

Ulster County
 Albert Spada
 County Clerk
 Kingston, NY 12401



69 2004 00019073

Instrument Number: 2004- 00019073

Recorded On: June 25, 2004

As
 D14 - Easement

Parties: TRUNCALI JOEL

To
 DECLARATION

Billable Pages: 20

Recorded By: RISELEY&MORIELLO PLLC

Num Of Pages: 20

Comment: MARLBORO

**** Examined and Charged as Follows: ****

D14 - Easement	85 00	Tax Affidavit TP 584	5 00		
Recording Charge	90 00				
		Consideration			
	Amount	Amount	RS#/CS#		
Tax-Transfer	0 00	0 00	7241	Basic	0 00
				Additional	0 00
				Special Additional	0 00
				Transfer	0 00
Tax Charge	0 00				

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For Ulster County,

File Information:

Document Number 2004- 00019073
 Receipt Number 171345
 Recorded Date/Time June 25, 2004 03 53P
 Book-Vol/Pg Bk-D VI-3916 Pg-53
 Cashier / Station b bhan / Cashier Workstation 3

Record and Return To:

RISELEY&MORIELLO PLLC
 PO BOX 4465
 KINGSTON NY 12402



Albert Spada

ALBERT SPADA, ULSTER COUNTY CLERK

20
7/1/36

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS made this 24TH day of June, 2004 by JOEL TRUNCALI and FRANCES E. TRUNCALI, residing at 2 Truncali Road, Marlborough, New York 12547, hereinafter collectively referred to as the "Subdivider;"

W I T N E S S E T H:

WHEREAS, the Subdivider is the fee owner of certain lots of land situate in the Town of Marlborough, County of Ulster and State of New York, which said lots of land are more particularly bounded and described as follows:

ALL THOSE CERTAIN LOTS, PIECES OR PARCELS OF LAND, situate, lying and being in the Town of Marlborough, County of Ulster and State of New York, and known and designated as Lot Numbers 1 through 20, inclusive, as shown on a certain map entitled, "Subdivision of Lands of Joel and Frances E. Truncali", made by Brinnier & Larios, P.C., Maiden Lane, Kingston, New York, which was filed in the Ulster County Clerk's Office on the 2nd day of June, 2004 as Map Number, 04-655 reference to which is hereby made for a more complete description; and

WHEREAS, the Subdivider, or its successors in interest has established a general plan for the improvement and development of such lots and does hereby establish the covenants, conditions, easements, reservations, restrictions and servitudes upon which and subject to which all of the above described lots and portions thereof shall be improved or sold and conveyed by them as owners thereof, except as hereinafter specifically provided. Each and every one of such covenants, conditions, easements, reservations,

restrictions and servitudes and all of them, are for the benefit of each owner of land in such subdivision, or any interest therein, and shall inure to and pass with each and every parcel of such subdivision, and shall bind the respective successors in interest of the present owners thereof. These covenants, conditions, easements, reservations, restrictions and servitudes are imposed upon such lots, all of which are to be construed as restrictive covenants and/or equitable servitudes running with the title to such lots and with each and every parcel thereof. The following described covenants, conditions, easements, reservations, restrictions and servitudes shall be applicable to Lots Number 1 through 20, inclusive.

1. Such lots and each and every one of them are intended for single family residential purposes only. No buildings or structures intended for apartment houses, lodging houses, rooming houses or other multiple family dwellings shall be erected, placed, permitted or maintained upon such lots or upon any part or parts thereof except a lawfully approved accessory apartment and as hereinafter provided. No improvements or structures whatsoever, other than a private dwelling house, accessory apartment, patio, tennis court, swimming pool, garage, and/or other similar or customary outbuildings and accessory structures may be

erected, placed or maintained upon said lots. Outdoor clothes lines are prohibited upon all of the lots.

2. No mobile homes, double wide trailers or house trailers or tractor trailers may be erected, placed, maintained, or permanently parked upon any lots or portions thereof.

3. No lot or portion thereof may be used for any business or commercial purpose whatsoever, except that a professional person actually residing on a lot may use a portion of his or her residence as an office. A professional person, as used herein, would encompass a doctor, dentist, lawyer, architect, accountant, engineer or other similar occupation.

4. No rubbish, trash, refuse, garbage or other waste material shall be stored on said lot except in sanitary containers, and no noxious or offensive activities shall be conducted thereon.

5. No lot or parcel of land may be further divided or subdivided into additional building lots. Lawfully approved lot line revisions and/or right-of-way easements for ingress and egress to adjoining lands may be made upon the lots provided no additional separate lots are created thereby.

