

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
Affecting Residential Subdivision Nos. 5 & 8 The Luther
Forest and common lands to be conveyed to
ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC.

THIS DECLARATION, made on the date hereinafter set forth by WILLIAM R. MACKAY and CAROL LUTHER MACKAY, his wife, both residing at Cold Spring Road, Stillwater, Saratoga County, New York, and The Luther Forest Corporation, whose principal place of business is Stonebreak Road, Ballston Spa, New York, hereinafter referred to as "Declarants".

W I T N E S S E S :

WHEREAS, WILLIAM R. MACKAY, CAROL LUTHER MACKAY and The Luther Forest Corporation are the owners of certain properties, in the State of New York, which are shown as residential lots and neighborhood common areas on certain maps entitled "Luther Forest Residential Subdivision Nos. 5 & 8, Town of Malta, Saratoga County", made and drawn by Benjamin F. Richards, Jr., P.E. and L.S., dated January __, 1986, which map was filed in the Office of the Clerk of Saratoga County, New York on

WHEREAS, Declarants desire to provide for the preservation and enhancement of the property values, amenities and opportunities in said community contributing to the personal and general health, safety and welfare of the residents and for

the maintenance of the land and improvements thereon, and to this end desire to subject the real property described and shown on Appendix "A", together with such additions as may hereafter be made thereto, 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;

NOW, THEREFORE, the Declarants hereby declare that all of the properties described and shown on Appendix "A", together with such additions as may hereafter be made thereto, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the land 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;

AND FURTHER, the Declarants hereby delegate and assign to the ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC. the power of administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created and carrying out the purposes of this declaration.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC., its successors and assigns.

Section 2. "Annual Assessment Period" shall mean and refer to that period of time beginning on January 1 and ending December 31 of each year.

Section 3. "Business Unit" shall mean and refer to the owner of at least 1000 sq. ft. of interior industrial, commercial or office space.

Section 4. "Corporation" shall mean and refer to THE LUTHER FOREST COMMUNITY ASSOCIATION, INC.

Section 5. "Declarants" shall mean and refer to William R. Mackay and Carol Luther Mackay, their heirs, and assigns, and The Luther Forest Corporation, its successors and assigns.

Section 6. "Declaration" shall mean and refer to such Declarations of Covenants, Conditions and Restrictions and Easements applicable to any of the lands so restricted within the Residential Sub-Division Nos. 5 & 8 of The Luther Forest as same may be duly amended from time to time.

Section 7. "Governing Documents" shall mean and refer to this Declaration and any Supplemental Declarations, the Certificate of Incorporation of Ermine Lair Neighborhood Association, Inc., and the By-Laws, all as filed and recorded,

if required, and all as may be duly amended from time to time. In the event of conflict or inconsistency among the documents, the Declaration, and any Supplemental Declarations shall prevail over the Certificate, which shall prevail over the By-Laws.

Section 8. "Lot" shall mean and refer to those sub-divided lands so designated as lots as shown on a certain map entitled "Luther Forest Residential Sub-Division Nos. 5 & 8, Town of Malta, Saratoga County" made and drawn by Benjamin F. Richards, Jr., dated January __, 1986, which map was filed in the office of the Clerk of Saratoga County, New York on

Section 9. "Members" shall mean and refer to those persons who are members of the Neighborhood Association and have rights and obligations with respect to the Neighborhood Association as provided in this Declaration or any Supplemental Declaration and the Certificate of Incorporation.

Section 10. "Neighborhood Association" shall mean and refer to ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC., its successors and assigns.

Section 11. "Neighborhood Common Area" shall mean and refer to any real property including the improvements thereon, if any, owned by the Neighborhood Association for the common use of Owners and those delegated such use in The Luther Forest, designated as Common Areas, as shown on a map entitled "Residential Subdivision Nos. 5 & 8, Town of Malta, Saratoga County," made by Benjamin F. Richards, Jr., dated January __,

1986, which map was filed in the Office of the Clerk of Saratoga County, on

, and intended to be deeded by the Declarants or their assigns to the Neighborhood Association on or before April 1, 1987.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any business or residential units, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Properties" shall mean and refer to that certain real property hereinafter described in Appendix "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Neighborhood Association.

