

THIS IS NOT
A BILL

7 0 8 1 8 0 7 8 1 7 3
COUNTY OF MONROE
COUNTY CLERK'S RECORDING PAGE

THIS IS YOUR
RECEIPT

RETURN TO:

Box 227

INDEX DEED

BOOK 8076 PAGE 173

NO. PAGES 36

INSTRUMENT Declaration
~~DECLARATION OF C~~

~~OR CHESAPEAKE PROPERTIES LTD
EE CHESAPEAKE HOMEOWNERS ASSOCIATION INC
EE CHESAPEAKE PROPERTIES LTD
OR CHESAPEAKE HOMEOWNERS ASSOCIATION INC~~

MORTGAGE TAX

SERIAL # _____

CITY/TOWN _____

S.M.A. _____

TRANS. AUTH. _____

TOTAL _____

FILING FEE	10.00
36 PAGE FEE	108.00
TRANSFER FEE	.00
AFFIDAVIT FEE	6.00
CAP GAINS FEE	.00
MISC FEE	.00
TOTAL	124.00

.00+ CSH: .00 CHK: 124.00
CASHIER: LEWIS, CAROL A

PAID AT RECORDING

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

RECORDED ON 05/01/91 AT 13:09:00

BOOK 8076 PAGE 173 OF DEED

PATRICIA L. MCCARTHY
MONROE COUNTY CLERK

TRANSFER TAX

14708

TRANSFER TAX _____

AMOUNT _____ .00

PAID AT RECORDING

0 0 0 0 8 0 7 6 1 7 4

EXHIBIT "A"

DECLARATION

Establishing Chesapeake Ponds Homeowners Association, Inc.

NAME: CHESAPEAKE HOMEOWNERS ASSOCIATION, INC.

SPONSOR: CHESAPEAKE PROPERTIES, LTD.
1799 Ridgeway Avenue
Rochester, New York 14615

DATED:

RECORDED:

REC'D
MAY -1 P 1:09
NONPROF CO.
CLERK'S OFFICE

RECORDED

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Attorneys for the Sponsor

44 Exchange Street
Rochester, New York 14614

8
let
CG

✓

DECLARATION OF COVENANTS AND EASEMENTS

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS.....
Section 1.01	Definitions.....
ARTICLE II	PROPERTY SUBJECT TO THIS DECLARATION.....
Section 2.01	Initial Property.....
Section 2.02	Additional Property
Section 2.03	Mergers.....
ARTICLE III	THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS.....
Section 3.01	Formation of the Association.....
Section 3.02	Membership.....
Section 3.03	Voting.....
Section 3.04	Interest in More Than One Lot.....
Section 3.05	Lots Owned or Held by More Than One Person or by Corporation.....
Section 3.06	Holder of Security Interest Not a Member.....
Section 3.07	Assigning Right to Vote.....
Section 3.08	Meeting and Voting Regulations.....
Section 3.09	Selection of Directors.....
Section 3.10	Powers and Duties of Directors.....
Section 3.11	Indemnification of Officers and Directors.....
Section 3.12	Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.....
ARTICLE IV	PROPERTY RIGHTS AND EASEMENTS.....
Section 4.01	Dedication of Association Property.....

Section 4.02	Right and Easement of Enjoyment in Association Property.....
Section 4.03	Rights of Association.....
Section 4.04	Rights of Sponsor.....
Section 4.05	Rights of Individual Lot Owners.....
	Common Utility and Conduit Easement.....
	Limited Access Easement.....
Section 4.06	Maintenance of Association Facilities.....
Section 4.07	Right of Association to Contract Duties and Functions.....
Section 4.08	Environmental Considerations.....
Section 4.09	Common Access Easement.....
Section 4.10	Distribution of Condemnation Awards.....

ARTICLE V ASSESSMENTS.....

