

~~BILL RANNE~~

~~583 3178~~

OFFERING PLAN

THIS OFFERING RELATES SOLELY TO
MEMBERSHIP IN THE
MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION, PHASE II, INC.
AND TO THE DECLARATION OF COVENANTS AND RESTRICTIONS
APPLICABLE TO ALL LOTS SOLD AT BIRCH RUN
LOCATED AT BOX 437, SEWARD STREET AND DENTON ROAD,
SARATOGA SPRINGS, SARATOGA COUNTY, NEW YORK

APPROXIMATE AMOUNT OF OFFERING: \$345,000.
(Cost of Common Areas and Facilities Included in the
Purchase Price of the Lots)
MAXIMUM NUMBER OF HOMES IN PHASE II is 42

SPONSOR

D. A. Collins Construction Co., Inc.
P.O. Box 191
Mechanicville, New York 12118

SELLING AGENT

Roohan Realty
48 Union Avenue
Saratoga Springs NY 12866

THE APPROXIMATE DATE OF THIS FIRST OFFERING TO THE PUBLIC IS: JUNE 26, 1987
THE TERM OF THE INITIAL OFFER WILL END ON APPROXIMATELY: JUNE 25, 1988

SEE PAGE 1 FOR SPECIAL RISKS TO PURCHASERS

THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL
MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION. NEW YORK LAW
REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN
THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE
DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY
MEMBERSHIP. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN
THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS
APPROVED THIS OFFERING.

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SPECIAL RISKS

Sponsor will control the Board of Directors of the Association until such time as 66 percent of the Lots are closed or for a period of five years whichever is sooner. The powers and duties of the Board of Directors are described at Article VII of the By-laws of the Association (see page 58). Purchasers of Lots should understand that this means that the Sponsor will have control over day-to-day management of the Association. The Sponsor will not, however, be able to exercise its control to reduce levels of services described in this Offering Plan, to prevent capital expenditures or to prevent expenditures required by law. Also, the Sponsor may not mortgage the Association property without consent of at least 51% of all Lot Owners excluding Sponsor or Sponsor's nominees. See page 16 of the Offering Plan.

INTRODUCTION

D. A. Collins Construction Co., Inc., (the "Sponsor" and/or "Declarant"), a New York State corporation, is creating a development encompassing 4.62 acres and containing 42 units of residential housing. The property is zoned residential and although Sponsor may construct apartment buildings or other multi-family structures if he so chooses, no commercial buildings of any kind can be built upon the property. This Offering Plan relates solely to Phase II of the proposed development and this phase and Homeowners Association will contain a maximum of forty-two (42) units of residential housing (each of which is referred to herein as a "Lot"). The 42 Lots will be attached townhouse type homes contained in ten buildings, each of which will contain a minimum of two and a maximum of five homes. The homes to be constructed upon the Lots will be a mix of single story townhouse type homes and two story townhouse type homes. The Sponsor has set aside a parcel of property adjoining the Phase II Property which shall be known as Phase III Property. Upon this Phase III Property, the Sponsor retains the right to develop no more than 134 units, organized into one or more condominium regimes and/or additional homeowners associations. The Sponsor has not determined the exact manner in which the Phase III Property will be developed. However, Sponsor does not intend that this Property will become a part of Morgan Street Birch Run Homeowners Association. It will be an entirely independent and unrelated project. Development of the Phase III Property will not exceed ten years once construction has begun. Phase II of the development is located on approximately 4.62 acres of land along Seward Street in the City of Saratoga Springs, Saratoga County, New York, which Sponsor acquired on January 14, 1981.

All purchasers of lots in Phase II of the development, will automatically become members of Morgan Street Birch Run Homeowners Association, Phase II, Inc. (the "Association"), a not-for-profit corporation incorporated April 3, 1987 under the Not-for-Profit Corporation Law of the State of New York. See Exhibit "A" for the Certificate of Incorporation of the Association. The mandatory nature of membership in the Association, which is prescribed by the Declaration of Covenants, Restrictions, Easements, Charges and Liens (the "Declaration") and the By-Laws annexed as Exhibits "B" and "C" respectively to this Offering Plan, is set forth in the Purchase Agreement and Deed annexed hereto as Exhibit "D" and "E" respectively. A Summary of the Declaration is set forth at pages 14.

The Association will own and maintain certain common areas and facilities within Phase II of the development for the use and enjoyment of its members. A full description of these common areas and facilities is set forth at pages 11 - 13.

Members of the Association will have the right to vote annually for the Board of Directors who will conduct the affairs of the Association and supervise the operation of the

common areas and facilities (see section of the plan called "The Association" at page 16. The By-laws of the Association are annexed hereto as Exhibit "C". Members will pay monthly maintenance charges to the Association for the operation and maintenance of the common areas and facilities and creation of such reserve for contingencies as the Board of Directors may deem proper.

The estimated maintenance charges for the first year of operation are set forth on pages 3 through 7 and provide estimated charges for four stages of development: (1) ten units; (2) 21 units; (3) 32 units; and (4) 42 units. It is anticipated that the charges will vary slightly depending upon the number of units developed during the first year of operation. The Sponsor will initially control the Association as is more fully set forth at page 14 of the Offering Plan.

THE PURCHASE OF A LOT ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOMEOWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.

MORGAN STREET BIRCH RUN
 HOMEOWNERS ASSOCIATION, PHASE II, INC.
 Estimate of Income and Expenses (2)
 (First Year of Operation Based on Full
 Occupancy of 42 Lots)
 July 1, 1987 to June 30, 1988

PROJECTED INCOME

Common Charges (1) \$66,009.00
 \$1571.65 per lot per year payable monthly (\$130.97)
 based on 42 Lots.

| | |
|---------------------------------------|--------------------|
| Estimated Receipts from other sources | NONE |
| TOTAL RECEIPTS | <u>\$66,009.00</u> |
| <u>PROJECTED EXPENSES</u> | |

| | |
|----------------------------|--------------------|
| 1. Refuse Service | 3,024.00 |
| 2. Snow Removal | 14,700.00 |
| 3. Grounds Maintenance | 10,000.00 |
| 4. Maintenance Employee | 20,000.00 |
| 5. Maintenance Supplies | 500.00 |
| 6. Office Supplies | 500.00 |
| 7. Real Estate Taxes/Water | 1,100.00 |
| Sewer | |
| Franchise Tax | 250.00 |
| 8. Electric | 1,635.00 |
| 9. Insurance | 750.00 |
| 10. Accounting | 600.00 |
| 10a Legal | NONE |
| 11. Management Fee | 3,150.00 |
| 12. Property Maintenance | 3,300.00 |
| 13. Contingency | <u>6,600.00</u> |
| TOTAL EXPENSES | <u>\$66,009.00</u> |

*These numbers correspond with footnotes on pages 7 and 8.

The estimated budget has been based upon figures supplied by Vulcan Development and Management Corp. of 9 Thurlow Terrace, Albany, New York 12203 and such estimate is based on Vulcan's experience in similar developments, using 1987 figures, but no guaranty or warranty is made that maintenance charges may not increase or decrease at any time (due to inflation or other economic and unforeseen factors) in the future. In addition to the income presented on this Exhibit, each unit owner will be required to contribute \$50.00 to the Association as initial working capital upon purchase of a unit from the Sponsor.

BASIS OF ESTIMATED EXPENSES

(1) Refuse Service - This is the annual cost for removing refuse, twice weekly, from the premises, on the basis of outside contractor prices obtained from C and B Sanitation, Inc., P.O. Box 789, Saratoga Springs, New York 12866.

(2) Snow Removal - This is the annual cost for labor and materials to clean the roadways, sidewalks, steps, driveways and parking areas on the basis of outside contractor prices obtained from Peter J. Gailor and Sons, Landscaping and Excavation Company, P.O. Box 609, Saratoga Springs, New York 12866.

(3) Grounds Maintenance - This is the annual cost for minor labor and materials to maintain fertilization, mowing of grass at all lawn areas and trimming and maintenance of trees and shrubs. This also includes a spring and fall clean-up. This figure is based on outside contractor prices submitted to Vulcan Development.

(4) Maintenance Employee - The annual cost for labor is based on an average hourly rate of \$10.00 per hour. The maintenance employee will be employed by the Association to manage the development.

(5) Maintenance Supplies - The annual cost for maintenance supplies is based on historical costs for similar homeowners association projects managed by the property management company retained by the Sponsor to prepare this budget.

(6) Office Supplies - This annual cost is derived from relevant historical data supplied by the property management company retained by the Sponsor to prepare this budget.

(7) Real Estate Taxes - The annual cost for real estate taxes is based on a rate supplied by the Tax Assessor, City of Saratoga, that was computed on the current assessment of \$5,000.00 for the common areas with a projected tax rate of approximately \$220.00 per \$1,000.00 of assessed value. This figure assumes that individual homeowners association members will pay taxes on their own homes and property.

Franchise Tax - Although the Homeowners Association is a Type A, Not-for-Profit Corporation, New York State has required payment of franchise taxes in recent years. The budget includes the minimum franchise tax required by law.

(8) Electricity - The annual cost is based on an engineering computation using projected cost figures supplied by Niagara Mohawk Power Corporation. Lighting costs are based on the use of 60-70 high watt pressure sodium lights along the roadways. The additional electric cost relates to the operation of the sewage pump station. This electrical usage is 15.07 kilowatts of power per day at the rate of \$.10 per kilowatt hour. Both of these cost figures are based on figures supplied by Niagara Mohawk Power Corporation. EACH HOMEOWNER WILL PAY FOR ALL ELECTRICITY CONSUMED IN THEIR INDIVIDUAL HOMES.

(9) Insurance - The annual cost of insurance is based on quotes submitted by Clements & Moncsko Agency Inc., 372 Broadway, Saratoga Springs, N.Y. for general liability insurance in the amount of \$1,000,000 for the common areas at an annual cost of \$200.00. Also, disability and worker's compensation insurance coverage is included for employee coverage when necessary (see page 7).

(10) Legal and Accounting - This figure is based on relevant historical data supplied by the property management firm retained by the Sponsor to prepare this budget. This estimate includes only the cost of providing the certified accounting statements as described in this Offering Plan and any tax returns required for filing by the Association. The 1987 budget does not anticipate any expenditures for legal expenses.

(11) Management Fee - The annual cost is estimated to be 5% of the gross annual assessment revenues. This is the competitive rate for similar homeowners association projects in the area based upon information obtained from Tamer Real Estate, 127 No. Allen Street, Troy, N.Y. 12203 (see page 7a).

(12) Property Maintenance - This figure is based on relevant historical data supplied by the property management firm retained by the Sponsor to prepare this budget. The estimated cost is 5% of gross annual assessment revenues.

(13) Contingency - The annual figure is based on historical allocations of similar homeowners association projects in the area. Approximately 10% of gross annual assessment revenues is recommended to be set aside. Contingency funds will be used to maintain exteriors of buildings and the roadways contained in the Property. The life expectancy of the roadways is 20 years, for the roofs of the Property 25 years and exterior paint is 5 years.



CLEMENTS & MONCSKO AGENCY INC.

372 BROADWAY

SARATOGA SPRINGS, N. Y. 12866

TELEPHONE 518-584-4050

January 23, 1987

Mark Simmons
Vulcan Development
9 Thurlow Terrace
Albany, NY 12203

Re: Birch Run

Dear Mark,

In connection with the insurance requirements for Phase II development at Birch Run, Seward St., Saratoga Springs, NY - please be advised as follows:

Comprehensive General Liability Coverage - \$1,000,000 limit

Annual Premium: \$200.00

The Association is presently covered for Disability Benefits Law Insurance and Worker's Compensation for an annual payroll of about \$15,000. The present annual premium for 1 male employee for DBL is \$43.00 per year and the present premium for the Worker's Compensation is \$506.00. These premiums, of course, would increase only as additional employees or payroll is increased.

I trust this is the information you require, and if you have any questions please feel free to call.

Sincerely yours,

Thomas H. Clements
President

THC:sg



June 18, 1987

Mark Simmons
President
Vulcan Development
9 Thurlow Terrace
Albany, NY 12203

Dear Mark:

The going rate among management firms for the management of a Homeowners Association is 5% of the gross assessment.

Please contact me if I can be of further assistance.

Sincerely,

N. E. Tamer
President

O'CONNELL AND ARONOWITZ

ATTORNEYS AT LAW

100 STATE STREET

ALBANY, NEW YORK 12207

(518) 462-5601

434-1251

TELECOPIER No. (518) 462-2670

GEORGE MYERS
CORNELIUS D. MURRAY
DANIEL M. SLEASMAN
NEIL H. RIVCHIN
PETER L. DANZIGER
FRED B. WANDER
STEPHEN R. COFFEY
ROBERT E. BIGGERSTAFF
E. MICHAEL RUBERTI
THOMAS F. GLEASON
BRENDAN C. O'SHEA

EDWARD J. O'CONNELL 1925-39
SAMUEL E. ARONOWITZ 1925-73
LEWIS A. ARONOWITZ 1951-79

MAX GORDON
BARBARA G. BILLET
SALVATORE D. FERLAZZO
MARY O'CONNOR DONOHUE
LAURA MEYERS LIEBERMAN
JAMES E. GIRVIN*
SARAH WALKER BIRN
MICHAEL RHODES-DEVEY
KRISTINE AMODEO LANCHANTIN

JOHN H. FARRELL
COUNSEL

*ALSO ADMITTED TO MASS. BAR

May 1, 1987

D. A. Collins Construction Co., Inc.
Box 191
Mechanicville, New York

Re: Morgan Street Birch Run Homeowners Association,
Phase II, Inc.

Gentlemen:

We have examined the Offering Plan and various supporting papers for the above entitled homeowners association. It is our opinion that the Declaration of Covenants and Restrictions annexed as Exhibit "B" to the Offering Plan will, when executed and recorded in the Office of the Saratoga County Clerk, be legal and valid, enforceable in accordance with its terms and conditions, binding upon the premises and that persons purchasing Lots in the Birch Run development will automatically become members of Morgan Street Birch Run Homeowners Association, Phase II, Inc., assuming all rights and obligations of membership.

In our opinion, under present law, members of the Association will not be entitled to deduct any portion of their annual Association common charges for Federal or New York State income tax purposes.

It is our understanding that the City of Saratoga Springs will levy a real estate tax assessment on the common areas owned by the Association. Provision is made in the Association budget and in the Declaration for the Association to pay such real estate taxes as part of its common expenses.