Section 14. "Residential Unit" shall mean and refer to a single family dwelling unit, a multiple family dwelling unit, attached or detached, and a condominium unit.

Section 15. "Supplementary Declaration" shall mean and refer to a declaration of covenants, conditions and restrictions which may hereafter be recorded by the Declarants or their successors, which extends the provisions of this Declaration to additional areas.

Section 16. "The Luther Forest" shall mean and refer to such lands in the Towns of Malta and Stillwater, County of Saratoga, State of New York, which lands are further shown on two maps, both filed in the Office of the Clerk of the County of Saratoga, entitled "Luther Forest, Saratoga County,

Saratoga, New York," dated January 1, 1952 as map DD 48, and the other being entitled "General Electric, Schenectady, New York" dated June 9, 1952 as map DD 49.

ARTICLE II
PROPERTY RIGHTS

Section 1. Dedication of Neighborhood Common Area.

The Neighborhood Common Areas, designated in this Declaration, as shown on the Subdivision Map of the Properties, are not dedicated hereby for use by the general public, but are dedicated for the common use and enjoyment of the owners, and those delegated such use pursuant to the terms of this Declaration.

Section 2. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Neighborhood Common Area which shall be appurtenant to and shall pass with the title to every Lot, Residential and Business Unit, subject to the following provisions:

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

(b) the right of the Association to dedicate or transfer all or any part of the Neighborhood 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 agreeing to such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded.

Section 3. Delegation of Use. Any owner may delegate in accordance with the Governing Documents, his or its rights of enjoyment to the Neighborhood Common Area and facilities to the members of his family, his or its tenants, guests or contract purchasers who reside on the property.

Section 4. Reciprocal Easements. Every owner of any business or residential unit subject to this Declaration or to any Supplemental Declaration with the properties as defined above, shall have a right and easement of enjoyment in and to all Neighborhood Common Areas, which may be the subject of other and further neighborhood association declarations and supplemental declarations, now or hereafter recorded.

Section 5. Delegation of Reciprocal Use. Any owner may delegate in accordance with the Governing Documents, his or its reciprocal right of enjoyment to the Neighborhood Common Areas and facilities to the members of his family, his or its tenants, guests or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a business or residential unit shall be a member of the Association. Membership shall be

appurtenant to and may not be separated from ownership of any business or residential unit which is subject to assessment, as hereafter provided.

Section 2. The Corporation shall have three classes of voting membership:

A. Class A

Class A members shall be the owners of all lots upon which residential units are constructed or will be constructed. When more than one person or entity holds an interest in any residential unit, all such persons shall be members, but shall only be entitled to one vote. The vote for such residential unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any residential unit.

B. Class B

Class B members shall be the owners of commercial, office or industrial space of 1000 or more square feet of interior space, which shall be designated a "business unit", and shall be entitled to one vote. When one or more persons or entities holds an interest in a business unit all such persons shall be members. The vote for any such business unit shall be exercised as

the owners thereof determine, but in no event shall more than one vote be cast with respect to any such business unit.

C. Class C

The Class C member(s) shall be the Declarants and be entitled to one vote. The Class C membership shall cease on the happening of either of the following events, whichever occurs earlier:

(a) two (2) years after the conveyance of the first lot to an owner, or

(b) when 236 lots (or 51% of the lots in Residential Subdivision No. 5 & 3) have been conveyed to an owner.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants for each business or residential unit owned within the properties hereby covenant, and each owner of any business or residential unit by acceptance of a deed therefore (with the exception of a Neighborhood Association), which contains statements of restrictive covenants or reference to such recorded covenants, is deemed to covenant and agree to pay to the Association: (1)

annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. A) The annual and special assessments, together with interest, costs, disbursements and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. B) Each such assessment, together with interest, costs, disbursements and reasonable attorney's fees, shall also be the personal obligation of each person or entity who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or its successors in title unless expressly assumed by them in a writing which is recorded in the Saratoga County, New York, Clerk's Office.