Section 5.01	Imposition, Personal Obligations, Lien.....
Section 5.02	Purpose of Maintenance Assessment.....
Section 5.03	Date of Commencement and Notice of Assessments.....
Section 5.04	Assessments for Specific Lots.....
Section 5.05	Basis for Maintenance Assessment.....
Section 5.06	Change in Basis of Assessments.....
Section 5.07	Special Assessments for Capital Improvements.....
Section 5.08	Non-Payment of Assessment.....
Section 5.09	Right to Maintain Surplus.....
Section 5.10	Assessment Certificates.....
Section 5.11	Subordination of Assessment Lien to Mortgages.....
Section 5.12	Right to Borrow and Mortgage.....
Section 5.13	Repayment of Monies Borrowed.....

ARTICLE VI MAINTENANCE BY THE ASSOCIATION.....

Section 6.01	Maintenance and Repair by the Association.....
--------------	---

Section 6.02	Repairs and Maintenance Which Are Not the Responsibility of the Association.....
Section 6.03	Quality and Frequency of Maintenance and Repairs.....
Section 6.04	Access for Repairs.....
ARTICLE VII	ARCHITECTURAL CONTROLS.....
Section 7.01	Control by Association.....
ARTICLE VIII	RESERVED.....
ARTICLE IX	INSURANCE AND RECONSTRUCTION.....
Section 9.01	Insurance to be Carried.....
	Liability.....
	Directors' and Officers' Liability.....
	Fidelity Bond.....
	Other Insurance.....
	No Liability for Failure to Obtain Above Coverages.....
	Deductible.....
	Option to Have Insurance Paid by Lot Owners Directly....
Section 9.02	Insurance Carried by Owners.....
ARTICLE X	GENERAL COVENANTS AND RESTRICTIONS.....
Section 10.01	Advertising and Signs.....
Section 10.02	Garbage and Refuse Disposal.....
Section 10.03	No Above Surface Utilities Without Approval.....
Section 10.04	Noxious or Offensive Activities.....
Section 10.05	Oil and Mining Operations.....
Section 10.06	Dwelling in Other Than Residential Unit.....
Section 10.07	Antennas.....
Section 10.08	Trees and Other Natural Features.....
Section 10.09	Use and Maintenance of Slope Control Areas.....
Section 10.10	Snowmobiles.....
Section 10.11	Commercial and Professional Activity on Property.....
Section 10.12	Outside Storage.....
Section 10.13	Outdoor Repair Work.....

Section 10.13	Oversized, Commercial and Unlicensed Vehicles.....
Section 10.14	Clotheslines.....
Section 10.15	Chain Link Fences.....

**ARTICLE XI ENFORCEMENT, AMENDMENT AND DURATION
 OF DECLARATION.....**

Section 11.01	Declaration Runs with the Land.....
Section 11.02	Enforceability.....
Section 11.03	No Waiver by Failure to Enforce.....
Section 11.04	Obligation and Lien for Cost of Enforcement by Association..
Section 11.05	Inspection and Entry Rights.....
Section 11.06	Default Notices to be Sent to Mortgagees.....
Section 11.07	Amending or Rescinding.....
Section 11.08	When Amendment or Rescission Become Effective.....
Section 11.09	Duration.....
Section 11.10	Construction and Interpretation.....
Section 11.11	Conflict with Municipal Laws.....
Section 11.12	Change of Conditions.....
Section 11.13	Invalidity of Agreement or Declaration.....

ARTICLE XII GENERAL.....

Section 12.01	Headings and Captions.....
Section 12.02	Right Reserved to Impose Additional Protective Covenants.....
Section 12.03	Notice.....
Section 12.04	Right of Association to Transfer Interest.....
Section 12.05	Right of Association to Transfer Functions.....

DECLARATION OF COVENANTS AND EASEMENTS

THIS DECLARATION, made this 20th day of April, 1991, by CHESAPEAKE PROPERTIES, LTD., a New York corporation, which has offices at 740 Driving Park Avenue, Rochester, New York, being hereinafter referred to as "the Sponsor".