Under current law, real estate taxes paid by individual owners upon their Lots and homes are, in our opinion, deductible for both Federal and New York State income tax purposes.

O'CONNELL AND ARONOWITZ

It is our opinion that the Association, upon its annual election, is exempt from income taxes to the extent provided for in Section 528 of the Internal Revenue Code. Consequently, no provision is made in the Association budget to pay income taxes as part of its common expenses. The Association would have to pay tax, however, on any non-exempt income, i.e., interest earned on accounts set aside in a sinking fund for future improvements, payment by non-members for use of Association facilities. To be exempt from income taxes, the Association will have to meet certain Section 528 Internal Revenue code requirements including at least 60% of its gross income from assessments, and 90% or more of its expenditures for the acquisition, construction, management, maintenance and care of Association property. The Association, which is formed under the New York State Not-for-Profit Law, pursuant to current position of the Department of Taxation and Finance may be liable for corporate franchise taxes to the State of New York. Provision is made for a minimum franchise tax in the budget.

We understand that this letter will be made a part of the Offering Plan of Morgan Street Birch Run Homeowners Association, Phase II, Inc.

Very truly yours,

O'CONNELL AND ARONOWITZ, P.C.

By:


Daniel M. Sleasman

DMS:jh

LAWRENCE R. HAMILTON

ATTORNEY AT LAW

PHONE (518) 587-8112
(518) 587-8128

511 BROADWAY
SARATOGA SPRINGS, NEW YORK 12866

March 12, 1987

Birch Run at Saratoga
P. O. Box 125
Saratoga Springs, New York 12866

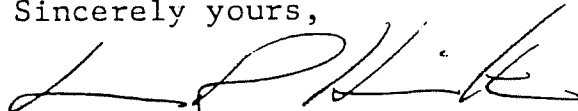
Re: Opinion Letter of Local Counsel

Gentlemen:

I have examined the Constitution and statutes of the State of New York and the Municipal Code of the City of Saratoga Springs and other rules and regulations authorizing and relating to the construction of attached townhouses within the City of Saratoga Springs. In my opinion, the Morgan Street Birch Run Homeowners Association, Phase II, Inc. when created, will be in complete compliance with all state and municipal zoning laws, ordinances and regulations.

The construction of the project known as Birch Run at Saratoga has been authorized in accordance with the Constitution and statutes of the State of New York and the City of Saratoga Springs.

Sincerely yours,



LAWRENCE R. HAMILTON

LRH/ks

MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION,
PHASE II, INC.
DESCRIPTION OF COMMON AREAS AND FACILITIES TO BE
OWNED BY THE ASSOCIATION

General

The Association shall own all of the land within Phase II except for the 42 Lots which shall be conveyed to homeowners. The Phase II Common Areas will consist of approximately 4.62 acres and will be improved only by installation of utilities, sewage system, street lighting, landscaping, parking areas, roadways and storm drainage as more particularly described herein.

The Sponsor does not intend to construct any other facilities as part of the Common Areas than those described herein. The Sponsor, however, has reserved a portion of the Common Areas to be owned by the Association for improvement by the Association at the Association's option and expense for the installation of any recreational or other facility desired by the Association.

Landscaping

All land areas which are subject to change from their natural state shall be covered with 3" topsoil, raked and seeded. All undisturbed areas shall be left in their natural state. Existing trees shall remain when possible. Supplemental shrubbing and trees shall be planted around the buildings. The Association property will be complete with lawns, shrubs and trees, both existing and planted, by the Sponsor. Lawn areas will be seeded with a good grade of seed blend and strong perennials and watered and reseeded as necessary to provide a lawn cover. Shrubs and trees planted by the Sponsor will be planted in a manner to provide a good growth potential and will be in accordance with the planting plan and schedule.

Utilities

Water shall be provided by the City of Saratoga Springs. Each home will be metered individually and each homeowner will be responsible for the payment of his/her water bills from the City of Saratoga Springs. Water will be provided through a 12" ductile iron pipe in the Phase II area. The water will be supplied to the Phase II area from a 12" pipe from a City of Saratoga Springs 12" main near the intersection of Myrtle Street and Church Street. The pipe from this point to the Phase II area was installed by the Sponsor on an easement through property owned by the Saratoga Golf and Polo Club, Inc. All water lines located upon the easement areas of lands owned by the Saratoga Golf and Polo

Club, Inc. shall be perpetually owned and maintained by the Sponsor. The water lines upon the Common Areas shall be owned and maintained by the Association. Electric shall be supplied and installed by Niagara Mohawk Power Corporation. Telephone service shall be installed by New York Telephone. Cable television service shall be installed by Jones Intercable, Inc.

Sewerage System

The sewerage system will consist of several pre-cast concrete manholes and a series of 8" diameter PVC pipes. The system will be gravity from each cluster of homes leading to a Duplex Lift Station or by a gravity system to a manhole adjacent to Seward Street. This manhole will receive the gravity system and pump system from Phase I and II. The lift station will be constructed of a pre-cast concrete manhole.

Street Lighting

Street lighting shall consist of 10 to 15 light poles placed along roadways within the property.

Roadways

The roadways within the Development will conform to the City of Saratoga Springs specifications except that no curbs or sidewalks will be provided in order to preserve the rural type setting of the site. The roadways will be thirty feet wide and will consist of a 12" layer of compacted crushed stone and stone dust. The pavement will consist of two courses of blacktop totalling 3 1/2". All courses will be graded and placed so as to provide proper drainage. The roadways will be maintained by the Association and the life expectancy of the roadways is 20 years.

Parts of the driveways from the internal roadways will also be constructed on the common areas. They will be constructed of a 6" layer of crushed stone and stone dust. The pavement will consist of a total of 3 1/2" of blacktop.

Drainage

All of the storm drainage will be contained on the site and released into an existing stream at the northwest corner of the site adjacent to Denton Road and the Phase I area. The system will consist of shallow swales and ditches. In

addition, it will include several catch basins, manholes and culverts ranging in size from 12" to 24" in diameter. The storm water will pass through the Phase I area and within the right of way of Denton Road to a detention area in Phase I. From there it will flow via an existing stone-lined ditch to the above-mentioned stream.

Parking Areas

There are no parking facilities within the Common Areas except for roadside parking on the roadways within the Common Areas. There will be parking facilities which will be located upon Lots and upon driveways located within Lots adjacent to the Common Areas, which parking areas will be available for use by Lot Owners and their guests for the Lots within the cluster of Lots upon which the parking spaces are to be located.

Recreational

There are various public recreational parks throughout the City of Saratoga Springs, a racquet club, a public golf course, an indoor ice skating rink, public bath and spa.

Fire and police protection as well as water and sewer services are provided by the City of Saratoga Springs.

The HOA is within the Enlarged City School District of Saratoga Springs.

A shopping center is located within a 3 minute drive from the Property at the intersection of West Avenue and Route 29. Also within 3 minutes is the downtown Saratoga Springs commercial business district containing many retail stores, hotels, restaurants and professional offices.

LOCAL GOVERNMENT APPROVAL

Approval for the development was obtained from the Planning Board of the City of Saratoga Springs, New York on October 7, 1981 (see page 13a) and the site plan for Phase II of the Birch Run project was approved on November 5, 1986 (see page 13b). Approval from the Saratoga County Planning Board was obtained on October 15, 1981 (see page 13c). A Certificate of Approval from the New York State Department of Health was received on January 29, 1987 (see page 13d).

PLANNING BOARD
CITY OF SARATOGA SPRINGS
Saratoga Springs, New York

February 4, 1982

Mr. Werner Deekeman
D. A. Collins Construction Co., Inc.
Willow Glen
Mechanicville, New York 12118

RE: Birch Run

Dear Mr. Deeleman:

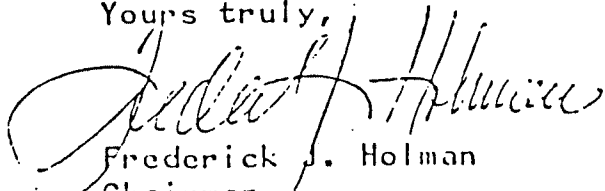
Please be advised of the approval by the Saratoga Springs Planning Board given for the development of a parcel of land at the corner of Seward Street and Morgan Street encompassing approximately 36 acres known as Birch Run.

On October 7, 1981, the Saratoga Springs Planning Board voted and approved the concept for the development of the entire 36 acre master development plan. The Planning Board further reviewed and granted preliminary and final approval for buildings A, B and E as identified in Phase I.

Further building construction in Phase I and all future phases will require approvals from the Planning Board.

If you have any questions, please don't hesitate to contact me.

Yours truly,



Frederick J. Holman
Chairman

PLANNING BOARD
CITY OF SARATOGA SPRINGS
Saratoga Springs, New York

March 11, 1987

Mr. Thomas Longe, President
D. A. Collins Construction Co., Inc.
P. O. Box 191
Mechanicville, New York 12118

RE: Birch Run

Dear Mr. Longe:

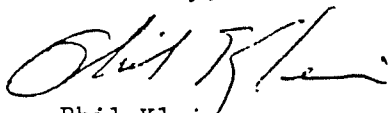
Please be advised of the approval by the Saratoga Springs Planning Board given for the development of a parcel of land at the corner of Seward Street and Morgan Street encompassing approximately 36 acres know as Birch Run.

On October 7, 1981, the Saratoga Springs Planning Board voted and approved the concept for the development of the entire 36 acre master development plan.

On November 5, 1986, the Saratoga Springs Planning Board voted site plan approval for Phase II of the project consisting of not more than 68 residential units. Our Board has also approved the subdivision of the Phase II area into 12 "great" lots. Once building foundations are in the "great" lots we require further subdivision approval.

If you have any questions, please contact me or Geoff Bornemann, City Planner.

Sincerely,



Phil Klein
Vice-Chairperson

GB/PK/lb

SEQR
Negative Declaration
Notice of Determination of Non Significance

Lead Agency: Saratoga Springs Planning Board
Address: Room 10
City Hall
Saratoga Springs, N.Y. 12866

Project # (if any) 85.56

Date: November 8, 1986

This notice is issued pursuant to Part 617 (and local law # _____ if any) of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The lead agency has determined that the proposed action described below will not have a significant effect on the environment.

Title of Action: Birch Run: Phase II

SEQR Status: Type I
Unlisted

Description of Action: Subdivision and Site Plan approval for up to 69 residential units. The project will result in the construction of a maximum of 45 attached single family units in clusters of 2 to 5 units and one 24 unit condominium four story mid-rise building.

Location: (Include the name of the county and town. A location map of appropriate scale is also recommended)

Seward Street at the intersection of Clements Avenue in the City of Saratoga Springs

(Attach additional pages as needed)

Reasons Supporting This Determination: This action will not result in any significant damage to the environment. The project will be connected to public water and public sanitary sewer, both of which have adequate capacity to serve this project. A storm drainage retention system has been adequately designed to service this project and to correct some existing drainage problems on and near the site. The site improvements approved will provide a safe and visually pleasing environment.

For Further Information:

Contact Person: William P. Cummings, Sr., Chairman
Address: Saratoga Springs Planning Board, City Hall, Saratoga Spgs., NY 12866
Phone No.: (518) 587-3550

Copies of this Notice Sent to:

Commissioner-Department of Environmental Conservation, 50 Wolf Road, Albany, New York
12233-0001

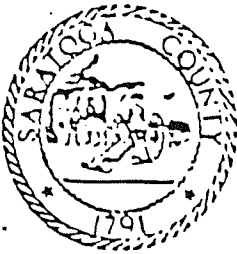
Appropriate Regional Office of the Department of Environmental Conservation

Office of the Chief Executive Officer of the political subdivision in which the action will be principally located

Main office and appropriate regional office (if any) of lead agency.

Applicant (if any)

All other involved agencies (if any)



SARATOGA COUNTY PLANNING BOARD

S. W. CORBIN
CHAIRMAN

LAWRENCE S. GORDON
DIRECTOR

October 16, 1981

Edna Livey, Secretary
Saratoga Springs Planning Board
City Hall
Saratoga Springs, N.Y. 12866

Re: S.C.P.B. Subdivision Review 81-A-11
City of Saratoga Springs, Birch Run

Received from Planning Board on 9/25/81. Reviewed by

Saratoga County Planning Board on 10/15/81.

Decision:

- XX Approved
- Approved with modification
- Disapproved
- Returned for additional information
- Returned for Local Decision

Comment:

Signature
Title

S. W. Corbin
Authorized Agent for
Saratoga County

NEW YORK
STATE DEPARTMENT OF HEALTH
ALBANY, N. Y. 12208

CERTIFICATE OF APPROVAL OF REALTY SUBDIVISION PLANS

To: Mr. Thomas Longe February 2, 19 87
President
D.A. Collins Construction Co., Inc.
P.O. Box 191
Mechanicville, New York 12118

This certificate is issued pursuant to Article 11 of the Public Health Law in connection with the approval of plans on January 29, 1987 for your realty subdivision known as Birch Run at Saratoga (Phase II) (~~XX~~,C) Saratoga Springs Saratoga County.

The following data was furnished in connection with the submission of the plans.

Location West of Seward Street, north of Morgan Street
Acres (approx.) 17.5 No. of lots 46 Size (approx.) 15,000 sq. ft.
Owner intends to build houses on this subdivision
Topography Flat to gentle slopes
Below Rock
Depth to Ground Water Unknown-max. min. When June 1986
Soil 0'-6' Topsoil; 2'-8' Sandy Clay; Rock 3'-8' below surface
Grading (cut or fill) 3 ft. max cut - 12 ft. max fill
Drainage roadside drainage
Water Supply City of Saratoga Springs
Sewage Disposal City of Saratoga Springs

Approval of this subdivision is granted on condition:

1. That the proposed facilities for water supply and sewage disposal are installed in conformity with said plans.

District Health Officer
By [Signature] P.E.
District Sanitary Engineer

STATE OF NEW YORK
DEPARTMENT OF HEALTH  OFFICE OF PUBLIC HEALTH

DISTRICT OFFICE • 21 BAY STREET • GLENS FALLS, N.Y. 12801 • TEL. (518) 793-3893

DAVID AXELROD, M.D.
Commissioner

~~GLENS FALLS DISTRICT OFFICE~~ M.D.
Director

February 2, 1987

Mr. Thomas Longe
President
D.A. Collins Construction Co., Inc.
P.O. Box 191
Mechanicville, New York 12118

RE: Realty Subdivision
Birch Run at Saratoga, Phase 2
Saratoga Springs, Saratoga Co.