Section 2. Purpose of Assessment.

A. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Neighborhood Common Areas; and

B. to pay the costs of management of the Neighborhood Association; and

C. to carry out the powers and perform the duties as same may appear in the Certificate of Incorporation.

Section 3. Maximum Annual Assessment. The maximum annual assessment shall be the total of the following:

(a) One dollar and 58 cents per \$1,000 of full

property valuation as calculated by the Malta Town assessor, or SIXTY-THREE and 12/100 (\$63.12) DOLLARS per unit, whichever may be less. This amount will be called the "base assessment", and

(c) the "base assessment" as determined in subdivision (a) above, may be increased by up to ten percent (10%) ("escalation") in the year beginning January 1, 1987. This base assessment may be increased each and every year thereafter by an amount which may not exceed ten percent (10%) of the amount of the assessment assessed in the previous year.

(c) From and after the filing of this instrument, the maximum annual assessment amounts specified above in subdivisions (a) and (b) may be increased only after a vote of the members, provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of members then in existence, who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors shall not have the power to set the annual assessments in excess of the maximums, except as specified above.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized in Section 3 of this declaration, the Association may levy, in any assessment year, a special assessment applicable for that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a permitted capital improvement upon the Neighborhood 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 each class of members then in existence, who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action

Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking an action authorized under Section 3 or 4, supra, shall be sent to all members either personally or by first class mail at the last address given to the Association not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast ten (10%) percent of all the votes of each class of membership shall constitute a quorum.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all units and may be collected on an annual, semi-annual, or more frequent basis.

Section 7. Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all units on the first day of the month following conveyance of such lot or lots to an owner/member. The first annual assessment shall be adjusted pro rata according to the number of months remaining in the annual assessment period.

Section 8. Annual Assessment Procedure. The Board of Directors shall fix the amount of the annual assessment against each unit at least fifteen (15) days in advance of each annual

assessment period. Written Notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors.

Section 9. Certificate of Assessment Payment. The Neighborhood Association shall, upon demand; and for a reasonable charge, furnish a certificate signed by an officer of the Neighborhood Association to the owner of such unit or the party authorized to receive such information by the owner in writing setting forth whether the assessments on a specified unit have been paid. A properly executed certificate of the Neighborhood Association as to the status of assessments on a unit is binding upon the Neighborhood Association as of the date of its issuance. The Acceptance of Membership in the Neighborhood Association is authority for the Association to disclose the status of assessment payments.

Section 10. Declarant Assessment. To the extent that the Declarants own units which are improved with buildings that are or have been occupied, such property shall be assessed as provided in Section 3 and 4 above. Until such time as the Class C membership shall expire, pursuant to Article III, Section 2.C) above, the Declarants shall also pay an annual assessment to make up any deficit in the budget between the amount collected from assessable units and the actual operating expenses of the Neighborhood Association. There is no obligation by the Declarants to pay for unanticipated obligations resulting from litigation against the Neighborhood Association. The Declarants can give no assurance that

unforeseen expenses resulting from changes in laws or regulations or otherwise will be paid by the Declarant, if such shall create a budgetary deficit. The amount of any unpaid deficit under this section shall become a lien against any of the Declarant's property subject to this Declaration.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of 13 percent per annum or the highest rate permitted by New York State Law, whichever is less. The Association may bring an action at law or equity against the Owner(s) 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 Neighborhood Common Area or abandonment of his unit.

Section 12. 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 unit shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

USE RESTRICTIONS

Section 1. Use Restrictions on Neighborhood Common Areas.

A. The properties and improvements owned by ERMINE

LAIR NEIGHBORHOOD ASSOCIATION, INC. may be used for any and all uses which promote the health, safety, recreation and welfare of the residents and members of ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC. within the common areas and any additions thereto as may hereafter be brought within the jurisdiction of this Association by annexation. Annexation may be by gift or purchase. The powers of the Neighborhood Association shall include the power to purchase or otherwise, to own, hold, improve, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Neighborhood Association, subject to any covenants and conditions contained in the deed from the Declarants to the Neighborhood Association.