W I T N E S S E T H :

WHEREAS, the Sponsor is the owner of the real property described in Article II of this Declaration, being Chesapeake Subdivision as the same is described on Schedule A attached hereto and made a part hereof, which the Sponsor desires to develop as a residential community with open spaces and other common facilities for the benefit of said community, and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described above to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, and

WHEREAS, the Sponsor desires that certain portions of said real property be subdivided into lots upon which are or will be constructed residential dwelling units, which lots and units will be individually owned and the Sponsor desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community, and

WHEREAS, the Sponsor has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an Association to which should be delegated and assigned the powers of maintaining and administering the community property and facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, the Sponsor has incorporated the Chesapeake Ponds Homeowners Association, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Sponsor, for itself, its successors and assigns, declares the real property described in Section 2.01 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "ASSOCIATION" shall mean and refer to the CHESAPEAKE PONDS HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Henrietta or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- F. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities, of the fee interest in any Lot whether or not such holder actually resides at or on such Lot.
- G. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.

H. "SPONSOR" shall mean and refer to Chesapeake Properties, Ltd.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Initial Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Henrietta, County of Monroe and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as "Initial Property".

Section 2.02. Additional Property. The Sponsor, its successors and assigns, shall have the right to bring additional properties within the scheme of this Declaration.

The additions authorized under this Article shall be made by filing or recording a Supplemental Declaration with respect to the additional properties which shall extend the scheme of the covenants, conditions, restrictions, easements, charges and liens of this Declaration to such properties and thereby subject such additions to assessments for their just share of the Association expenses. The Supplemental Declaration(s) may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

Section 2.03. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may be transferred by operation of law, to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added by operation of law, to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III
THE ASSOCIATION STRUCTURE,
MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed the Association, to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and ByLaws of the Association, and as they may be amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the ByLaws, the Association shall have all the powers and be subject to the limitations of a Not-for-Profit Corporation as contained in the Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Sponsor. 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 definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until 370 Lots are transferred, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. Lots Owned or Held by More Than One Person or by Corporation. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common ownership or interest such Owners shall collectively be entitled to only one vote, and if such Owners cannot jointly

agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

In the case of a corporate Owner, the ballot may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. The Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. All such assignments shall be subject to the provisions of the Offering Plan pursuant to which the Sponsor has offered interests in the Association, including any duly filed amendments thereof.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled.

Section 3.12. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, until seven (7) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 5% or more of the Lots then subject to this Declaration, the Board of Directors may not, without the Sponsor's written consent, which consent will not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Property of the Association costing more than 20% of the then current annual budget, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Lot, or (v) reduce the quantity or quality of services or maintenance of the Association Property. Until seven (7) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 5% or more of the Lots then subject to this Declaration, this Section of the Declaration shall not be amended without the prior written consent of the Sponsor.

ARTICLE IV
PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members, which land shall hereinafter be referred to as "Association Property". The Association shall accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association, the Sponsor, and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner.

Every Member (and such Member's guests, licensees, tenants and invitees) also shall have an easement for ingress and egress by vehicle or on foot over Association Property.

These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

Section 4.03. Rights of Association. With respect to the Association Property, and/or Property, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

(a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

(b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

(c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all

Members who shall vote upon written ballot which shall be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on $33 \frac{1}{3}\%$ or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;

(d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds ($\frac{2}{3}$) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than 60 days in advance of the vote on the proposed agreement;

Section 4.04. Rights of Sponsor. With respect to Association Property, the Sponsor shall have the right until the improvement, marketing and sale of all Lots is completed:

(a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not limited to, water, gas, electric, telephone, cable television and sewer to service the Property;

(b) to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property;

(c) to use the Association Property for ingress and egress to those portions of the Initial Property (as described in Section 2.01 of this Declaration);

(d) to operate a sales center and to have prospective purchasers and others visit such sales center;

(e) to grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of the Property.

All easements, rights-of-way and other rights granted by the Sponsor pursuant to (a), (b), (c) and (e) above, shall be permanent, run with the land and be binding upon and for the benefit of the Association and the Sponsor and their respective successors and assigns. The rights granted to the Sponsor shall remain in effect until the Sponsor completes the improvement, marketing and sale of all Lots or the Sponsor records a written memorandum releasing its rights hereunder.

Section 4.05. Rights of Individual Lot Owners. Each Lot Owner shall have an easement over Association Property which shall be exercised so as not to impair the enjoyment of the adjacent Lot.

Section 4.06. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.07. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.

Section 4.08. 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, in its discretion, may establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of such activities or take affirmative action to improve the quality of the environment.

Section 4.09. Common Access Easement. The Sponsor and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways and drives located on the Association Property.