Dear Mr. Longe:


Plans consisting of paper prints along with the necessary supporting information for this subdivision have been reviewed. The project is satisfactory and the Certificate of Approval is enclosed.

Please note that no lots may be sold until a copy of these approved plans has been filed with the County Clerk.

If any changes are required by the local governing agency or any other agency having jurisdiction after this final Health Department approval is granted, the revised final plan must be reapproved by the State Health Department.

With the exception of one paper print which we have retained for our files, the approved plans have been returned to your engineer.

Very truly yours,


Brian S. Fear, P.E.
District Health Director

BSF:ns

Enc.

cc: Mr. Diekmann, P.E. ✓

DECLARATION SUMMARY

Prior to the closing of title to the first Lot in the development, the Sponsor will record the Declaration and By-Laws (attached hereto as Exhibits "B" and "C") in the Saratoga County Clerk's Office and will convey the common areas set forth in the Declaration to the Association. The Declaration provides that each Lot purchaser, by acceptance of a deed, shall agree to pay to the Association, commencing on the first day of the month following the conveyance of the common areas, annual assessments or charges and special assessments for capital improvements. This obligation shall commence at such time as Sponsor shall have filed the Declaration. These assessments are charges upon the land and continuing liens on the property against which such assessment is made. They are also a personal obligation of the person who is the owner of such property at the time when the assessment becomes due and payable. Claims of the Association against defaulting owners may be enforced by legal action brought by the Association. The Sponsor cannot and does not represent or guarantee that any members of the Association will in fact meet their respective obligations, and the Sponsor shall not be liable for any failure to meet such obligations. Each member of the Association will be entitled to one vote for each Lot owned and each member shall be entitled to one vote at all Association meetings. Therefore, even if a member owns more than one Lot, he is not entitled to more than one vote. At the time that title to 50% of the Lots is conveyed by Sponsor or two years from the date of recording the Declaration, there shall be no more than three members of the Board of Directors of the Association who shall be officers or employees of Sponsor or its affiliated companies. As of that time, all other directors shall be elected from the members other than the Sponsor.

SUMMARY OF BY-LAWS

The By-Laws of the Association provide for the method of management and operation of the Association. In addition to setting forth the definitions of terms, the By-Laws provide for the conduct of meetings of members, the organization of the Board of Directors of the Association, procedures for nomination and election of the Directors, procedures for meetings of the Board of Directors and the duties and powers of the Board of Directors. In addition, the By-Laws provide for the election of officers of the Association, including the president, vice-president, secretary and treasurer. The By-Laws contain a number of other provisions which deal with procedural matters such as formation of committees, maintenance of books and records, procedures for assessments, liability insurance, amendments, notices and maintenance of operating and other accounts for the Association. Prospective purchasers are urged to read thoroughly the By-Laws of the Association which are attached hereto as Exhibit "C".

ASSOCIATION SERVICES

The Association will provide the following services: maintenance of water, sewer and drainage facilities located on the Common Areas, roadways, parking areas (including snow removal), and roadway lighting located in the Common Areas; cutting and maintenance of all grass, trees and shrubbery in the Common Areas; exterior maintenance of all buildings to be constructed on the Lots, including painting, staining, maintenance of driveways, courtyards, and sidewalks (including snow removal), maintenance of trees, grass, shrubbery and landscaping upon the Lots and trash removal from the premises. The Association will not provide maintenance or repair of roofs, windows and glass doors located in buildings nor will the Association be responsible for repairs made necessary by the negligence or willful conduct of the Lot Owners.

The Association will insure the Common Areas against hazard and public liability in an amount of at least \$1,000,000 and the premiums for such insurance will be a common expense. This insurance does not protect a homeowner against losses occurring upon his Lot or within his home. The Owner should consult his own insurance advisor for additional coverage.

The Declaration also provides that every owner shall have the right to the use and enjoyment of the Common Areas, including any facilities thereon, which the Sponsor is obligated to convey to the Association prior to the first closing and such right shall be appurtenant (attached) to and shall pass with the title to every Lot. This right shall inure to all successive owners, legal representatives and heirs. While an owner's right to use the Common Areas may be suspended for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty days for any infraction of the Association's published rules and regulations, in no event will any such suspension preclude the owner's ingress or egress to and from his Lot.

Various easements are created throughout the properties in favor of the Sponsor, the Owners, the Association, and utilities and police and fire departments allowing ingress and egress for purposes set forth in the Declaration.

The administration of the Association will be in accordance with its Certificate of Incorporation, the Declaration and the By-Laws annexed to this Offering Plan.

THE ASSOCIATION

The Association was formed on April 3, 1987 under the Not-for-Profit Corporation Law of the State of New York. It is a Type "A" corporation. The Certificate of Incorporation is found at Exhibit "A".

The By-Laws of the Association require three directors initially. The present directors have been designated by and are officers or employees of the Sponsor and will serve until such time as 66% of the Lots are closed or for five years, whichever is sooner. At the first annual meeting of the Association which will be held prior to the first anniversary date of the conveyance of the first Lot by Sponsor, one additional member of the Board of Directors shall be elected who shall not be designated by the Sponsor..

The initial directors are:

| | |
|--------------------|--|
| Barbara Longe | 27 Underwood Drive Saratoga, New York 12866 |
| Thomas F. Longe | 27 Underwood Drive Saratoga, New York 12866 |
| Werner A. Diekmann | 155 Elm Grove Avenue Troy, New York 12180 |

At the first annual meeting of the Association and at all subsequent annual meetings, the members shall elect four directors to serve for one year terms, except that the Directors designated by the Sponsor described above shall have a term of five years or until 66% of the Lots are closed, whichever is sooner.

CONTROL BY SPONSOR

The Sponsor will control the Board of Directors of the Association after closing of title to the first lot and until such time as 66% of the lots have been closed or for a period of five years after closing of the first lot, whichever is sooner. This means that while the Sponsor controls the Board of Directors of the Association, the Sponsor will be able to control the day-to-day management of the project and control the budget and expenditures of the project (see Special Risks, page 1). Notwithstanding the foregoing, the Sponsor may not exercise its veto power or use its control of the Board of Directors to reduce the level of services described in this Offering Plan or to prevent capital repairs or to prevent expenditures required to comply with applicable laws and regulations. Also, while Sponsor is in control of the Board of Directors, no mortgage lien will be placed upon the Association property without consent of at least 51% of the Lot Owners excluding Sponsor or Sponsor's nominees. While Sponsor is in control of the Board of Directors, certified financial statements will be provided each year to members.

OBLIGATIONS OF SPONSOR

Prior to the conveyance of title to any Lot, the Sponsor will arrange for the Lot to be released from the provisions of a construction loan mortgage, if any, which may encumber the Development. The Common Areas will be released from the lien of this mortgage prior to the conveyance of the first Lot. The Sponsor will complete the construction of all roadways, sewer and water systems, utilities, landscaping, street lighting and parking areas directly serving a Lot before conveying title to the Lot. The Sponsor's obligation to complete the construction of the Common Areas will survive their conveyance to the Association. As the Sponsor is not posting a completion bond, its ability to complete the construction of the Common Areas will depend solely on its financial resources during the period of construction.

Prior to conveyance of title to any Lot, the Sponsor shall complete construction of roadways upon contiguous lands owned by Sponsor and reserved for future development, which roadways shall connect with the roadways to be located in the Common Areas and which shall provide unlimited access to the nearest public highway. The Sponsor shall, by virtue of the Declaration, provide for an easement in favor of each Lot owner for such access purposes.

The Sponsor is also obligated to construct and maintain roadways to the same specifications as those within the Common Areas and sewer and water lines all located on the Phase III Property owned by the Sponsor so as to provide ingress and egress to and from the Phase II Property and to provide water and sewer facilities to the Common Areas. Sponsor is obligated to maintain such facilities until such time as the Phase III Property is developed and such obligations are transferred to a homeowners association or a condominium regime with respect to the Phase III property.

At the time of the transfer of title to the Common Areas by the Sponsor to the Association, the Sponsor will furnish the Association with a fee title policy covering the lands and facilities comprising the Common Areas. This fee policy of title insurance will be issued by U.S. Life Title Insurance Company of New York, or such other reputable title insurance company licensed to do business in the State of New York and shall be in the amount of \$345,000. Any proceeds of such title insurance policy arising out of a claim of defective title, pertaining to land and facilities being conveyed to the Association, will be held for the benefit of and delivered to the Association. Sponsor will certify to the Association, in writing, the substantial completion of the Common Areas. Sponsor will correct any defects due to construction not in accordance with the filed plans if notified within 14 months from the conveyance of the first lot or within 14 months of substantial completion of the Common Areas, whichever is later.

During the period that Sponsor retains voting control of the Board of Directors, he will furnish yearly certified financial statements to members. The Sponsor further agrees to deliver a set of "as-built" plans of common property improvements to the Board of Directors, including specifications of roads, sewers and/or water lines and a representation that the plans or specifications are in substantial compliance with the terms of the Offering Plan. After Association charges have been levied on one or more owners who have cleared title to their lots, Sponsor will be obligated for Association charges including supplemental charges on all unsold lots.

TRUST FUNDS

The Sponsor will hold all monies received directly or through its agents or employees in trust until the closing of title or Sponsor will post a security bond issued by a New York insurance company securing repayment of such funds in the event the purchaser is entitled to such amount under the terms of the Offering Plan or Purchase Agreement. If no bond is posted, such funds will be held as trust funds pursuant to Section 352-h and Section 352-e(2)(b) of the General Business Law, in a special account entitled Morgan Street Birch Run Homeowners Association, Phase II, Inc. in Adirondack Trust Co., Broadway, Saratoga Springs, New York. The signature of Lawrence Hamilton, Esq. as attorney for the Sponsor shall be required to withdraw any of such funds. Such funds will be payable to Sponsor upon closing of title to the Lot covered by the Purchase Agreement. In the event of default by the purchaser under the Purchase Agreement, which default continues for 30 days after notice of such default from the Sponsor to the Purchaser, the downpayment (to a maximum of 10%) may be released to the Sponsor from such account as liquidated damages and thereafter neither party shall have any rights or obligations against or to the other. If a bond is posted, it may be withdrawn after such default and notice. All funds received by Sponsor will be handled in accordance with the provisions of Section 352-h of the General Business Law and shall be employed by Sponsor only for the purposes set forth in this Plan.

MANAGEMENT AGREEMENT AND OTHER CONTRACTUAL ARRANGEMENTS

The Board of Directors of the Association has entered into a management contract with D. A. Collins Development Corp. to provide for the management of the Common Areas. The contract will commence on the date of the conveyance of the Common Areas to the Association and shall continue, unless terminated by the Association, until June 30, 1988. The contract provides for annual payments to D. A. Collins Development Corp. of \$3,300 as a management fee. Because some of the directors of D. A. Collins Development Corp. are also principals or related to principals of the Sponsor, the management fee of may be lower than that charged by an unrelated entity. Consequently, if another entity should be employed by the Association in the future to manage the Common Areas, it is very likely that the management fee will substantially increase. Pursuant to information obtained from Tamer Real Estate (see page 7a) the going rate is currently 5% of the gross annual expenses.

As managing agent, D. A. Collins Development Corp. will bill and collect the monthly maintenance charges, hire and fire employees, supervise alterations and repairs, maintain the Association's books and records, advise the Board of Directors of its proposed annual budget, provide each Lot annually with a Balance Sheet and Profit and Loss Statement prepared and certified by an independent public accountant, purchase supplies for the Association and generally perform the duties of a managing agent for residential property. In performing its duties, D. A. Collins Development Corp. may engage contractors on behalf of the Board of Directors for the purpose of carrying out the maintenance and repair of the Common Areas. At the present time no contracts have been entered into with contractors for these purposes. While the Sponsor controls the Board of Directors, it will not sign any contract that expires later than June 30, 1988, unless such contract contains a clause allowing the Association to terminate on thirty (30) days written notice.

IDENTITY OF PARTIES

Sponsor

The Sponsor is D. A. Collins Construction Co., Inc., a New York State corporation incorporated in 1954. The officers of the corporation are Donald A. Collins, 88 Dewey Avenue, Mechanicville, New York, Chairman of the Board; Thomas F. Longe, 27 Underwood Drive, Saratoga Springs, New York, President; D. Alan Collins, 12 Roberts Lane, Saratoga Springs, New York, Treasurer; and Joseph Trangucci, 45 Carriage Road, Clifton Park, New York, Secretary.

The Sponsor has been actively engaged in the construction business for many years and has primarily been involved in the construction of highways, roads, bridges and other similar major construction projects as well as Sponsor for Birch Run Homeowners Association, Inc., Saratoga Springs, N.Y.

Attorneys for the Sponsor

The Sponsor has retained the law firm of O'Connell and Aronowitz, P.c., 100 State Street, Albany, New York, who drafted the Declaration, the By-Laws, this Offering Plan, the form of Purchase Agreement, the form of Deed and all other documents necessary in connection with the formation of this Homeowners Association and has advised the Sponsor in connection with all legal matters incidental thereto.

Selling Agent

Roohan Realty, 48 Union Avenue, Saratoga Springs, New York 12866, has been retained by Sponsor as the Selling Agent. The Selling Agent has had no financial relationship, past or present, to the Homeowners Association, the Sponsor or its principals.

Letter of Adequacy

Vulcan Development and Management Corp., 9 Thurlow Terrace, Albany, New York 12203, has reviewed the Projected Schedule of Receipts and Expenses (see page 3 of the Offering Plan). Vulcan has no financial relationship, past or present, to the Homeowners Association, the Sponsor or its principals.

Architecture and Engineering

M. J. Engineering Co., P.C., Mary Knoll Drive, Clifton Park, N.Y. is consulting engineer for the drainage system of the development. Werner Dieckmann, P.E., 155 Elm Grove Avenue, Troy, New York is the engineer for the remainder of the development. M. J. Engineering has no financial relationship, past or present, to the Homeowners Association, the Sponsor or its principals. Werner Dieckman is an employee of D. A. Collins Construction Co., Inc., the Sponsor of the development.

Managing Agent

The Managing Agent for the Homeowners Association is D. A. Collins Development Corp. Barbara Longe, President of the managing agent is the daughter of Donald A. Collins, President of the Sponsor and the wife of Thomas F. Longe, Vice-President of the Sponsor. Thomas F. Longe is a director of the managing agent and Werner Dieckmann, an employee of the Sponsor, is also a director of the managing agent. The managing agent has had minimal experience related to the management of residential real estate property.