A. Said lands shall be used in accordance with any and all regulations promulgated by the Board of Directors and members of ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC. It is intended that the common areas shall be for the use of all owners for recreation and related activities.

B. The Neighborhood Association members shall not cause any noxious or offensive activity to be carried on upon any Neighborhood Common Area nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In addition, the following restrictions shall also apply to all neighborhood common areas:

a. No commercial vehicles shall be garaged, stored or parked on the Neighborhood Common Areas.

- b. No animals, livestock or poultry of any kind shall be raised, bred or kept on Neighborhood Common Areas.
- c. The Neighborhood Common Areas shall not be used or maintained as a dumping ground.
- d. No junked or unregistered vehicles may be stored upon the common area; nor may any repairs to vehicles be conducted upon any neighborhood common area. Furthermore, no boats of any kind shall be stored upon any common area; nor may any repairs to boats be conducted upon any common area. Furthermore, no motorized recreational vehicles of any kind shall be stored upon any common area; nor may repairs to motorized recreational vehicles be conducted upon any common area.
- e. No trail bikes, motorcycles, dune buggies, all-terrain vehicles, snowmobiles, or other motorized vehicles except as may be necessary for the maintenance or the forestry of the Neighborhood Common Areas, shall be permitted on Neighborhood Common Areas.
- f. The imposition of the restrictions on these lands shall not prevent the Declarant from imposing other and different restrictions on any other lands whether the same shall be more or less stringent.

3. A fee title to any lot shown on the recorded map or plan as abutting upon any Common Property shall not extend upon such common property and the fee title to common property is reserved to the Declarants to be conveyed for the common enjoyment of the members of the ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC. for the purpose of recreation, including the right of use of any and all trails within the Neighborhood Common Area; specifically reserving, however, to the Declarants all of the development rights; and further specifically reserving to the Declarants any rights to place upon and/or construct the Neighborhood Common property permanent improvements of any kind or nature; and further reserving to the Declarants all riparian rights including the right of impoundment of surface water and the right to flood or drain upon the Neighborhood Common Areas; and further reserving to the Declarants all mineral rights both surface and subsurface including the right to take ground water; and further reserving to the Declarants all timber rights including the right to harvest, manage, thin and prune trees in accordance with sound forestry practices; and further reserving to the Declarants all hunting and fishing rights and all rights to manage and control wildlife;

and further reserving the right to enter upon, erect, and maintain signs and theme displays upon the Neighborhood Common Area lands. In furtherance of the aforesaid rights the Declarants reserve a permanent easement of access and egress upon the Neighborhood Common Area, together with such rights of use and/or construction, maintenance and repair as may be necessary to exercise the rights so reserved.

Section 2. Use Restriction as to Lots.

1. Activity conducted on lots subject to this Declaration shall be subject to any and all regulations promulgated by the Board of Directors of ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC.

2. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance.

3. No commercial vehicles with gross vehicle weight in excess of 15,000 lbs. shall be garaged or stored on any lot.

4. No animals, livestock or poultry of any kind shall be raised or bred upon any lot. Nothing herein contained shall prevent the harboring of domestic animals not to exceed four in number.

5. Rubbish, trash, garbage or other wastes shall be kept in sanitary containers and shall not be in public view except on collection days.

6. No junked or unregistered vehicles shall be stored

upon any lot; nor may any repairs to vehicles be conducted upon any lot. Furthermore, no boats of any kind shall be stored upon any lot; nor may any repairs to boats be conducted upon any lot. Furthermore, no motorized recreational vehicles of any kind shall be stored upon any lot; nor may repairs to motorized recreational vehicles be conducted upon any lot.

7. All lots are for residential purposes only, and no business, whether professional or commercial may be conducted upon any lot.

8. Each lot is for single family use. Four or more unrelated persons occupying any dwelling house upon the lot shall be deemed to be more than a single family and shall constitute a violation of these restrictions.