Section 4.10. 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 the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the manner adopted by two-thirds of the Members.

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

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

ARTICLE V **ASSESSMENTS**

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"), and (b) special assessments for capital improvements ("Special Assessments"); hereinafter collectively referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and also shall be the personal obligation of the Owner of such Lot at the time the assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety

and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such other date as determined by the Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable annually unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration, excluding the Sponsor, shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any; the Maintenance Assessment on Lots owned by the Sponsor shall be equal to an amount calculated in accordance with the following provision: the Sponsor shall be obligated for the difference between the actual Association expenses, including reserves applicable to completed improvements, and the Association charges levied on owners who have closed title to their Lots.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by a fraction the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots then subject to this Declaration, thereby assuring that each Lot bears an equal share of the Association expenses.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance

Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until seven (7) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 5% or more of the Lots then subject to this Declaration, whichever shall first occur, no change in the basis of Maintenance Assessments which adversely affect the interest of the Sponsor with respect to unsold Lots shall be valid except with the specific consent of the Sponsor in writing. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners at least 30 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 30 days prior to the first such due date.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment

shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed ten percent (10%) per annum, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association, under no circumstances, shall entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or at the request of a mortgagee, shall send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association within a reasonable period of time, shall issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these 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 or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all

agreements with note holders shall be subject to (i) the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;
- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) assess the Maintenance Assessment on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
 - (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
 - (3) provide for the custody and safeguarding of all funds received by it;
 - (4) establish sinking funds and/or other security deposits;
 - (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

ARTICLE VI
MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, and the maintenance of

all landscaped areas within Association Property shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether such lines and facilities are on individual Lots or Association Property) also shall be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

- a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace all improvements and landscaped areas associated with the storm water drainage ponds and such other areas which the Board of Directors may deem proper.
- b. Maintenance of Lots. With respect to the Lots, the Owner shall have complete and absolute responsibility for maintenance, repair and replacement of all improvements. The Association shall not be responsible for any maintenance, repair or replacement of any improvement on any Lot.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association or constructed on any Lot, or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company, (iii) the maintenance, repair or replacement of the dedicated improvements, or (iv) obstructed sewer laterals.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner or the Sponsor shall be made at the cost and expense of such Lot Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that

Lot Owners arising from occurrences within such Owner's house or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of not less than \$500,000.00 covering all claims for bodily injury and property damage.

2. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$250,000.00.

3. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget, but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000.00 for dishonest acts and \$5,000.00 for forgery.

4. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

5. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property.

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

ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. The Association shall not have any architectural control over the individual Lots within the Property.

ARTICLE VIII RESERVED

ARTICLE IX INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) liability insurance on the Association Property, (ii) directors and officers' liability insurance, (ii) fidelity bond or surety bond, and (iii) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

1. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners of Lots, but not the liability of

6. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly 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 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.

Option to Have Insurance Paid
by Lot Owners Directly

The Board of Directors may, at its option, elect to have any insurance which it obtains, paid for directly by the Owners of the Lots rather than from assessments paid to the Association. However, should any Owner fail to pay such Owner's portion of such insurance premium, the Board of Directors may elect to pay such amount on behalf of such Owner in which event such amount so advanced shall be a charge and continuing lien upon the Lot of such Owner and shall also be the personal obligation of such Owner. Such amount shall bear interest and shall be collectible in the same manner as a delinquent assessment as set forth in Section 5.08 of this Declaration.

Section 9.02. Insurance Carried by Owners. Owners of Lots shall not be prohibited from carrying other insurance for their own benefit, provided that such policies contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

ARTICLE X
GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property, including but not limited to temporary signs advertising property for sale or rent, except in compliance with zoning code requirements.

Section 10.02. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

Section 10.03. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association.

Section 10.04. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 10.05. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Association.

Section 10.06. Dwelling in Other Than Residential Unit. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.07. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.08. Trees and Other Natural Features. After the transfer of title by the Sponsor to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.09. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 10.10. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association, subject, however, to the Town of Henrietta Zoning Code and the Parks and Recreation Law of the State of New York.