REPORTS TO MEMBERS

All members of the Association will receive, annually, at the expense of the Association, copies of a Balance Sheet and a Profit and Loss Statement of the Association prepared and certified by an independent public accountant, a statement regarding taxable income attributable to the members, if any, and a notice of the holding of the annual meeting of the Association.

CERTIFICATE OF INCORPORATION

OF

MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION, PHASE II, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, does hereby certify:

FIRST: The name of the corporation is: MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION, PHASE II, INC.

SECOND: That the corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law.

THIRD: The purposes for which the corporation is formed are:

To own, operate, manage and control certain community and recreational facilities in the City of Saratoga Springs, County of Saratoga, State of New York, as a homeowner's association and to do any act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

FOURTH: The Corporation shall be a type A corporation under Section 201 of the Not-For-Profit Corporation Law.

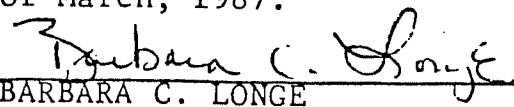
FIFTH: The office of the corporation is to be located in the County of Saratoga, State of New York.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is Morgan Street Birch Run Homeowners Association, Phase II, P. O. Box ^{# 145A} Saratoga Springs, New York, 12866.

SEVENTH: There are three directors of the corporation, namely, Barbara C. Longe, residing at 27 Underwood Drive, Saratoga Springs, New York, 12866; Thomas F. Longe, residing at 27 Underwood Drive, Saratoga Springs, New York, 12866; and Werver Diekmann, residing at 155 Elm Grove Avenue, Troy, New York, 12180.

EIGHTH: The subscribers are of the age of eighteen years or over.

IN WITNESS WHEREOF, this Certificate has been signed by the subscribers this 30th day of March, 1987.


BARBARA C. LONGE
27 Underwood Drive
Saratoga Springs, N.Y. 12866

Thomas F. Longe
THOMAS F. LONGE
27 Underwood Drive
Saratoga Springs, N.Y. 12866

Werner Diekman
WERNER DIEKMAN
155 Elm Grove Avenue
Troy, New York 12180

STATE OF NEW YORK

SS:

COUNTY OF SARATOGA

On this 30th day of March, 1987, before me, the subscriber, personally appeared BARBARA C. LONGE to me personally known and known to me to be the same person described in and who executed the within instrument, and she duly acknowledged to me that she executed the same.

Robert O. Morehouse
Notary Public

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires ~~Mar. 00, 19~~
Reg. # 4839749

Oct. 31, 1989

STATE OF NEW YORK
COUNTY OF SARATOGA

SS:

On this 30th day of March, 1987, before me the subscriber, personally appeared THOMAS F. LONGE to me personally known and known to me to be the same person described in and who executed the within Instrument, and he duly acknowledged to me that he executed the same.

Robert O. Morehouse
Notary Public

STATE OF NEW YORK
COUNTY OF SARATOGA

SS:

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989 Oct. 31, 1989
Reg. # 4839749

On this 30th day of March, 1987, before me the subscriber, personally appeared WERNER DIEKMAN, to me personally known and known to me to be the same person described in and who executed the within Instrument, and he duly acknowledged to me that he executed the same.

Robert O. Morehouse
Notary Public

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989 Oct. 31, 1989
Reg. # 4839749

NYS DEPARTMENT OF STATE

FILING RECEIPT INCORPORATION (NOT FOR PROFIT)

CORPORATION NAME

MORGAN STREET BIRCH RUN HOMEDOWNERS ASSOCIATION, PHASE II, INC.

| | | | |
|-------------------------------|---|---------------------------------|------------------------------|
| <u>DATE FILED</u> 04/03/87 | <u>DURATION & COUNTY CODE</u> P SARA | <u>FILM NUMBER</u> B479459-5 | <u>CASH NUMBER</u> 919393 |
|-------------------------------|---|---------------------------------|------------------------------|

| | |
|----------------------------------|-------------------------------------|
| <u>NUMBER AND KIND OF SHARES</u> | <u>LOCATION OF PRINCIPAL OFFICE</u> |
|----------------------------------|-------------------------------------|

RECEIVED APR 10 1987

TYPE: A

| | |
|---|-------------------------|
| <u>ADDRESS FOR PROCESS</u> S/S: THE CORPORATION P.O. BOX #145A SARATOGA SPRINGS NY 12866 | <u>REGISTERED AGENT</u> |
|---|-------------------------|

FEES AND/OR TAX PAID AS FOLLOWS:

| | | |
|---|--------------------------------|------------------------------------|
| AMOUNT OF CHECK \$ <u>00110.00</u> | AMOUNT OF MONEY ORDER \$ _____ | AMOUNT OF CASH \$ _____ |
| \$ <u>6.00</u> DOLLAR FEE TO COUNTY | \$ 050.00 FILING | \$ 00000.00 TAX |
| <u>FILER NAME AND ADDRESS</u> LAWRENCE R. HAMILTON 511 ROADWAY SARATOGA SPRINGS NY 12866 | \$ _____ CERTIFIED COPY | \$ _____ CERTIFICATE |
| | TOTAL PAYMENT \$ <u>010.00</u> | MISCELLANEOUS \$ <u>0000110.00</u> |
| | REFUND OF \$ <u>00050.00</u> | TO FOLLOW |

380804-003 (8/84)

GAIL S SHAFFER - SECRETARY OF STATE

EASEMENTS, CHARGES AND
LIENS

DECLARATION OF COVENANTS, RESTRICTIONS
EASEMENTS, CHARGES AND LIENS

DECLARANT - MORGAN STREET BIRCH RUN HOMEOWNERS
ASSOCIATION, PHASE II, INC.
Box 437
Saratoga Springs NY 12866

DATE OF DECLARATION -

O'CONNELL AND ARONOWITZ, P.C.
Attorneys for the Sponsor
100 State Street
Albany, New York 12207

EXHIBIT - "B"

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DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

Declaration made as of this day of , 1987, by
D. A. COLLINS CONSTRUCTION CO., INC., with an office at Box 191,
Mechanicville, N.Y. 12118, hereinafter referred to as "Declarant"
or "Sponsor".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property in the
City of Saratoga Springs, County of Saratoga, State of New York,
which is more particularly describes as follows:

ALL THAT CERTAIN PIECE OR PARCEL OF GROUND LYING and being in
the City of Saratoga Springs, County of Saratoga, State of New
York, and being more particularly described as follows:

BEGINNING at a point, said point being the southeast corner
of the lands of the Birch Run Homeowners Association, Phase I, and
the northeast corner of the parcel herein described thence along
the west side of a road known as Seward Street, the following
three courses:

(1) S 15 39' 00" W 296.11' to a point, thence

(2) S 14 26' 00" W 250.0' to a point, thence

(3) S 11 29' 30" W 71.59' to a point, said point being the
southeast corner of this parcel, thence along the north line of
other lands of D. A. Collins Construction for one course:

(4) N 76 49' 10" W 457.30' to a point, thence along the lands now
or formerly Pauline Jonke the following three courses:

(5) N 13 10' 50" E 71.94' to a point, thence

(6) N 76 51' 00" W 143.0' to a point, thence

(7) S 69 59' 30" W 92.0' to a point, thence along the west
boundary of this parcel, being along other lands of D. A. Collins
Construction Co., the following:

(8) N 16 56' 05" E 379.12' to a point, thence

(9) N 42 29' 00" W 642.09' to a point, thence

(10) N 34 35' 00" E 269.91' to a point, being the northwest corner
of this parcel, thence along the division line between Phase I on
the north, and this parcel, Phase II, on the south, the following
four courses:

(11) S 42 16' 20" E 555.0' to a point, thence

(12) N 72 18' 28" E 118.57' to a point, thence

(13) S 43 49' 07" E 137.21' to a point, thence

(14) S 67 50' 40" E 431.61' to the Point of Beginning, containing
13.54 ± acres, more or less.

Excepting from this parcel Lots #2-11, which have an area of 8.92 ± acres, more or less. Yielding a net acreage of 4.62 ± acres.

WHEREAS, Developer desires to provide for the preservation of the value and amenities in said community and for the maintenance of said recreational lands, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article I to the covenants, 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, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community property and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated Morgan Street Homeowners Association, Phase II, Inc. under the Not-for-Profit Corporation Laws of the State of New York for the purposes of exercising the aforesaid functions.

NOW, THEREFORE, Developer, for itself, its successors and assigns, declares that the real property referred to heretofore and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, and the same shall be binding on all parties having any right, title or interest in the described properties or any part hereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

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

ARTICLE I DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

Section 1. "Association" shall mean and refer to MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION, PHASE II, INC., a New York Not-for-Profit Corporation, its successors and assigns.

Section 2. "The Properties" shall mean and refer to that certain real property hereinbefore described together with any additions thereto.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All that piece or parcel of property described on a map entitled "Phase II Birch Run at Saratoga" filed in the Saratoga County Clerk's office on March 18, 1987 and recorded as Maps 131A through N.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and streets to be dedicated.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having interest merely as security for the performance of an obligation, and including the Declarant with respect to an unsold lot.

Section 6. "Member" shall mean and refer to all those Lot Owners who are members of the Association, as provided in Article III hereof.

Section 7. "Party Fence" shall mean and refer to a fence situate, or intended to be situate, on the boundary line between adjoining lots.

Section 8. "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support or enclosure of each adjoining home, situate, or intended to be situate, on the the boundary line between adjoining lots.

Section 9. "Declarant" shall mean and refer to and its successors and assigns, if such successors and assigns should acquire an undeveloped portion of the Properties for purpose of development.

Section 10. "Home" shall mean any residential structure built upon a lot for single family occupancy.

Section 11. "Townhouse" shall mean and refer to single family homes with one or more party walls.

Section 12. "Detached Homes" shall mean and refer to single family homes which are free standing and without party walls.

ARTICLE II PROPERTY RIGHTS

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

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;

(d) the right of the Declarant and of the Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities, and the right of the Declarant to grant and reserve easements and rights-of-way, in, through, under, over, upon and across the Common Areas for the completion of the Declarant's work and for the operation and maintenance of the Common Areas;

(e) the right of individual owners to the exclusive use of parking spaces as provided in this article.

Section 2. Delegation of Use. Any member may delegate in accordance with the By-Laws and the Rules and Regulations of the Association, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

Section 3. Parking Rights. All members shall be entitled to the use of certain automobile parking spaces along the roadways and also along the driveways within certain of the Lots, together with the right of ingress and egress in and upon said parking areas.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Each member of the Association shall be entitled to one vote.

Section 3. When more than one person holds an interest in any Lot, all such persons shall be members and the vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 4. Notwithstanding the foregoing, as of the time that Declarant shall have conveyed title to 66% of the Lots or five years from the date of recording the Declaration, whichever shall first occur, the Sponsor shall not be entitled to exercise its voting rights and elect more than a majority in number of the members of the Board of Directors of the Association. Until such time, Declarant has elected the initial Board of Directors, consisting of three (3) members who shall serve for an initial term of five years or until 66% of the lots have been closed, whichever is sooner.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties as a community and in particular for the improvement and maintenance functions herein set forth, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance of the Association, all of which obligations the Association hereby assumes as of the date of conveyance of title of the Common Areas by Developer.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members.

Section 4. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all members. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Exempt Property. The following properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; (b) all Common Areas as defined in Article I, hereof. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE V. EASEMENTS

Section 1. Reservation of Easements. (a) Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and the maintenance of same, so long as it stands, shall and does exist. In the event a Home is partially or totally destroyed, and then rebuilt, the Owners of the Home or Homes so effected agree that minor encroachments on parts of adjacent Homes or upon the Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof exists.

(b) Declarant hereby specifically reserves to itself, its successors and assigns, an easement for ingress and egress, installation and maintenance of all utilities, including but not limited to sewer and drainage lines, water lines, wires, conduits and pipes, upon, across, over and under all of said properties and all of the roadways within the property as shown on Exhibit "1" attached hereto and made a part hereof and without limiting the foregoing, reserves an easement for the installation and maintenance of roadways and all necessary utilities for the benefit of contiguous lands now or formerly owned by the Declarant for future development and improvement of said lands.

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

Section 3. Easements in Favor of Association and Lot Owners. Declarant does hereby establish and create for the benefit of the Association and for all Owners of Lots located on The Properties the following easements, licenses, rights and privileges:

(i) Right of ingress and egress over roadways to the nearest public highway which shall be constructed by Declarant upon other contiguous lands presently owned by Declarant and intended for future development; and an easement for maintenance of any and all sewer, water or utility services within the roadways located upon such contiguous lands.

(ii) Right of ingress and egress to the nearest public highway over and through all roads, walkways, driveways and parking areas on the Common Areas, and if there are no roads, walkways or driveways leading from a Lot to a public highway, right of ingress and egress to the nearest public highway over the Common Areas.

(ii) Rights to connect with and make use of utility lines, wires, pipes, conduits, sewers and drainage lines which may from time to time be in or along the streets and roads or other portions of the Common Areas.

(iii) In the event that it shall be necessary for a Lot Owner to cross over any walkway or driveway which shall be located upon a contiguous Lot, each Lot Owner shall have an easement for ingress and egress over such walkways and/or driveways to and from such Owner's Lot. In addition, Lot Owners shall be entitled to the use of driveways located upon Lots for parking spaces provided such use does not interfere with the rights of ingress and egress of other Lot Owners or the Association.

ARTICLE VI.
RIGHTS AND OBLIGATIONS OF DECLARANT

Section 1. Completion of Common Areas by Declarant. Prior to the conveyance of title to each Lot, Declarant shall complete the construction of the streets, roadways, walkways and parking facilities directly serving said Lot. Declarant's obligation to complete the construction of the Common Areas, at Declarant's sole cost and expense, shall survive the conveyance of the Common Areas to the Association pursuant to Section 2 of this Article.

Section 2. Title to Common Areas. Declarant hereby covenants for itself, its successors and assigns, that prior to the conveyance of the first Lot to an Owner, it will convey title to the Common Areas to the Association free and clear of all liens and encumbrances, except those created by or pursuant to this Declaration, subject, however, to the following covenant, which shall be deemed to run with the land and shall be binding upon the Declarant, the Association, and their successors and assigns:

In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair and damage to pavement, walkways, garages, outdoor lighting, fences, and recreational facilities.

This section shall not be amended, as provided for herein to reduce or eliminate the obligation for maintenance and repair of the Common Areas.