9. No signs of any kind shall be erected on any lot except a "For Sale" sign not to exceed 6 square feet in total area.

10. No temporary structure shall be erected upon any lot including a shack, shed or trailer, excepting a playhouse for children's recreation and further excepting a construction trailer for use while the dwelling is being initially constructed and sold.

11. No above-ground pools may be constructed. Inground pools shall be screened with evergreen vegetation and shall be enclosed by a fence.

12. No burning shall be conducted upon any lot, nor accumulation of litter, nor storage of building material except in connection with on-site construction.

13. No exterior television or radio antennae shall be constructed upon any lot or dwelling house, which shall be visible from the street or from neighboring dwelling units.

14. Vertical fences shall not exceed 6 feet in height; picket or horizontal fences shall not exceed 3.5 feet in height. Fences being constructed shall be either unfinished vertical wood or horizontal rustic split rail or painted picket. In addition to the other specifications, plans for all fences shall be submitted to the Declarant or the assignee of the Declarant for aesthetic review pursuant to the terms of Article VI of this Declaration.

15. No duplex or multiple family unit shall be converted into single family usage, nor may any lot be further sub-divided.

16. The imposition on the restrictions on this subdivision shall not prevent the Declarants from imposing other and different restrictions on any other lots within the Lutner Forest whether the same shall be more or less stringent.

ORIGINAL
J. M. ...

Section 3. Declarant Exemption. Anything in this Article to the contrary notwithstanding, during the period of time which Declarants or any Operative Builder to whom Declarants have sold any Lots, is conducting the business of constructing and selling dwellings, Declarants, or such builder with the consent of Declarants may maintain such model dwellings, sales offices, signs and other offices, and carry on such activities as declarants shall permit in connection with such business.

Section 4. Violation of Restrictive Covenants. In the event that a lot owner should ever violate any of the restrictions, covenants or conditions contained in this agreement, the declarant, or the Association, may commence an action at law or in equity, to enjoin said violation or seek damages resulting therefrom. In the event that an action is commenced as a result of a violation hereof, the plaintiff in such action, in addition to all other relief to which such party may be entitled, shall also be entitled to reasonable attorney's fees, and all costs and disbursements of the proceeding.

ARTICLE VI

AESTHETIC REVIEW

No building, fence, wall, sign or other structure shall be commenced, erected, or maintained upon the lots or the common areas, nor shall any exterior addition to or change or alteration thereon 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 and appearance in relation to surrounding structures and topography by the Declarants or the assignees of said Declarants. In the event said Declarants or the designated assignee fails to approve or disapprove or otherwise act within 30 days after submission to it of the plans and specifications for addition,

change or alteration, it shall be presumed that said application was approved and the restrictions herein shall be of no effect.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Right of Enforcement. The Declarants, the Neighborhood Association, or any Owner while a party in interest, 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 Declarants, the Neighborhood 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 hereafter.

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-year period by an instrument signed by not less than ninety (90%) percent of the members,

and thereafter by an instrument signed by not less than seventy-five (75%) percent of the members. Any amendment must be recorded.

Section 4. Annexation. Additional residential property, business property, or neighborhood Common Area may be annexed to the properties with the consent of two-thirds (2/3rds) of each class of members.

Section 5. FHA/VA Approval. So long as the Declarant or any operative builder to whom Declarant has sold any lots is conducting the business of constructing and selling dwellings, the following actions of the Association will require the prior approval of the Federal Housing Administration and/or the Veterans Administration:

- a. amendment of this "Declaration"
- b. dedication of the common properties to the public
- c. dissolution of the association
- d. amendment of the Certificate
- e. annexation of additional properties
- f. mortgaging of any common properties by the Neighborhood Association
- g. the merger or consolidation of this Neighborhood Association with any other Corporation, Association, or Entity

Section 6. Declarants' Obligations. The Declarants shall build and pay for the recreational trails and/or paths within the Neighborhood Common Area before conveying said areas to Ermine Lair Neighborhood Association, Inc., and upon

completion of said trails the Declarant shall deed said areas without cost to the Neighborhood Association. In no event, however, shall said conveyance occur after April 1, 1987. This Declaration shall be recorded in the office of the Clerk of the County of Saratoga prior to the conveyance of the first lot to any owner.

