 2) Along a curve to the right an arc length of 54.07 feet to a point of tangency, said curve having a radius of 40.00 feet and a chord length of North 38 deg. 14 min. 50 sec. West, 50.04 feet;
- 3) North 00 deg. 28 min. 30 sec. East, 103.87 feet to a point of curvature;
- 4) Along a curve to the right an arc length of 200.98 feet to the point of intersection of said easterly line with the common division line of Lot #152 to the west and Lot #83 to the east, said curve having a radius of 270.00 feet and a chord length of North 21 deg. 47 min. 30 sec. East, 196.37 feet;

Thence along the common division line of Lot #152 to the west and Lot Nos. 83, 86, 87, 88, 89, 90, 91 and 153 to the east, South 19 deg. 15 min. 50 sec. East, 411.10 feet to a point in the northerly

line of Lot #82; Thence along said northerly line, South 86 deg. 55 min. 40 sec. West, 120.61 feet to the point or place of beginning and containing 1.059± acres of land.

**TOGETHER WITH THE FOLLOWING EASEMENTS:**

**MAIL KIOSK EASEMENT:**

**INGRESS AND EGRESS EASEMENT THROUGH ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the easterly line of Plant Road and southerly line of Empire Court within a portion of Lot #1 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said easement also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the easterly line of Plant Road with the southerly line of Empire Court as shown on said maps; Thence from said Point of Beginning along said southerly line of Empire Court the following two (2) courses and distances;

- 1) Along a curve to the right an arc length of 58.13 feet to a point of compound curvature, said curve having a radius of 30.00 feet and a chord length of North 26 deg. 50 min. 40 sec. East, 49.45 feet;
- 2) Along a curve to the right in a general easterly direction an arc length of 74.24 feet to a point, said curve having a radius of 170.00 feet;

Thence through Lot #1 as shown on said maps, South 49 deg. 36 min. 40 sec. West, 104.88 feet to a point in the easterly line of Plant Road; Thence along said easterly line along a curve to the left in a generally northerly having a radius of 1,074.50 feet and an arc length of 34.00 feet to the point or place of beginning of said easement and containing 4,076± square feet.

**PLANT ROAD FENCE EASEMENT:**

**INGRESS AND EGRESS EASEMENT THROUGH ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying along the westerly and southwesterly lines of Plant Road within a portion of lots 34-36, 37-39, 40-42, 43-45 and 46 as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092, said easement also shown on a map entitled "Plant Road Estates, Applicant: Tra-Tom Development Corp.", dated November 1, 2011 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on April 18, 2014 as Map No. M2014082, and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the westerly line of Plant Road with the common division line of Lot #146 to the south and Lot #34 to the north as shown on said maps; Thence

from said Point of Beginning along said common division line, South 59 deg. 48 min. 00 sec. West, 62.97 feet to a point; Thence through Lot Nos. 34-36, 37-39, 40-42, 43-45 and 46 the following two (2) courses and distances;

- 1) North 35 deg. 27 min. 10 sec. West, 236.89 feet to a point;
- 2) North 44 deg. 30 min. 50 sec. West, 301.41 feet to a point in the southerly line of lands now or formerly of Arthur Hayner and Gale Hayner as conveyed in Book 737 of Deeds at Page 127;

Thence along said southerly line, North 89 deg. 00 min. 00 sec. East, 40.54 feet to a point in the southwesterly line of Plant Road; Thence along said southwesterly line and the westerly line of Plant Road the following three (3) courses and distances;

- 1) South 43 deg. 16 min. 00 sec. East, 154.11 feet to a point;
- 2) South 46 deg. 25 min. 00 sec. East, 196.36 feet to a point of curvature;
- 3) Along a curve to the right in a general southeasterly direction having a radius of 1,025.00 feet and an arc length of 173.10 feet to the point or place of beginning of said easement and containing 20,182± square feet.

#### **BOUNDARY FENCE EASEMENT - SOUTHEAST PORTION:**

**10-FOOT WIDE INGRESS AND EGRESS EASEMENT THROUGH ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying within a portion of lots 92-94, 95-97, 98-100, 101-102, 103-105, 106-108, and 109-111, said lots as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092 and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the northerly line of lands now or formerly of Devoe's Rainbow Orchards, LLC as conveyed in Instrument No. 2012048826 (Parcel No. 4) with the common division line of Lot #149 to the west and Lot #92 to the east; Thence from said Point of Beginning along said common division line, North 24 deg. 31 min. 10 sec. East, 11.04 feet to a point; Thence through Lot Nos. 92-94, 95-97, 98-100, 101-102, 103-105, 106-108, and 109-111, North 89 deg. 31 min. 00 sec. East, 904.75 feet to a point in the in the common division line of Lot #147 to the east and Lot #111 to the west; Thence along said common division line, South 11 deg. 25 min. 00 sec. East, 10.19 feet to the point of intersection of said common division line with the northerly line of lands now or formerly of Devoe's Rainbow Orchards, LLC as conveyed in Instrument No. 2012048826 (Parcel No. 4); Thence along said northerly line, South 89 deg. 31 min. 00 sec. West, 911.34 feet to the point or place of beginning of said easement and containing 9,082± square feet of land.

#### **BOUNDARY FENCE EASEMENT - SOUTHWEST PORTION:**

**10-FOOT WIDE INGRESS AND EGRESS EASEMENT THROUGH ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND SITUATE** in the Town of Halfmoon, County of Saratoga, State of New York lying within a portion of lots 76, 77-79 and 80, said lots as shown on a map entitled "Plant Road Estates, Applicant: Malta Land Company, LLC, Amended

Building Layout Plan", dated February 23, 2015 as prepared by The Environmental Design Partnership, LLP and filed in the Saratoga County Clerk's Office on June 8, 2015 as Map No. M2015092 and being further bounded and described as follows:

**BEGINNING** at the point of intersection of the northerly line of lands now or formerly of Devoe's Rainbow Orchards, LLC as conveyed in Instrument No. 2012048826 (Parcel No. 4) with the common division line of Lot #149 to the east and Lot #80 to the west; Thence from said Point of Beginning along said northerly line, South 89 deg. 31 min. 00 sec. West, 508.68 feet to a point marked with an iron rod found at the point of intersection of said northerly line with the common division line of Lot #76 to the east and lands now or formerly of Squash Lot, LLC as conveyed in Instrument No. 2012006319 to the west; Thence along said common division line, North 00 deg. 28 min. 00 sec. East, 10.00 feet to a point; Thence through lots 76, 77-79 and 80, North 89 deg. 31 min. 00 sec. East, 505.12 feet to a point in the common division line of Lot #149 to the east and Lot #80 to the west; Thence along said common division line, South 19 deg. 15 min. 50 sec. East, 10.56 feet to the point or place of beginning of said easement and containing 5,069± square feet.