Section 3. Reservation of Easements. Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Common Areas, for the purpose of completing the construction and sale of Homes situate upon the Properties. Towards this end the Declarant hereby reserves easements and the right to grant same and rights-of-way in, through, over, under and across the Common Areas for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil, gas and other utilities and for any other materials or services necessary for the completion of the work. Declarant reserves the right to permit prospective Lot purchasers to tour Common Areas and to temporarily make use of the parking facilities while touring the project site and models. Declarant also reserves the right to connect with and make use of utility lines, wires, pipes, conduits, sewers and drainage lines which may from time to time be in or along the streets and roads or other portions of the Common Areas.

In situations where the Association is responsible for the outside maintenance and repair of the pipes, sewer lines, water lines, wires, conduits, etc., the cost of such maintenance will be apportioned among the members of the Association who are immediately effected by such maintenance or repair on a reasonable basis. This provision does not apply to the Sponsor unless Sponsor is the owner of a unit or home effected by the maintenance or repairs.

Section 4. Location of Parcels. In the event that Declarant shall deem it necessary due to site conditions upon Parcels 2,3,4,5,6,7,8,9,10,11 and 12 as shown on Exhibit "F" of the Offering Plan, Declarant reserves the right to cause the Association to adjust the exact dimensions of the Common Areas and the Parcels referred to above until such time as Declarant has completed construction of single family housing units within such Parcels. In furtherance of this provision, the Association and Declarant shall be required to execute and deliver any and all deeds or other instruments to effectuate the intent of this section. Declarant through any of its officers shall be authorized to execute any and all deeds or other instruments on behalf of and as attorney-in-fact for the Association. This provision shall terminate and be of no further force and effect upon completion of construction of the Lots.

ARTICLE VII. COMMON AREA MAINTENANCE, MANAGEMENT AGREEMENT AND INSURANCE ASSESSMENTS

Section 1. (a) Common Area Maintenance. The Association shall be responsible for all maintenance on the Common Areas including, but not limited to, maintenance of parking facilities, recreational facilities, the cutting of grass on Common Areas, and snow removal on walkways and roadways which are Common Areas.

(b) Maintenance of Lots. The Association shall be responsible for certain exterior maintenance of homes and appurtenances which shall be constructed on Lots, specifically including periodic staining and/or painting of all exteriors, maintenance of any and all utility lines, wires, pipes, conduits, sewers and/or drainage lines which may be upon any Lot, snow removal of driveways and walkways, maintenance of driveways, walkways, lawns, trees and shrubbery and landscaping. Such maintenance shall be performed by the Association in accordance with the same standards as apply to maintenance of the Common Areas so as to be consistent with the overall purposes of this Declaration. Each Homeowner shall be responsible for the maintenance and repairs of the interior of the Home, roofs, foundations, if any, windows and glass doors, and further shall be responsible for the maintenance, repairs and replacement of any exterior damage caused by the neglect or willful conduct of the Lot Owner or Lot Owner's tenant, guest or invitee. The exterior maintenance described in this paragraph shall be performed by the Association at such times and in accordance with such standards (subject to the general provisions of this Declaration) as shall be determined, from time to time, by the Directors of the Association.

As used herein, the term "maintenance" means preservation, repairing and keeping in good condition the items referred to herein, and replacement of any item which is deemed reasonably necessary by the Directors of the Association, excluding repairs or replacement of items which are caused by fire, explosion, flood, natural disaster or Act of God.

Section 2. Management Agreement. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the said management agreement may be cancelled prior to its expiration date by an affirmative vote of sixty (60%) percent of the votes of each class of the Members of the Association who are voting in person or by proxy at a meeting at which a quorum, as defined in Article III, Section 4 of the By-Laws, is present. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 3. Insurance. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for the Common Areas, including insurance of any buildings located on the Common Areas against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction. The Association shall also obtain a comprehensive public liability policy covering all Common Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. Such insurance shall be written in the name of the Association as Trustee for each of the Home Owners in equal proportions. Any Home Owner may in addition, at his own expense, carry any and all other insurance he deems advisable, such as standard home owner damage and liability insurance.

In the event that any portion of any structure, as originally constructed by Declarant, including any party wall or fence, shall protrude over an adjoining lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining lot or lots, and Owners shall neither maintain any action for the removal of a party wall or fence or projection nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements of any structures, party walls or fences if same are constructed in conformance with the original structure, party wall or fence constructed by Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

ARTICLE VIII. PARTY WALLS

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

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX. USE OF PROPERTY

The use of a Home by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Directors and the following covenants and restrictions:

(a) The Home and area restricted to the Members' use shall be maintained in good repair and overall appearance.

(b) Any Member who mortgages his Home shall notify the Board of Directors providing the name and address of his mortgagee.

(c) The Board of Directors shall, at the request of the mortgagee of the Home, report any delinquent assessments due from the Owner of such Homes.

✕ (d) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.

(e) No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and the regulations of all governmental bodies having jurisdiction thereof shall be observed.

(f) Regulations promulgated by the Board of Directors concerning the use of the property shall be observed by the Members, provided, however, that copies of such regulations are furnished to each Member prior to the time the said regulations become effective.

(g) The maintenance assessments shall be paid when due.

(h) Occupancy of the Homes shall be restricted to residential and in conformity with local zoning regulations.

(i) No sign of any kind shall be displayed to the public view on any Home or parcel except a one-family name or professional sign of not more than two hundred forty square inches, or no temporary sign of not more than five square feet, advertising the property for sale or rent. No such sign shall be illuminated except by non-flashing white light emanating from within or on the sign itself and shielded from direct view.


(j) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Home or on any Lot, except that 2 dogs, cats or other domesticated household pets in the aggregate may be kept in any Home.

(k) No fence shall be erected on any parcel or attached to the exterior of any dwelling, except for those to be erected by Declarant for aesthetic purposes or by an Owner as a patio fence, provided, however, that this paragraph shall not prohibit the erection, repair and maintenance of a perimeter fence around the exterior boundary of the Community. Any patio fence erected by an Owner shall be erected within the perimeter of the property line and in conformance with plans and specifications submitted to and approved by the Board of Directors or its duly designated architectural Committee.

(l) There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas without the prior consent of the Board of Directors.

(m) Home Owners shall not cause to permit anything to be hung or displayed on the outside of windows or doors of a Home and no awning or canopy shall be affixed to or placed upon the exterior walls or doors, roof or any part thereof, or exposed on or at any window, without the prior written consent of the Board of Directors.

(n) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant or the builder of said Homes to maintain during the period of construction and sale of said Homes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Home, including but without limitation, a business office, storage area, construction yards, signs, model units, and sales office, with unrestricted access to these facilities as the Declarant deems necessary for construction and sale.

 ARTICLE X. ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to ~~or change or alteration~~ therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designate committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, said plan shall be deemed to have been denied. The Sponsor shall be exempt from the provisions of this Article.

ARTICLE XI. GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than eighty percent (80%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. Mergers. Upon a merger or consolidation of the Association with another association, 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 corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the Properties, together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by the Declaration within the Properties, except as hereinafter provided.

Section 6. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to purposes, as nearly as practicable, the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes, as nearly as practicable, the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title of any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears a Member or Owner on the records of the Association at the time of such mailing.

Section 8. Administration. The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Schedule "C".

D.A. Collins Construction Co., Inc.

By: _____
Thomas F. Longe, President

RESERVED FOR
SITE PLAN MAP

EXHIBIT "1"

BY-LAWS
OF
MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION,
PHASE II, INC.

O'CONNELL AND ARONOWITZ, P.C.
100 State Street
Albany, New York 12207

"EXHIBIT C"

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BY-LAWS

OF

MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION,
PHASE II, INC.

A New York Not-For-Profit Corporation

ARTICLE I. NAME AND LOCATION

The name of the corporation is Morgan Street Birch Run Homeowners Association, Phase II, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at Box 437 Saratoga Springs, New York, but meetings of members and directors may be held at such places within the State of New York, County of Saratoga, as may be designated by the Board of Directors.

ARTICLE II. DEFINITIONS

Section 1. "Association" shall mean and refer to Morgan Street Birch Run Homeowners Association, Phase II, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and streets which may be dedicated.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation, and including Declarant with respect to any unsold Lot.

Section 6. "Declarant" shall mean and refer to D. A. Collins Construction Co., Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Saratoga County Clerk.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 9. "Home" shall mean any residential structure built upon a Lot for single family occupancy.

ARTICLE III. MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Association.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, sixty percent (60%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV. BOARD OF DIRECTORS

Section 1. Number and Term. The number of directors which shall constitute the whole Board shall not be less than three, and not more than nine. An initial Board consisting of three Directors shall be designated by the Declarant to serve for a term of five years or until 66% of the lots have been closed, whichever is sooner. At the first annual meeting after the closing of title to the first lot, the members shall vote for and elect one additional director to serve for a term of one year and until his or her successor has been duly elected and qualified. At such time as the term of the initial Board of Directors shall expire as described above, the members shall vote for and elect all members of the Board of Directors at each annual meeting of the members. As required by Law, each Director shall be at least nineteen years of age.

Section 2. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 3. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V. NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the

Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI. MEETINGS OF DIRECTORS

Section 1. First Meeting. The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the annual meeting of Home Owners Association Members and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set. Notwithstanding the above, the first meeting of the Board of Directors shall take place within six months from the date of closing of title to the first Lot.

Section 2. Regular Meetings. Regularly scheduled meetings of the Board may be held without special notice.

Section 3. Special Meetings. Special meetings of the Board may be called by the President on two (2) days' notice to each Director either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

Section 4. Quorum. At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a two-thirds majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

Section 5. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the

giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

ARTICLE VII. POWERS AND DUTIES OF THE
BOARD OF DIRECTORS

Section 1. Powers.

(a) The property and business of the Homeowners Association shall be managed by its Board of Directors, which may exercise all such powers of the Homeowners Association and do all such lawful acts and things as are not by Statute, Declaration, Certificate of Incorporation or by these By-Laws, directed or required to be exercised or done by the Members or Owners personally. These powers shall specifically include, but not be limited to the following items:

1. To determine and levy monthly assessments ("Homeowners Association assessments") to cover the cost of operating and maintaining the Common Area payable in advance.

2. To collect, use and expend the assessments collected to maintain, care for and preserve the Common Area.

3. To make repairs, restore or alter any of the Common Area after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

4. To open bank accounts on behalf of the Homeowners Association and to designate the signatories to such bank accounts.

5. To insure and keep insured the Common Area in accordance with Article XII of these By-Laws.

6. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the house rules and regulations herein referred to.

7. To make reasonable rules and regulations and to amend the same from time to time. Such rules and regulations and amendments thereto shall be binding upon the Members when the Board has approved them in writing and delivered a copy of such rules and all amendments to each Member. Such rules and regulations may, without limiting the foregoing, include reasonable limitations on the use of the Common Areas by guests of the Members, as well as reasonable admission and other fees for such use.

8. To employ workmen, lifeguards, janitors and gardeners and to purchase supplies and equipment to enter into contracts, including contracts with a management company.

9. To bring and defend actions by or against more than one Member and pertinent to the operation of the Homeowners Association.

10. To pay and to charge back to the Homeowners as Common charges any real property taxes which may be levied upon the Common Areas.

(b) The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of such committees to consist of at least three (3) Directors or Members one of whom shall be a Director, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Homeowners Association and may have power to sign all papers which may be required, provided the said resolution or resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Committees established by resolution of the Board of Directors shall keep regular minutes of their proceedings and shall report the same to the Board as required.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained.

Section 3. Annual Statement. The Board of Directors shall furnish to all Members and shall present annually (at the annual meeting and when called for by a vote of the Members at any special meeting of the Members) a full and clear statement of the business conditions and affairs of the Homeowners Association, including a balance sheet and profit and loss statement verified by an independent public accountant and a statement regarding any taxable income attributable to the Members and a notice of the holding of the annual meeting of Homeowners Association members.

Section 4. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Homeowners Association handling or responsible for Homeowners Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be an expense of the Homeowners Association.

Section 5. Management Agent. The Board of Directors may employ for the Homeowners Association a management agent under a term contract or otherwise at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to all of the delegable duties of the Board listed in this Article. All management contracts shall provide that the books and records of the Association shall be returned upon demand.

ARTICLE VIII. USE OF FACILITIES

Section 1. Tenants' Use. The Common Area shall be limited to the use of the Members and their guests. In the event that a Member shall lease or permit another to occupy his Home, however, the lessee or occupant shall at the option of the Member, be subject to the same restrictions and limitations as said Member. Any

Member, lessee or occupant entitled to the use of the Homeowners Association facilities may extend such privileges to members of his family residing in his household by notifying the Secretary in writing of the names of any such persons and of the relationship of such Member, lessee or occupant to such persons.

Section 2. Tenants' Voting Rights. Notwithstanding any other provisions of these By-Laws, in the event a member shall lease or permit another to occupy his home and elects to permit the lessee or occupant to enjoy the use of the Common Areas in lieu of the Member himself, the Member may, by a writing directed and in form satisfactory to the Board of Directors of the Association, also permit the lessee or occupant to exercise his right to vote for the duration of the lease or permitted occupancy, or for a period of ten (10) years, whichever is shorter. Upon the expiration of said period, and each successive period, the Member shall have the right to extend the lessee's or occupant's right to his vote if the aforesaid conditions are again satisfied.

ARTICLE IX. OFFICERS

Section 1. Elective Officers. The Officers of the Homeowners Association shall be chosen by the Board of Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Assistant Secretaries and Assistant Treasurers and such other officers as in their judgment may be necessary. All Officers must be either Members of the Board of Directors, Members of the Homeowners Association, lessees or occupants entitled to the use of the Common Areas in lieu of the Member renting or permitting them to occupy the Home in which they reside or officers or employees of Declarant or its affiliated companies. Two or more offices may not be held by the same person.

Section 2. Election. The Board of Directors, at its first meeting after each annual meeting of the Homeowners Association Members, shall elect a President, a Vice President, a Secretary and a Treasurer. Only the President must be a member of the Board.

Section 3. Appointive Offices. The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. Term. The officers shall hold office for the term to which they are elected and appointed and until their successors are chosen and qualify in their stead. Any officer

elected or appointed by the Board of Directors may be removed with or without cause at any time, by the affirmative vote of a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President. The President shall be the chief executive officer of the Homeowners Association; he shall preside at all meetings of the Homeowners Association Members and the Board of Directors, shall be an ex-officio member of all standing committees, shall have general and active management of the business of the Homeowners Association, shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

Section 6. The Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act and shall have such other powers and duties as are usually vested in the office of Vice President of a Corporation organized under the Not-for-Profit Corporation Law of the State of New York.