Section 10.11. Commercial and Professional Activity on Property. No wholesale or retail business, service occupation or

home business in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, excepting acts of the Sponsor in conjunction with the initial construction, development, lease and sale of Lots.

Section 10.12. Outside Storage. Outside storage or parking for more than one 72 consecutive hour period per month of commercial or recreational vehicle, unlicensed vehicle, camper, boat, truck or trailer shall be prohibited.

Section 10.13. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

Section 10.14. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property for more than 72 hours within any month:

- a. any vehicle which cannot fit into a garage of the size constructed by the Sponsor with the Units with the overhead garage door closed;
- b. commercial vehicles of a weight of two (2) tons or more, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 10.15. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Association.

Section 10.16. Chain Link Fences. Unless otherwise consented to by the Association, no chain link fence shall be erected anywhere on the Property.

ARTICLE XI
ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property, whether or not the deed, lease or any other instrument incorporates or refers to the Declaration, covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior to or subsequent thereto. No liability shall attach to the Sponsor, the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any

family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any.

Section 11.05. Inspection and Entry Rights. Any agent of the Association may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration.

Section 11.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration. In addition, until seven (7) years from the date of recording of this Declaration, or so long as the Sponsor owns 5% or more of the Property then subject to this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor.

In voting for such amendment or rescission, the Members voting rights shall be as set forth in Article III hereof.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least 30 days prior to the date set for voting on said proposed amendment or rescission.

In addition to the approval of the Lot Owners and Sponsor, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the date set for voting on the proposed amendment, that they are opposed to such amendment,

which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2010, and, as then in force, shall be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 11.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and making and finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and other residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization or approval, as herein provided, the Association may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the consideration set forth in the immediately preceding paragraph hereof.

Section 11.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.12. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.13. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII GENERAL

Section 12.01. 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 12.02. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Sponsor, Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 12.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges 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 or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.05. Right of Association To Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or 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 or residents association or similar entity.

CHESAPEAKE PROPERTIES, LTD.

By: 
LOUIS M. BACCHETTA, PRES.

CHESAPEAKE PONDS HOMEOWNERS
ASSOCIATION, INC.

By: 
LOUIS M. BACCHETTA

DESCRIPTION OF SECTION NO. 1 OF CHESAPEAKE
SUBDIVISION IN THE TOWN OF
HENRIETTA, NEW YORK.

October 9, 1989

Page 1 of 2

Revised June 20, 1990

Part of Tax Map No.: 174.010-02-053

All that tract or parcel of land situated in Lot 11, Range 6, Township 12, Range 7 of the Phelps & Gorham Purchase, Town of Henrietta, County of Monroe, State of New York, and described as follows:

Beginning at the intersection of the west line of East River Road (66' wide right of way), and the south line of the now or former Eugene & Katherine Skuza property (Tax Map No.: 174.010-02-052);

1. thence South $8^{\circ} 04' 55''$ West, along said west line of East River Road, a distance of 265.01' to a point;
2. thence North $81^{\circ} 55' 05''$ West, a distance of 7.00' to a point;
3. thence Northwesterly, on a curve to the left having a radius of 30', a delta angle of $90^{\circ} 00' 00''$, a distance of 47.12' to a point of tangency;
4. thence North $81^{\circ} 55' 05''$ West, a distance of 8.80' to a point of curvature;
5. thence Southwesterly on a curve to the left, having a radius of 340' a delta angle of $30^{\circ} 59' 57''$ a distance of 183.95' to a point;
6. thence South $22^{\circ} 55' 02''$ East, a distance of 120.00' to a point;
7. thence South $59^{\circ} 17' 25''$ West, a distance of 296.61' to a point;
8. thence South $64^{\circ} 24' 39''$ West, a distance of 175.47' to a point;
9. thence North $15^{\circ} 10' 11''$ West, a distance of 141.88' to a point;
10. thence Southwesterly on a curve to the right having a radius of 630', a delta angle of $0^{\circ} 08' 39''$, a distance of 1.59' to a point;
11. thence North $15^{\circ} 01' 32''$ West, a distance of 226.10' to a point;
12. thence North $88^{\circ} 26' 34''$ East, a distance of 125.96' to a point;
13. thence North $60^{\circ} 58' 06''$ East, a distance of 106.02' to a point;
14. thence North $29^{\circ} 01' 54''$ West, a distance of 26.91' to a point;
15. thence North $1^{\circ} 33' 26''$ West, a distance of 120.00' to a point;

0 0 0 0 8 0 7 5 2 0 -8

Chesapeake Subdivision
Section No. 1
Chesapeake Properties Ltd.