Section 7. Declarants' and Builders' Obligations.

A. All literature, brochures, public advertising in connection with new construction for sale of residential units by a person, persons, partnership, corporation or legal entity for commercial purposes, shall be approved by the Declarants in advance thereof. Issuance of such sales and/or advertising literature, after approval by the Declarants, shall be deemed a continuing warranty by the issuer, his heirs, successors and assigns, to the Declarant, of the truthfulness and accuracy of any statements or representations contained in such advertising or literature.

B. All warranties, representations, guarantees and/or promises of a contractual nature given in connection with the new construction of residential units within Residential Subdivision Nos. 5 & 8 shall be deemed to be for the benefit of the Declarants as a third party beneficiary thereof.

Section 3. All headings used herein are for informational purposes only.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands and seal this _____ day of _____, 1986.

WILLIAM R. MACKAY

CAROL LUTHER MACKAY

THE LUTHER FOREST CORPORATION

By: _____

STATE OF NEW YORK)
COUNTY OF SARATOGA)

ss.:

On this _____ day of _____, 1986, before me, the subscriber, personally came WILLIAM R. MACKAY and CAROL LUTHER MACKAY, to me known and known to me to be the same persons described in the within instrument, and they severally acknowledged to me that they executed the same.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF _____)

ss.:

On this _____ day of _____, 1986, before me personally came WILLIAM R. MACKAY, to me personally known, who, being by me duly sworn, did depose and say that he resides in Stillwater, New York, that he is the President of The Luther Forest Corporation, the corporation described in, and which executed, the within Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