Section 7. The Secretary. The Secretary and/or Assistant Secretary shall attend all sessions of the Board and all meetings of Homeowners Association Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of Homeowners Association Members and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he shall be.

Section 8. The Treasurer. The Treasurer shall have the custody of the Homeowners Association funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Homeowners Association including the vouchers for such disbursements, and shall deposit all monies and other valuable effects in the name and to the credit of the Homeowners Association in such depositories as may be designated by the Board of Directors.

He shall disburse the funds of the Homeowners Association as he may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Directors at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Homeowners Association.

He shall keep detailed financial records and books of account of the Homeowners Association, including a separate account for

each Member, which, among other things, shall contain the amount of each assessment, the date when due, the amounts paid thereon and the balance remaining unpaid.

Section 9. Agreements, Etc. All agreements and other instruments shall be executed by the President or such other person as may be designated by the Board of Directors.

ARTICLE X. COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI. BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XII. ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot. The Directors of the Association shall have the power to levy special assessments not exceeding \$500.00 in any calendar year. Additional special assessments may be levied by vote of 2/3 of all members of the Association.

ARTICLE XIII. INSURANCE

The Board of Directors shall maintain public liability insurance, to the extent obtainable, covering each member of the Board of Directors, each Homeowners Association Member, and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Area. To the extent obtainable, the Board of Directors shall also be required to obtain the following insurance: (a) fire insurance with extended coverage, water damage, vandalism and malicious mischief endorsements, insuring the facilities on the Common Area, in an amount equal to their full replacement values and (b) workmen's compensation insurance. All insurance premiums for such coverage shall be paid for by the Homeowners Association.

ARTICLE XIV. AMENDMENTS

These By-Laws may be altered, amended or added to at any duly called meeting of Homeowners Association Members, provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment and (2) that the amendment shall be approved by vote of eighty percent (80%) of the Members. No amendment, however, shall affect or impair the validity or priority of the Members' interests and the interests of holders of a mortgage encumbering a Member's Home.

ARTICLE XV. SELLING, LEASING AND GIFTS OF HOMES

Section 1. Selling and Leasing Lots. Any Lot may be conveyed or leased by a Member free of any restrictions except that no Homeowner Member shall convey, mortgage, pledge, hypothecate, sell or lease his Lot unless and until all unpaid Homeowners Association expenses assessed against the Lot shall have been paid as directed by the Board of Directors. Such unpaid Homeowners Association expenses, however, may be paid out of the proceeds from the sale of a Lot, or by the Grantee. Any sale or lease of a Lot in violation of this section shall be voidable at the election of the Board of Directors. Upon the written request of a Member or his mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this section shall not apply to the acquisition or sale of a Lot by a mortgagee who shall acquire title to such Lot by foreclosure or by deed in lieu of foreclosure. Such

provisions shall, however, apply to any purchaser from such mortgagee.

Section 2. Gifts, Etc. Any Member may convey or transfer his Lot by gift during his lifetime or devise his Lot by Will or pass the same by intestacy without restriction.

Section 3. Future Memberships. Upon any transfer of any Lot located upon the Properties, the Grantee (devisee, distributee, or beneficiary of a gift) shall automatically become a Member of the Homeowners Association with the same rights, duties and restrictions under the Declaration and these By-Laws as his Grantor or predecessor in title.

ARTICLE XVI. NOTICES

Section 1. Definition. Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Directors or to any Director or Homeowners Association Member, it shall not be construed to mean personal notice; but such notice may be given in writing, by mail, by depositing the same in a post office or letter box in a postpaid sealed wrapper, addressed to the Board of Directors, such Director or Member at such address as appears on the books of the Homeowners Association.

Section 2. Service of Notice - Waiver. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, 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 thereof.

ARTICLE XVII. FINANCES

Section 1. Operating Account. There shall be established and maintained a cash deposit account to be known as the "Operating Account", into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all members. Disbursements from said account shall be for the general needs of the operation, including but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the community and Common Area facilities.

Section 2. Other Accounts. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

ARTICLE XVIII. GENERAL PROVISIONS

Section 1. Fiscal year. The fiscal year of the Homeowners Association shall be fixed by resolution of the Board of Directors.

Section 2. Seal. The Homeowners Association seal shall have inscribed thereon the name of the Homeowners Association and the year of its incorporation under the laws of the State of New York. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Section 3. Construction. Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural; whenever the context so required.

In the Case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 4. Severability. Should any of the covenants, terms or provisions herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

IN WITNESS WHEREOF, we, being all of the Directors of the Association, have hereunto set our hands this ___ day of _____, 1987.

(Director)

(Director)

(Director)

EXHIBIT "D"

PURCHASE AGREEMENT

Agreement made and dated _____ 198 , between D. A. Collins Construction Co., Inc., a New York Corporation, having its offices at P.O. Box 191, Mechanicville, New York hereinafter called the "Seller" and _____ residing at _____, hereinafter called the Purchaser.

WHEREAS, the Seller desires to offer for sale Lots to be situated on the land owned by it located in the City of Saratoga Springs, New York, together with mandatory memberships in the Morgan Street Birch Run Homeowners Association, Phase II, Inc., hereinafter called the "Association", and the Purchaser is desirous of purchasing a Lot therein and obtaining membership in the Association.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth, the parties hereto mutually agree as follows:

1. The Purchaser hereby agrees to purchase and the Seller agrees to sell the Lot No. _____, together with a _____ to be constructed thereon, in substantial conformity with the plans and specifications therefor, filed with the Building Department of the City of Saratoga Springs.

2. The Seller has exhibited and delivered to the Purchaser and the Purchaser has read and agrees to be bound by the Declaration of Covenants, Restrictions, Easements, Charges and Liens, By-Laws and Offering Plan of the Association (and the Exhibits attached thereto), all of which are incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full herein. With the purchase of a Lot, the Purchaser acknowledges that he will automatically thereby become a member of the Association, subject to its rules and regulations and liable for each of its assessments. This Agreement is being executed more than 72 business hours after the receipt by the Purchaser of a copy of the Offering Plan.

3-A. The purchase price is \$ _____ payable as follows:

- (i) \$ _____, previously received as a non-binding reservation deposit (where applicable);
- (ii) \$ _____, on the signing of this Agreement, the receipt whereof is hereby acknowledged;
- (iii) \$ _____, on or before the _____ day of _____, 198 ;
- (iv) \$ _____, certified or bank cashier's check on closing of title;
- (v) \$ _____, loan in that amount, to be procured by the

Purchasers from a financial institution for a term of _____ years at the prevailing rate of interest charged by financial institutions and permitted by New York State Law at the time of closing of title, the proceeds of which shall be turned over to the Seller.

Any payment made by check is accepted by Seller subject to collection.

The Home purchased herein shall not include any furniture or house furnishings on display in Seller's model or any other items not specifically referred to in the inventory list made a part of this Agreement and annexed hereto as Exhibit "A".

3-B. The Seller will hold all monies received directly or through its agents or employees in trust until the closing of title or Seller will post a security bond issued by a New York insurance company securing repayment of such funds in the event the purchaser is entitled to such amount under the terms of the Offering Plan or Purchase Agreement. If no bond is posted, such funds will be held as trust funds pursuant to Section 352-h or Section 352-e(2)(b) of the General Business Law, in a special account in Adirondack Trust Co., Broadway, Saratoga Springs, New York. The signature of Lawrence Hamilton, Esq., as attorney for the Seller shall be required to withdraw any of such funds. Such funds will be payable to Seller upon closing of title to the Lot covered by the Purchase Agreement.

In the event of default by the purchaser under this Purchase Agreement, which default continues for 30 days after notice of such default from the Seller to the Purchaser, the down payment (to a maximum of 10%) may be released to the Seller from such account as liquidated damages and thereafter neither party shall have any rights or obligations against or to the other. If a bond has been posted, it may be withdrawn after such default on notice.

All such funds received by Seller will be handled in accordance with the provisions of Section 352-h of the General Business Law and shall be employed by Seller only for the purposes set forth in this Plan.

3-C. The purchase price includes the following alternates and extras:

- (i) _____
- (ii) _____

(iii) _____

(iv) _____

(v) _____

Title to all items of personal property shall be delivered free and clear of all liens and encumbrances, except the lien of the mortgage applied for by Purchasers herein, if any.

3-D. The Purchaser further agrees to pay at the closing of title: the applicable New York State Transfer Tax and the actual fee for recording the deed to the Lot, as well as the applicable New York State sales tax on any items of personal property. In the event the Purchaser shall obtain a purchase money mortgage, he shall also pay all applicable fees connected therewith such as fees for credit reports, examination of title, mortgage title insurance, bank attorneys fees for preparation of the documents necessary for the mortgage loan, all recording fees and all other governmental charges assessed on the loan. All applicable real estate taxes and other usual and normal closing charges and any common charges assessed during the month that title closes or established as a reserve, shall be adjusted as of the closing date based upon the last bill rendered for such taxes or charges. The Purchaser shall pay the fee of his own attorney and the premium for a fee title insurance policy, if he desires such coverage. In addition thereto, the Purchaser agrees to pay at the closing the sum of \$50.00 to the Association as an initial working capital contribution.

4. The closing deed shall be a Bargain and Sale Deed with Covenants Against Grantor's Acts, shall be duly executed and acknowledged by the Seller, so as to convey to the Purchaser fee simple title to the said premises, free and clear of all liens and encumbrances, except as herein stated, and shall also contain the covenant required by subdivision 5 of Section 13 of the Lien Law. The Purchaser shall accept a marketable title such as Seller's title company or any other reputable title company will insure and the Purchaser shall pay the applicable New York State transfer tax. Title to the premises is sold and shall be conveyed subject to: (a) ordinances and regulations of competent municipal or other governmental authorities; (b) easements for screening and planting and for sewer, water, gas, fuel line, drainage, electricity, telephone and other similar utilities, if any, granted or to be granted; (c) any state of facts an accurate survey might show provided title is not rendered unmarketable thereby; (d) usual rights of owners in party walls; (e) The Declaration of Covenants, Restrictions, Easements, Charges and Liens, referred to in Paragraph 2 of this Agreement and contained in the Offering Plan of the Association which the Seller will or has recorded in the Saratoga County Clerk's Office; and (f) unpaid taxes and liens, provided the title company shall insure against collection of same from the premises.

5. The closing of title shall take place at the office to be designated by the Seller or by the lending institution at o'clock on or about 198, or at another date and time designated by the Seller upon ten (10) days' written notice mailed to the Purchasers at their address hereinabove set forth. The Seller shall be entitled to a reasonable adjournment in the closing of title in the event of delay by reason of weather conditions, strikes or material shortages, or delays in inspections and reports thereon, or other requirements.

6. The conventional mortgage loan applied for by the Purchaser herein, if any, shall be secured by a first mortgage on the Lot herein described which shall be self-liquidating and payable in monthly installments of principal and interest, together with such installments of taxes, water, insurance and common charges as the lending institution shall require. The Purchaser does hereby agree to furnish, deliver and/or execute all instruments whether application, affidavit, statement or any other instrument in connection with the Purchaser's application for such loan, to furnish all information required by the lending institution and/or the Seller and to render promptly a truthful and accurate statement of them, and if the application is approved, to execute at title closing all papers, statements or instruments which may be necessary to consummate the mortgage loan transaction (and if this Agreement is executed by husband only on behalf of Purchasers, the husband agrees that his wife will join in the application for consummation of the mortgage loan). Failure to comply will be deemed a material breach of this Agreement.

If after compliance with the foregoing by the Purchaser, he is not approved by a lending institution designated by Seller, then this Agreement shall be deemed cancelled and the monies paid hereunder by the Purchaser shall be refunded to the Purchaser, with interest earned if any, and the parties hereto shall be released from any liability hereunder except that the Seller reserves the right to designate another lending institution or to grant the mortgage loan itself on the same terms and conditions. The instruments furnished by the Purchaser are hereby made part of this Agreement. If no mortgage commitment is obtained by Purchaser within 120 days from the signing of this contract, this contract is null and void.

7. Should Purchaser violate, repudiate or fail to perform any of the terms of this Agreement, Seller may, at its option, retain all or any part of the monies paid on account hereunder up to a maximum of 10% of the base purchase price plus the price of any custom works ordered as liquidated damages, in which event the parties shall be discharged of all further liability hereunder, or Seller may otherwise avail itself of any legal or equitable rights which it may have under this Agreement. This provision shall

apply whether or not construction has commenced and regardless of any sale of the property subsequent to Purchaser's default.

8. The Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage heretofore or hereafter made and any advances heretofore or hereafter made thereon, and any payments or expenses already made or incurred or which may hereafter be made or incurred, pursuant to the terms thereof, to the full extent thereof without the execution of any further legal documents by the Purchaser. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or accelerated thereunder by virtue of the lender's right to make advances before they become due in accordance with the schedule of payments. The Seller shall satisfy all such mortgages or obtain a release of the Lot from the lien of such mortgages at or prior to the closing date, except for the individual mortgage covering the mortgage loan taken out by the Purchaser, if any, whether same be by extension, assumption, consolidation or otherwise.

9. All sums paid on account of this Agreement and the reasonable expense of the examination of the title to the Lot are hereby made liens hereon, but such liens shall not continue after default by the Purchaser under this Agreement. The risk of loss or damage to the Home by fire or any other cause until the delivery of the deed is assumed by the Seller.

10. The parties hereto do hereby agree that the Seller may cancel this Agreement by forwarding its check in the full amount paid by the Purchaser, together with a notice in writing addressed to the Purchasers at their address hereinabove set forth in the event of the occurrence of either of the following: (1) that any governmental bureau, department or subdivision thereof shall impose restrictions on the manufacture, sale, distribution and/or use of materials from its regular suppliers or from using same in the construction and/or completion of the Home; or (2) that the Seller is unable to obtain materials from its usual sources due to strikes, lockouts, war, military operations and requirements or national emergencies, or the installation of public utilities is restricted or curtailed.

11. The existence of unpaid taxes or liens of any kind at the time of title closing shall not constitute an objection to title, provided the Seller shall deposit a sufficient amount with the title company so that said company shall be willing to insure against collection of same from the property herein described. The parties agree that the Seller may pay and discharge any liens and encumbrances upon the property, not provided for in this Agreement out of the monies to be paid by the Purchaser at the time of closing title.