DESCRIPTION OF SECTION NO. 1 OF CHESAPEAKE
SUBDIVISION IN THE TOWN OF
HENRIETTA, NEW YORK.

October 9, 1989

Page 2 of 2

Revised June 20, 1990

16. thence North $88^{\circ} 26' 34''$ East, a distance of 48.00' to a point;
17. thence North $1^{\circ} 33' 26''$ West, a distance of 180.00' to a point;
18. thence South $88^{\circ} 26' 34''$ West, a distance of 50.00' to a point;
19. thence North $25^{\circ} 18' 25''$ West, a distance of 54.63' to a point;
20. thence North $1^{\circ} 33' 26''$ West, a distance of 138.21' to a point;
21. thence Southeasterly on a curve to the right having a radius of 190', a delta angle of $20^{\circ} 01' 25''$, a distance of 66.40' to a point;
22. thence North $26^{\circ} 19' 54''$ East, a distance of 217.31' to a point;
23. thence North $88^{\circ} 26' 34''$ East, a distance of 129.95' to the west line of the now or former Howard & Margaret Updyke property (Tax Map No.: 174.010-02-048);
24. thence South $1^{\circ} 33' 32''$ East, along said west line, a distance of 170.00' to a point;
25. thence North $88^{\circ} 26' 34''$ East, along the south line of the Updyke property, a distance of 109.84' to the west line of the now or former John Selph property (Tax Map No.: 174.010-02-050);
26. thence South $8^{\circ} 08' 36''$ West, along said west line and west line of properties fronting on East River Road, a distance of 354.99' to a point;
27. thence North $88^{\circ} 26' 34''$ East, along said south line of the Eugene & Katherine Skuza property, a distance of 200.35' to the point of beginning.

Containing 8.67 \pm Acres.

EXHIBIT A - PART II
Common Areas to be Deeded
to Chesapeake Ponds Homeowners
Association, Inc.

0 0 0 0 8 0 Chesapeake Subdivision
Chesapeake Properties Ltd.
(southeast pond area)

SOUTH POND AREA

November 13, 1989

Part of Tax Map No.: 174.010-02-053

All that tract or parcel of land situated in Lot 11, Range 6, Township 12, Range 7 of the Phelps & Gorham purchase, Town of Henrietta, County of Monroe, State of New York and described as follows:

Beginning at a point in the west line of East River Road (66' wide Right of Way), 792.46' south of the south line of Valley View Drive (60' wide right of way) as measured along said west line of East River Road:

1. thence South 8° 08' 36" West, continuing along said west line of East River Road, a distance of 78.84' to an angle point in said west line;
2. thence South 3° 48' 24" East, continuing along said west line, a distance of 600.53' to the north line of the now or former Ralph T. Sacheli and Ben Coglitore property (Tax Map No.: 174.010-02-054);
3. thence South 88° 44' 53" West, along said north line, a distance of 681.14' to a point;
4. thence north 1° 33' 26" West, a distance of 340.27' to a point;
5. thence North 88° 26' 34" East, a distance of 19.37' to a point;
6. thence North 64° 24' 39" East, a distance of 236.37' to a point;
7. thence North 59° 17' 25" East, a distance of 296.61' to a point;
8. thence North 22° 55' 02" West, a distance of 120.00' to a point;
9. thence Easterly, on a curve to the right having a radius of 340', a delta angle of 31° 03' 37", a distance of 184.32' to a point of tangency;
10. thence South 81° 51' 24" East, a distance of 12.84' to a point of curvature;
11. thence Southeasterly, on a curve to the right having a radius of 30', a delta angle of 90° 00' 00", a distance of 47.12' to a point;
12. thence South 81° 51' 24" East, a distance of 2.00' to the point of beginning;

Containing 8.04 ± Acres.