NOTARY PUBLIC

The Leather Forest

SUBDIVISIONS NUMBER 5 & 8 CONCEPTUAL PLAN

PREPARED BY
BENJAMIN F. RICHARDS, JR.
JANUARY 1986
1 INCH = 200 FEET

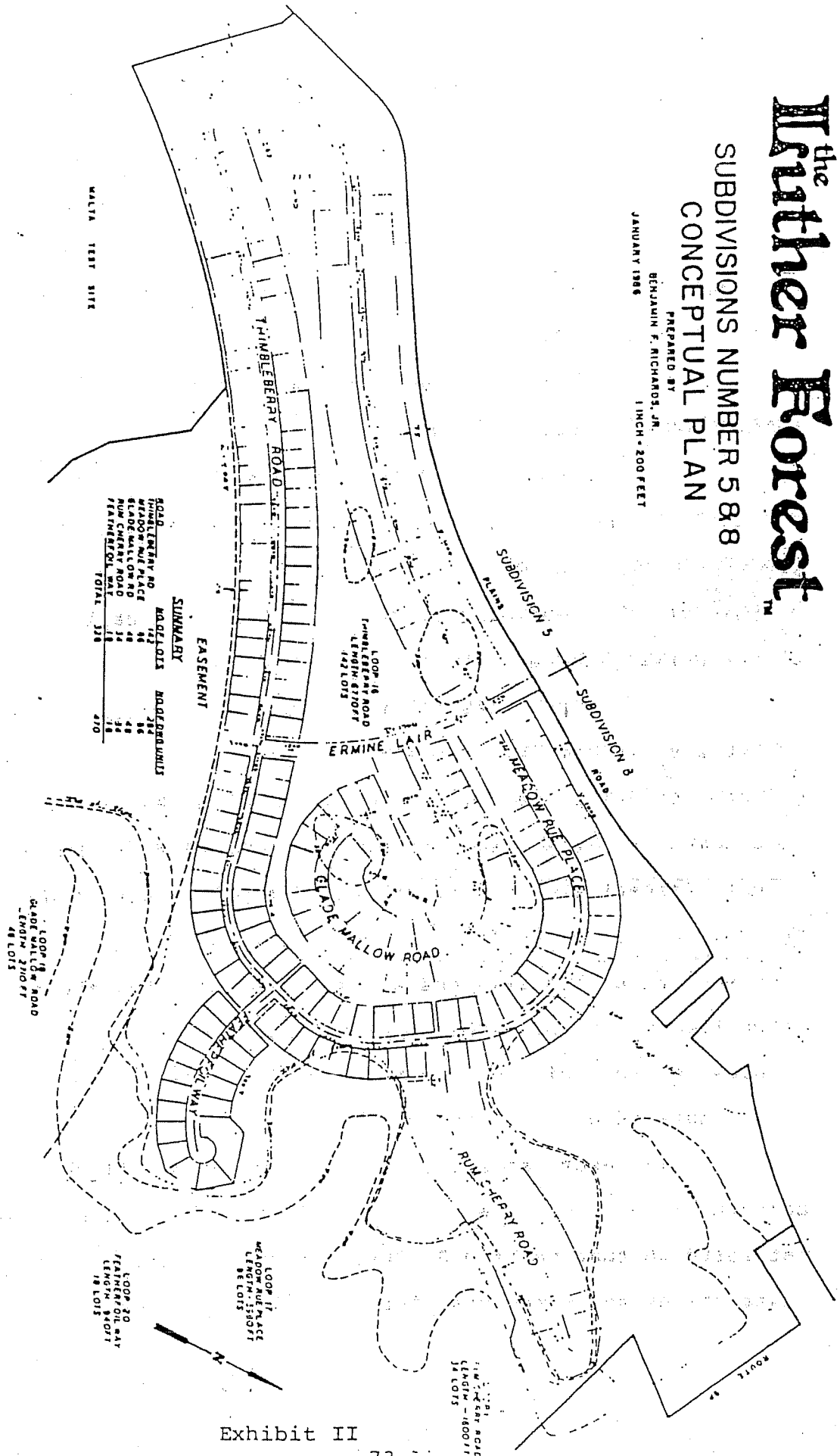


Exhibit II

REVISED 4-1-88 BFB

CERTIFICATE OF INCORPORATION
OF
ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC.

(Under Section 402 of the Not For Profit Corporation Law)

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

1. The name of the corporation shall be ERMINE LAIR NEIGHBORHOOD ASSOCIATION, INC.

2. The corporation has not been formed for pecuniary profit or financial gain and no part of the assets, income or profit of the corporation is distributable to or enures to the benefit of its members, directors or officers except to the extent permitted under the Not For Profit Law.

3. The purposes for which the corporation is to be formed are: to establish an association to provide for the maintenance and preservation of the common areas of the development and the trail systems thereon, known as Luther Forest Residential Subdivisions No. 5 and 8; and to promote the health, safety and welfare of the residents of the above-described subdivisions and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation for this purpose by annexation, as provided for. In furtherance of these purposes to:

(1) exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements, hereinafter called the

"Declaration", applicable to the property and recorded or to be recorded in the office of the Saratoga County Clerk, Saratoga County, State of New York, and as the same may be amended from time to time as herein provided;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Corporation including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

(d) dedicate, sell 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 has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(e) participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Areas, provided that any such merger, consolidation or annexation

shall have the assent of two-thirds (2/3) of each class of members;

(f) have and to exercise any and all powers, rights and privileges which a corporation organized under the Not For Profit Corporation Law of the State of New York by law may now or hereafter have or exercise.

4. The corporation is a Type "A" corporation, pursuant to Section 201 of the Not For Profit Corporation Law.

5. The County in which its office is to be located is the County of Saratoga and State of New York. The territory in which the corporation's activities are principally to be conducted is the common areas of Luther Forest Residential Subdivisions 5 & 8, located in the Town of Malta, County of Saratoga, State of New York.

6. The corporation shall exist perpetually.

7. Amendment of these articles shall require the assent of two-thirds percent (2/3%) of the entire membership.

8. The Secretary of State shall be designated as the agent of the corporation upon whom process against it shall be served. The Secretary of State shall mail a copy of such process served upon him, c/o The Corporation, Stonebreak Road, Box 360, Ballston Spa, NY 12020.

9. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to assessment by the Corporation pursuant to the terms of the Declaration, including contract sellers, shall be a member of the Corporation. The foregoing is not intended to include

persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Corporation.

10. Every owner of a business or residential unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any business or residential unit which is subject to assessment, as hereafter provided. The Association shall have three classes of voting membership:

(a) Class A

Class A members shall be all owners of residential units with the exception of the Declarants. When more than one person or entity holds an interest in any residential unit, all such persons shall be members, and shall be entitled to one vote. The vote for such residential unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any residential unit.

(b) Class B

Class B members shall be the owners, with the exception of the Declarants, of commercial or industrial space of 1,000 square feet of interior space, which shall be designated a "business unit", and shall be entitled to one vote. When

one or more persons or entities holds an interest in the unit, all such persons shall be members.

A Class B member shall have one vote for ownership of 1,000 square feet of interior space. The vote for any such business unit shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any such business unit.

(c) Class C

Class C members shall be the Declarant and shall be entitled to one (1) vote.

11. The affairs of this Corporation shall be managed by a Board of five (5) Directors, who need not be members of the Corporation. The number of directors may be changed by amendment of the By-laws of the Corporation.

Members shall mean and refer to those persons who are members of the Corporation and have rights and obligations with respect to the Corporation as provided in this Declaration or any Supplemental Declaration and the Certificate of Incorporation.

At the first annual meeting the members shall elect two directors for a term of three (3) years, two directors for a term of two (2) years, and one director for a term of one (1) year. At each such annual meeting thereafter, the members shall elect such directors as is necessary to fill the vacancies created by the expiration of the respective terms of office. After the initial staggered terms of office expire,

the term of office of each director shall be three years.

12. The names and addresses of the initial directors are as follows:

(a) William R. Mackay, P.O. Box 360, Ballston Spa, NY 12020.

(b) Carol Luther Mackay, P.O. Box 360, Ballston Spa, NY 12020.

(c) Bruce Kirkpatrick, R.D.#1, Grace Moore Road, Saratoga Springs, NY 12866.

(d) Richard C. Miller, Jr., P.O. Box 438, Route 9, Clifton Park, NY 12065

(e) Bernard Granger, 35 Hills Road, Ballston Lake, New York 12019

13. The Corporation may be dissolved with the unanimous assent given in writing of each class of members, at a special meeting specifically called and properly noticed for this purpose, or at the annual meeting. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that 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 such similar purpose.

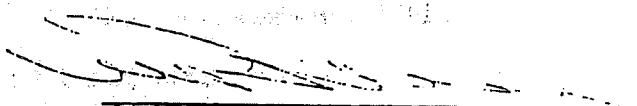
14. That the subscriber is over the age of twenty-one (21) years.

15. The meetings of the Board of Directors shall be

held only in the State of New York.

16. As long as there is a Class C membership, the following actions by the Corporation will require the prior approval of the Federal Housing Administration or the Veterans Administration; annexation of addition properties; mergers and consolidations; dissolution; and amendment of this Certificate.

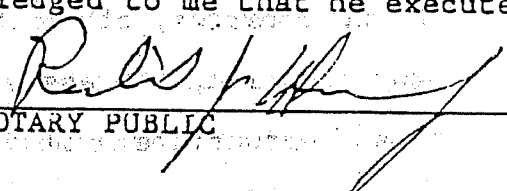
IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of New York, the undersigned, constituting the incorporator of this Corporation has executed these this Certificate of Incorporation, this day of April, 1986.


WILLIAM R. MACKAY
Cold Spring Road
Stillwater, NY 12170

STATE OF NEW YORK)
COUNTY OF SARATOGA)

ss.:

On this 20th day of April, 1986, before me, the subscriber, personally came WILLIAM R. MACKAY, to me known and known to me to be the same person described in the within instrument, and he duly acknowledged to me that he executed the same.


NOTARY PUBLIC