12. It is expressly understood and agreed that the Purchaser shall in no event take possession of the premises prior to the time of the delivery of the deed and full compliance by the Purchaser with the terms of this Agreement, and should the Purchaser violate this provision, the Purchaser consents that the Seller shall have the right to remove him from the premises as a squatter and intruder by summary proceedings. Upon the Purchaser's unauthorized possession, the Purchaser shall be deemed in default hereunder at the option of the Seller, and upon such election, the amount paid hereunder shall belong to the Seller as liquidated damages. It is further understood and agreed that the Seller will not be responsible for damage or loss to any property belonging to the Purchaser whether same is delivered to the property on or after the closing of title herein.

13. The Seller's liability under this Agreement for failure to complete and/or deliver title for any reasons other than the Seller's willful default, shall be limited to the return of the money paid hereunder, and upon the return of said money, the Agreement shall be null and void and the parties hereto released from any and all liability hereunder. In any event, the Seller shall not be required to bring any action or proceeding or otherwise incur any unreasonable expense to render the title to the premises marketable or to cure any objection to title.

All down payment monies paid by Purchaser to Seller pursuant to this Agreement prior to Closing, will be held as trust funds pursuant to Section 352-h and Section 352-e(2)(b) of the General Business Law, in a special account in Adirondack Trust Company, Broadway, Saratoga Springs, New York. The signature of Lawrence Hamilton, Esq. as attorney for Sponsor, shall be required to withdraw any of such funds. Such funds will be payable to Sponsor upon closing of title to the Lot covered by the Purchase Agreement.

In the event of default by the purchaser under the Purchase Agreement, which default continues for 30 days after notice of such default from the Sponsor to the purchaser, the down payment (to a maximum of 10%) may be released to the Sponsor from such account as liquidated damages and thereafter neither party shall have any rights or obligations against or to the other.

All funds received by Sponsor will be handled in accordance with the provisions of Section 352-h of the General Business Law and shall be employed by Sponsor only for the purposes set forth in this Plan.

14. Anything to the contrary contained notwithstanding, it is specifically understood and agreed by the parties hereto that the acceptance of the delivery of the deed at the time of the closing of title hereunder shall constitute full compliance by the Seller.

with the terms of this Agreement and none of the terms hereof, except as otherwise herein expressly provided, shall survive the delivery and acceptance of the deed. All representations contained in the Offering Plan shall survive delivery of the deed. The parties hereto do hereby agree that trial by jury in any action, proceeding or counterclaim arising out of or from this agreement is hereby waived.

15. At the closing of title the Seller will deliver a temporary or permanent Certificate of Occupancy covering the building in which the Home is located. The provisions of this paragraph shall survive the closing of title and the delivery of the deed. Sponsor shall at its own expense provide a permanent Certificate of Occupancy within one year of the closing of title.

16. The Seller agrees, at its own cost and expense, to erect and complete the aforementioned Home in accordance with the requirements as to materials and workmanship of the Building Department of the City of Saratoga Springs and with the requirements of the lending institution which shall make the mortgage loan herein set forth, and further agrees that when completed, same will be in substantial accordance with the plans as filed with the Building Department.

17. It is further agreed that wherever the Purchaser has the right to make a selection of colors, fixtures, and/or materials, he shall do so within ten (10) days after written demand therefor. In the event the Purchaser fails to make such selection within such period, the Seller shall have the right to use its own judgment in the selection of colors, fixtures and materials and the Purchaser shall accept the same. Such written demand shall be by ordinary mail addressed to the Purchaser at the address herein set forth.

18. Purchaser agrees to deliver to Seller all documents and to perform all acts required by the Seller to carry out the provisions of this Agreement and the Offering Plan and conform to the provisions of all applicable laws and regulations. The paragraph shall survive delivery of the deed.

19. The Seller shall be required to erect the Home and all utilities or systems necessary to support normal occupancy thereof within a period of two (2) years from the date the Purchaser executed this Agreement. In the event the Seller shall be unable to convey title to the Home on or before six (6) months after the date of delivery of title set forth herein, except for the Purchaser's default, the Purchaser shall have the option to cancel this Agreement and to have the down payment advanced by him returned with interest earned, if any.

20. The parties agree that the stipulations and agreements herein contained shall be binding upon them, their respective

heirs, executors, administrators and/or assigns. The Purchaser agrees that he will not record or assign this Agreement or any of his rights hereunder without the written consent of the Seller. Any notice to be given hereunder shall be in writing and sent by certified mail to the parties at the address above given or at such address as either party may hereafter designate to the other in writing.

21. Manufacturers' warranties covering the heating and air conditioning systems and appliances as well as contractors' warranties against defects in workmanship and materials from the roofing, plumbing, heating and air conditioning contractors covering the Home or applicable common areas will, to the extent assignable and only to the extent such warranties are made to the Sponsor, be delivered at the time of title closing. In addition thereto, the Seller will deliver to Purchaser at such time, an agreement to the effect that:

(a) If water should seep or leak through the foundation walls (other than condensation), the Seller will repair same. The agreement will except leaks or seepage resulting from acts of God (other than normal rainwaters), disturbance of the Seller's grading or disturbance of the earth surrounding the foundation;

(b) The Seller will promptly correct any defects in the construction of the Home, or in the installation or operation of any mechanical equipment therein, due to materials or improper workmanship substantially at variance with the plans and specifications, provided it is notified of such defects in writing within one (1) year from the date of closing of title to the Home.

The warranties and agreements above referred to shall run for a period of one (1) year from the date of title closing, and liability thereunder shall be limited to repair or replacement of defective parts. This paragraph shall survive the closing of title and the delivery of the deed.

22. If two or more persons are named as the Purchaser herein, anyone of them is hereby made agent for the other in all matters of any and every kind or nature affecting the premises herein or this Agreement.

23. Purchaser may not assign this Agreement. Seller may assign this Agreement only to another business organization related to the Sponsor herein.

This Agreement states the entire understanding of the parties and neither the Seller nor the Purchaser shall be bound by any oral representations and/or agreements.

D. A. COLLINS CONSTRUCTION
CO., INC., (Seller)

By: _____

Purchaser _____ L.S.

Purchaser _____ L.S.

Director of Planning and
Development

EXHIBIT "A"

Inventory List

"EXHIBIT "E"

DEED

THIS INDENTURE made the _____ day of _____, 198 , between D. A. Collins Construction Co., Inc., a New York Corporation, existing under the laws of the State of New York, having a place of business at Box 191, Mechanicville, New York, party of the first part and _____, residing at _____, party of the second;

W I T N E S S E T H :

That the party of the first part, in consideration of Ten Dollars (\$10.00) lawful money of the United States, and other good and valuable consideration, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain piece or parcel of real property, with the buildings and improvements thereon contained, situate, lying and being in the City of Saratoga Springs, County of Saratoga and State of New York bounded and described as follows:

(PROPERTY DESCRIPTION)

SUBJECT to covenants, restrictions, reservations and easements of record.

AND SUBJECT to the benefits, rights, privileges, easements and subject to the burdens, covenants, restrictions, by-laws, rules, regulations and easements all as set forth in the Declaration of Covenants, Restrictions, Easements, Charges and Liens made by the party of the first part dated _____ 198 , and filed in the Office of the Clerk of Saratoga County on the _____ day of _____, 198 , in Liber _____ of conveyances at page _____.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

NOTES

ZONING DISTRICT R-4, MIDDLE FAMILY RESIDENTIAL
 MIN. LOT SIZE 3 STORIES OR MORE
 1.000 SQ. FT. PER STRUCTURE UNIT FOR STRUCTURES
 MORE THAN 3 STORIES
 1.000 SQ. FT. PER STRUCTURE UNIT FOR STRUCTURES
 MORE THAN 3 STORIES
 SET BACKS - FRONT - 20'
 REAR - 10'
 SIDE - 5'
 TOTAL SIDE - 40'
 MAX. HT. - 35' - 10 STORIES

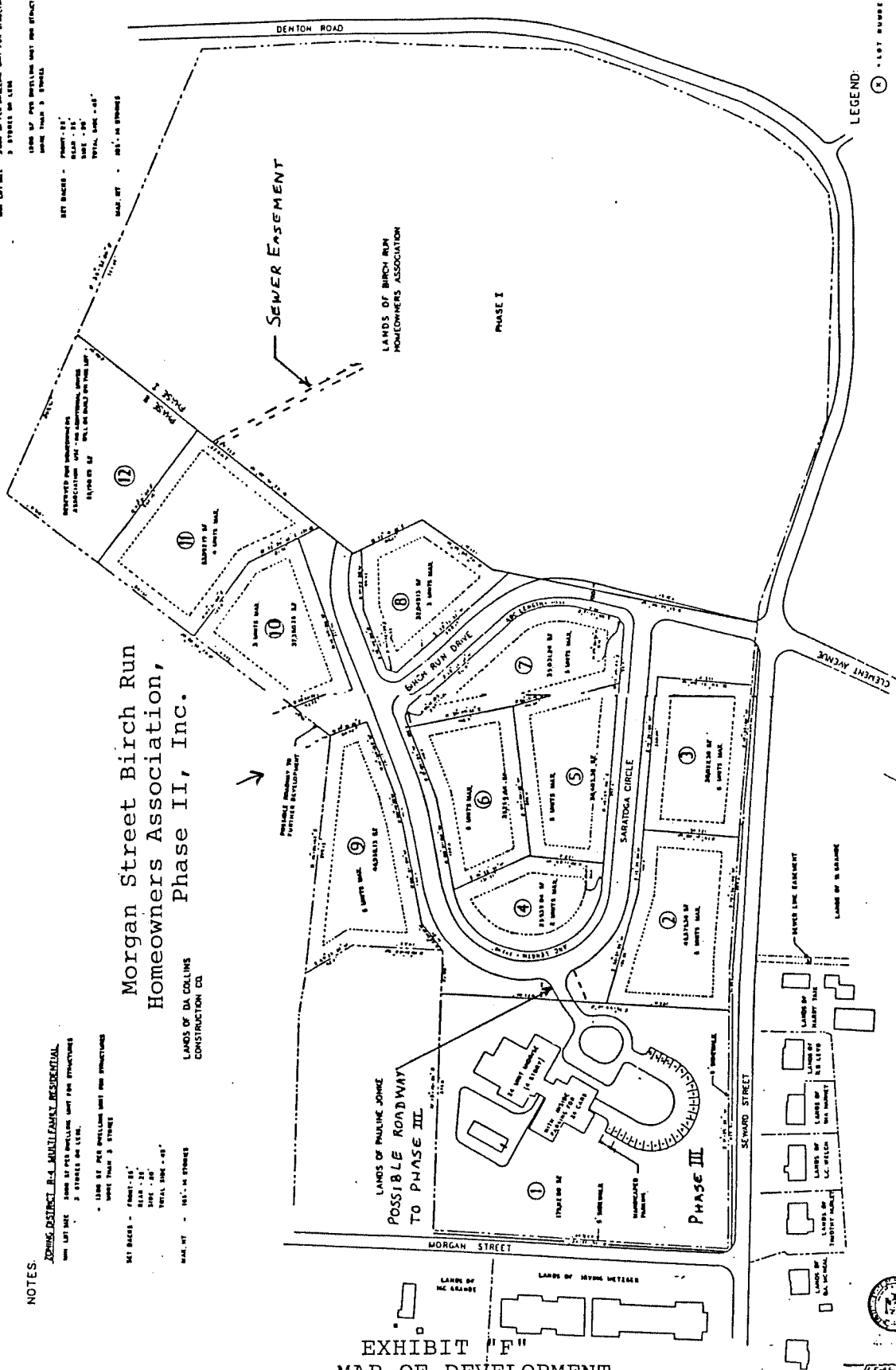
**Morgan Street Birch Run
 Homeowners Association,
 Phase II, Inc.**

LANDS OF DA COLLINS
 CONSTRUCTION CO.

NOTES

ZONING DISTRICT R-4, MIDDLE FAMILY RESIDENTIAL
 MIN. LOT SIZE 3 STORIES OR MORE
 1.000 SQ. FT. PER STRUCTURE UNIT FOR STRUCTURES
 MORE THAN 3 STORIES
 1.000 SQ. FT. PER STRUCTURE UNIT FOR STRUCTURES
 MORE THAN 3 STORIES
 SET BACKS - FRONT - 20'
 REAR - 10'
 SIDE - 5'
 TOTAL SIDE - 40'
 MAX. HT. - 35' - 10 STORIES

**EXHIBIT "F"
 MAP OF DEVELOPMENT**



| | | | | |
|-----|--|------------|---|--|
| L-1 | SCALE 1" = 40' DRAWN BY EB DATE DEC 66 | GREAT LOTS | PHASE II BIRCH RUN AT SARATOGA SARATOGA SPRINGS, NEW YORK | STAMP: DA COLLINS CONSTRUCTION CO. INC. SARATOGA, N.Y. |
| | NOTE: REVISED OCT 68 | | | |

"EXHIBIT "G"

MANAGEMENT AGREEMENT

AGREEMENT made this day of , 198 between the Board of Directors of the Morgan Street Birch Run Homeowners Association, Phase II, Inc., a Not-for-Profit Corporation organized under the laws of the State of New York, having an office at Box 437, Saratoga Springs, New York (hereinafter called the "Association") and D. A. Collins Development Corp., a New York Corporation, having an office at Box 191, Mechanicville, New York (hereinafter call the "Agent").

W I T N E S S E T H :

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. The Association hereby appoints the Agent as the exclusive Managing Agent of the Association's property comprising the Common Areas and to perform duties as more particularly set forth in this Agreement, and the Agent hereby accepts appointment as such upon the terms and conditions hereinafter provided.

2. This Agreement shall be for a term commencing on the day of the conveyance of Common Areas to the Association by D. A. Collins Construction Co., Inc., and expiring on June 30, 1988. Notwithstanding the foregoing, the parties hereto agree, that once D. A. Collins Construction Co., Inc., gives up control of the Association, the Association will be free, upon thirty (30) days'

written notice to the Agent to cancel this Agreement. Such cancellation, prior to normal expiration of this Agreement, must be by an affirmative vote of sixty (60%) percent of the votes of the members of the Association who are voting in person or by proxy at a meeting of the Association, at which a quorum is present, pursuant to the By-laws of the Association.

3. The Agent agrees as follows:

(a) To maintain, on behalf of all Lot Owners, Lots and/or Homes acquired or leased by the Association after notice thereof to Agent.

(b) To use its best efforts in collecting the Assessments and in making disbursements from said assessments in connection with the services to be rendered hereunder.

At the written request of the Association, the Agent shall, in the name of and at the expense of the Association, institute any and all legal actions or proceedings for the collection of any unpaid assessments assessed against a Lot.

All monies received by the Agent for or on behalf of the Association (less any sums properly deducted by the Agent pursuant to this Agreement) shall be deposited in a bank in a special account maintained by and in the name of the Association and not co-mingled with the funds of the Agent; provided, however, that the Agent shall have the right to draw checks and make withdrawals from such account for the purpose of paying all expenses incurred in connection with the performance of the services hereunder.

(c) To make, or cause to be made, in the name of and at the expense of the Association, such ordinary repairs to the Common Areas as may be advisable or necessary, and to purchase supplies incidental thereto. The expense to be incurred for any one item of repair shall not exceed the sum of Two Thousand (\$2,000.00) Dollars unless authorized in writing by the Association. The Agent shall allow to the Association any rebate or discount which the Agent shall obtain in connection therewith.

(d) To make, in the name of and at the expense of the Association, contracts for electricity, gas, telephone, snow removal, garbage collection, and such other services as the Agent shall deem advisable in connection with the operation and maintenance of the Common Areas. No such contract shall extend beyond June 30, 1983 without a provision allowing the Association to cancel upon 30 days' written notice.

(e) To supervise the work of and to hire and discharge employees in connection with the services to be rendered hereunder; however, employees may also be in the employ of the Association, and not in the employ of the Agent and then the Agent will not be liable to employees of Association for payment of their wages nor to Association or others for any act or omission on the part of such employee.

Employees who handle or are responsible for the Association's monies shall be bound by a fidelity bond unless waived by the Association. In connection with Unemployment Insurance and Social Security taxes, the Agent will furnish the Association a copy of

the payroll, and, at the request of the Association, prepare additional reports as required and engage independent public accountants for the Association and at its expense to prepare an annual balance sheet and profit and loss statement of the Association.

(f) To render to the Association an estimate of the Common Charges required for the maintenance and operation of the Association's property and to render to the Association periodic statements of receipts and disbursements. Such disbursements shall include the compensation of the Agent for its services hereunder on the basis hereinafter provided.

(g) To attend all meetings of the Board of Managers and Unit Owners to the extent so requested, but not exceeding attendance at fifteen (15) such meetings during the term hereof, and to advise and counsel them and answer inquiries with respect to all matters pertaining to the operation of the Association's property.

(h) To obtain and maintain, at the direction of the Association, policies of fire insurance, workmen's compensation insurance, public liability insurance and such other insurance as the Association may determine necessary.

(i) To return to the Association all of its books and records upon demand.

4. The Association agrees as follows:

(a) To reimburse the Agent upon demand for any monies which the Agent is required to pay out for any reason whatsoever either in connection with, or as an expense in defense of, any claim, civil or criminal action, proceeding, charge or prosecution made,

instituted or maintained against the Agent or the Association and the Agent, jointly or severally, arising out of or due to the condition or use of the Association's property or the acts or omissions of the Association's officers, agents, servants, employees or contractors.

(b) To promptly defend, at its own cost and expense, any claim, action or proceeding brought against the Agent or the Agent and the Association, jointly or severally, arising out of or in connection with this Agreement, and to hold harmless and fully indemnify the Agent from any judgment, loss or settlement on account thereof.

(c) To promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of all governmental authorities affecting the Common Areas.

5. Association agrees to pay Agent, during the term hereof a fee at the annual rate of \$1,000.00 (for 10 lots), \$2,000.00 (for 21 lots), \$2,700.00 (for 32 lots) and \$3,000.00 (for 42 lots) in monthly installments on the 1st day of each month during the term hereof; except, however, the first and last monthly installments shall be equitably apportioned if the term of this Agreement does not begin or end on the first or last day of a calendar month.

6. The parties executing this Agreement on behalf of the Association have done so only in their respective capacities as Members of the Board of Directors and as agents for all Lot Owners and have no personal liability hereunder (except as Lot Owners). Each Lot Owner's liability hereunder shall be limited to such

proportion of the total liability hereunder as his interest in the Common Areas bears to the interest of all Lot Owners in the Common Areas.

7. Any notices, consents, approvals, submissions or demands which either party hereto shall be required or desire to give or make hereunder shall be by certified mail, return receipt requested, addressed to the respective parties at the address first above written or at such other address as either party shall designate by like notice to the other.

8. If the Agent is prevented from performing any act required to be performed hereunder by reason of fire, catastrophe, strikes, civil commotion, acts of God or the public enemy, governmental prohibitions, inability to obtain materials or labor, or for any other reason beyond the reasonable control of the Agent, the Agent shall be excused from such performance during the period that such act cannot be performed for any of the foregoing reasons.

9. Unless otherwise provided herein, all defined words and terms appearing in this Agreement shall be as defined in the Declaration of Covenants, etc., dated _____, 198 , covering the Association.

10. This Agreement constitutes the entire agreement between the parties and cannot be changed, modified, amended or terminated unless such change, modification, amendment or termination is in writing and executed by the party against which enforcement thereof is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MORGAN STREET BIRCH RUN
HOMEOWNERS ASSOCIATION,
PHASE II, INC.

By: _____

D. A. COLLINS DEVELOPMENT CORP.

By: _____

P. O. Box 191

Mechanicville, NY 12118-0191

Re: Morgan Street Birch Run Homeowners Association, Phase II, Inc.

We are the sponsor and the principals of sponsor of the homeowners association offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Attorney General in Part 22 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan for the homeowners association does, and that documents submitted hereafter by us which amend or supplement the offering plan for the homeowners association will:

- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;
- (v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where I/we (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statements made.

We certify that the roads, sewers and water lines (which are the sole property of the Homeowners Association), when constructed, will be in accordance with local government specifications. After completion of such amenities and before conveyance of the common property to the Homeowners Association, the plan will be amended to include a certification by an engineer or architect (who must be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the Homeowners Association is located) stating that the roads, sewers and water lines have, in fact,

been constructed in accordance with local government specifications (for public roads) and indicating the date of completion. In the alternative, and/or if the construction of the roads, sewers and water lines have not been completed prior to conveyance to the Homeowners Association, a bond will be posted, funds will be escrowed or other adequate security will be provided in an amount to be determined by an engineer licensed to practice as a professional engineer in the jurisdiction where the Homeowners Association is located which amount shall not be less than the amount required to complete such construction to the required specifications.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

D. A. Collins Construction Co., Inc.

By: D. A. Collins
D. A. Collins, Chairman

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989
Reg. # 4839749

By: Thomas F. Longe
Thomas F. Longe, President

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989
Reg. # 4839749

By: D. C. Ross, Jr.
D. C. Ross, Jr., Vice-President

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989
Reg. # 4839749

By: D. Alan Collins
D. Alan Collins, Treasurer

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires Mar. 30, 1989
Reg. # 4839749

Morgan Street Birch Run Homeowners Association, Phase II, Inc.

By: Betty S. Collins
Betty S. Collins, Stockholder

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires ~~Mar. 30, 1988~~ Oct. 31, 1989
Reg. # 4839749

By: Barbara C. Longe
Barbara C. Longe, Stockholder

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires ~~Mar. 30, 1988~~ Oct. 31, 1989
Reg. # 4839749

By: Karen B Collins
Karen Collins, Stockholder

Sworn to before me this 18th day of June, 1987

Robert O. Morehouse
Notary Public, State of New York

ROBERT O. MOREHOUSE
Notary Public
State of New York, Saratoga County
My Comm. Expires ~~Mar. 30, 1988~~ Oct. 31, 1989
Reg. # 4839749



VULCAN DEVELOPMENT AND MANAGEMENT CORP.
NINE THURLOW TERRACE ALBANY, NEW YORK 12203
TELEPHONE (518) 462-9629

June 22, 1987

D. A. Collins Construction Co., Inc.
P O Box 191
Mechanicville, New York 12118-0191

RE: Morgan Street
Birch Run Homeowners Association, Inc. Phase II
Saratoga Springs, New York

Gentlemen:

This Letter of Adequacy is our response to your firm as the Sponsor of the homeowners association offering plan for the captioned property having retained our firm to prepare and review the Schedule containing projections of income and expenses for the year beginning July 1, 1987 and ending June 30, 1988 for the development project.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to this Schedule.

We have reviewed the Schedule and investigated the facts set forth in the Schedule and the facts underlying them with due diligence in order to form a basis for this certification.

We certify that the projections in this Schedule appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated.) #

Vulcan Development and Management Corporation (VDMC) has over eight (8) years experience developing and managing similar projects and properties. VDMC served as property manager of Loudonwood East for five (5) years which is a 39 unit Homeowners Association development located in Loudonville, New York. VDMC currently owns and manages over \$30,000,000.00 of residential and commercial real estate.

We certify that this certification and all documents prepared to us hereafter that concern the Schedule do:

- i) set forth in detail the terms of the transaction as it relates to the Schedule and are complete, current and accurate;
- ii) afford potential investors, purchasers and participants to an adequate basis upon which to found their judgment;
- iii) not omit any material fact;
- iv) not contain any untrue statement of a material fact;
- v) not contain any fraud, deception, concealment or suppression;
- vi) not contain any promise or representations as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statements made.

We further certify that we are not owned or controlled by and have no beneficial interest in the Sponsor and that our compensation for preparing this Certification is not contingent on the conversion of the property to a homeowners association or on the profitability or price of the offering.* We understand that a copy of this Certification is intended to be incorporated into the offering plan so that prospective purchasers may rely on it.

D. A. Collins
Construction Co.

-3-

June 22, 1987

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Respectfully submitted:

VULCAN DEVELOPMENT AND MANAGEMENT CORPORATION

BY: *Mark J. Simmons*
Mark J. Simmons, President

Sworn to before me this

22nd day of June, 1987

Betty J. Maxstadt
Notary Public, State of New York

BETTY J. MAXSTADT
Notary Public, State of New York
Qualified in Albany County
No. 4811957
Commission Expires Jan. 31, 1989

*

SECOND AMENDMENT
OF THE DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
MORGAN STREET BIRCH RUN HOMEOWNERS ASSOCIATION
PHASE II, INC.

This Second Amendment of the Declaration of Covenants, Restrictions, Easements, Charges and Liens (hereinafter "Second Amendment") is made by eighty (80%) percent of the Lot Owners of the Morgan Street Birch Run Homeowners Association, Phase II, Inc. pursuant to Section 3 of Article XI of the Declaration of Covenants, Restrictions, Easements, Charges and Liens (hereinafter called "Declaration") filed in the office of the Saratoga County Clerk on the 23rd day of December, 1987 and recorded in Liber 1222 of Deeds at page 709.

W I T N E S S E T H:

WHEREAS, eighty (80%) percent of the Lot Owners of the Morgan Street Birch Run Homeowners Association, Phase II, Inc. choose to amend the Declaration to include the following language; and

WHEREAS, Section 3 of Article XI of the Declaration permits amendment of the Declaration during the first twenty (20) year period from the date of recording of the Declaration, by recording, in the Saratoga County Clerk's Office an instrument containing the Amendment executed by not less than eighty (80%) percent of the Lot Owners; and

WHEREAS, the undersigned intend to file this document, when executed, with the Clerk of Saratoga County, New York as the Second

Amendment of the Declaration of Covenants, Restrictions, Easements, Charges and Liens.

NOW THEREFORE, the undersigned declare that the real property described in the Declaration and commonly known as Morgan Street Birch Run shall be held, transferred, sold, conveyed, utilized, and occupied subject to the provisions of the Declaration and this Second Amendment.

All references to article and section numbers herein correspond to such references in the Declaration and any article and/or section not referenced hereby shall remain unchanged.

Accordingly, the Declaration is hereby amended, as follows:

ARTICLE IV

Section 5 shall be amended to read as follows:

Section 5. Date of commencement of annual assessments: due date. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of sixty-six (66%) percent of the lots. At such time as sixty-six (66%) percent of the lots are closed, the Sponsor will be obligated for the difference between the actual Association expenses (including reserves applicable to complete improvements as provided for in the budget) and the Association charges levied on owners who have closed title to their homes or lots. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the board of directors. The Association shall upon demand

and for a reasonable charge, furnish the certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

All provisions of the Declaration and By-laws of the Morgan Street Birch Run Homeowners Association, Phase II, Inc. concerning the enforcement of the Declaration are applicable to this Amendment and are incorporated as if set forth in full herein.

D.A. COLLINS CONSTRUCTION
CO., INC.

DATED: _____

By: _____
D.A. Collins as Sponsor

DATED: _____

D.A. Collins

X DATED: 7/16/92

Ruth E. Potter

DATED: 7/16/92

Winifred Fels

DATED: 7/16/92

James F. Gilroy

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

DATED: _____

Legal Committee Report for the Annual Meeting to be held on June 24, 2003 for the Birch Run Special District and the Birch Run Homeowners Association .

Highlights of Special District Law #4 of '96:

- The District is responsible for operating, maintaining and insuring the common area landscaping and municipal-type facilities.
- The Board of Directors is responsible for establishing annual budgets, hiring contractors, and levying & collecting the annual assessments, including special assessments as approved by the Board. The collected assessments are remitted to the City.
- The City Finance Commissioner reimburses those same funds to the District to implement its approved maintenance programs and necessary budget expenditures.
- As a subdivision of City government, the District's assessments may qualify as a deductible "tax" under current IRS rules.
- A Capital Reserve Fund is established for emergency repairs of facilities.

Limitations:

- Owners of the 36 homes must benefit equally from all District services.
- Use of assessment funds is limited to the maintenance of existing facilities.
- Addition of new facilities or improvements is prohibited on the common area. Such changes would require a new City law or amendment of the current law and approval by 75% of the Lot owners. If approved, the expense and assessments for the purchase and installation of additions or improvements would not be deductible under current IRS rules.

Birch Run Homeowners Association:

Summary of Declaration & By-laws:

- The Association is responsible for grounds care, snow removal and trash removal on the private lots. The Board establishes budgets, levies assessments, obtains bids and selects contractors to perform these services consistent with the standards and purposes of the Declaration.
- The Board responsibilities also include periodic painting of the 36 homes, and special assessments are issued to owners in the year their unit is repainted. Owners are responsible for the repair and maintenance of roofs, foundations, fences and other exterior features of their lots. Plans for any changes, replacements or additions must be submitted in writing to the Board for approval in advance.
The Declaration & By-laws are binding upon all Lots and are extended automatically for successive 10-year periods. Amendments require approval by 75% of the lot owners.