6. No liquid or solid waste shall be discharged into any watercourse or drainage ditch or line.

7. There shall be no outside storage upon any lot of any automobile, commercial vehicle, truck, tractor or trailer, recreational vehicle, camper, camper trailer, boat or other watercraft, boat trailer, other type of trailers, or any other transportation device of any kind, except in enclosed structures or in the rear yard of the lot so as not to be visible from the frontage road and except for visitors temporarily parking. No owners or occupants shall perform any repair or restore any vehicle of any kind upon any lot so as to be visible from the road or neighboring lots except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

8. Animals, including, but not limited to, cats, dogs, and similar customary domestic pets may be kept and maintained upon a lot in reasonable numbers for the use of the occupants, but may not be kept, maintained or bred for any commercial purposes. Dogs shall be confined to the inside of a house or when outside, to an area of the lot wholly enclosed by an invisible dog fence.

9. Motorbikes, motorcycles, mopeds, trail bikes, snowmobiles and off-road recreational vehicles of all types are specifically prohibited from being operated on any lot without the written consent of the Subdivider, which consent may be withheld or revoked in the Subdivider's sole discretion. Such consent shall be personal in nature and

shall not run with the land. In the event the Subdivider no longer owns any of the lots in the subdivision, no further consents for the operation of any of the foregoing vehicles upon any of the subdivided lots will be granted.

10. No building used as a dwelling shall contain less than 2,500 square feet of residential floor area, exclusive of garages, covered walks and open porches, unless approved by the Subdivider in writing. All roofing and exterior surfaces (except for glass) on all buildings shall be muted or earth tone in color within the medium and dark range of color value, excepting for the one (1) existing house situate upon lot 20.

11. For the purpose of further insuring the development of the aforesaid lots as an area of high standards, the Subdivider reserves the power to review and approve the nature and type of construction, design, shape, exterior treatment and finish of all buildings and other structures and improvements placed on each lot.

Whether or not provision therefore is specifically stated in any conveyance of a lot made by the Subdivider, the owner and occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no buildings or other structures shall be placed on any lot unless and until the plans and specifications relating to the type of construction, design,

shape, color, exterior treatment and finish have been approved in writing by the Subdivider. Each such building and structure shall be placed on said lot only in accordance with the plans and specifications so approved. Refusal of approval of the design, shape, exterior treatment and/or finish of a proposed building or structure may be based on any ground, including purely aesthetic grounds which, in the sole and uncontrolled discretion of the Subdivider, shall seem sufficient.

If the Subdivider is no longer in existence, or if after bona fide and diligent efforts the Subdivider cannot be found, or if the Subdivider shall fail to approve or disapprove the plans and specifications within thirty (30) days after written request therefore, then such approval shall not be required; provided no building or other structure shall be erected which violates any of the other covenants herein contained.

12. The Subdivider reserves for themselves, its successors and assigns, easements over and upon portions of Lots Number "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19" and "20" for the purpose of continuing the existing unobstructed drainage of surface waters from and across the subdivision, and for the laying, maintaining and operation of such drainage facilities ("facilities") as ditches,

swales, culverts and conduits required to facilitate such drainage, including the detention pond and all drainage and structural appurtenances thereto which is wholly situate upon Lot Number 5, as well as the detention areas and all drainage and structural appurtenances thereto and situate on Lot Numbers 1 and 2. The existence of such easements shall be as indicated and shown on the filed subdivision plat and the Stormwater Management Plan Map. Each owner shall have an affirmative obligation and duty to keep and maintain such portions of the detention areas, the drainage lines and all facilities located on his lot free and clear of any obstructions and open to the free flow of surface waters, which obligation may be enforced by any lot owners affected thereby and/or by the Town of Marlborough. Concomitant and co-extensive with this right to drain surface water and to maintain such drainage facilities is the further right of the Subdivider, its successors and assigns, including the Township of Marlborough, of ingress and egress over and upon the lands subject to said easements to effect the purposes above described and to clean, maintain, repair and replace such facilities.

13. In order to protect the existing drainage channels and the existing water quality; to prevent and minimize increased turbidity and the erosion of channels and adjoining lands; to protect and facilitate the drainage of

surface waters and to minimize runoff in the direction of federal wetlands which have been duly mapped by the Subdivider, no lot owner shall erect, construct or maintain any dam, obstruction, building or sewage disposal system, or cut down any live trees within the bounds of the drainage channels as depicted on the filed subdivision map or plat; nor shall any lot owner excavate, dredge or deposit fill or other material within such drainage channels, nor permit anyone else to do the same without the prior approval of the Town of Marlborough Building Inspector in each such instance. In reviewing an application for such action, the Building Inspector shall consider the purposes and goals above set forth and shall ascertain the probable effect likely to result from the proposed action or work.

Notwithstanding the above provisions, nothing herein contained shall prevent the cutting of brush; nor the maintenance of lawns and fencing; nor the installation and maintenance of driveways and culverts for access to lawful buildings and structures; nor the performance of work pursuant to the provisions of Paragraph 12 of this Declaration, provided that such construction, installation and maintenance do not have a significant adverse impact on the above considerations. No approval or action of the Building Inspector shall be required for emergency work in the drainage channels and/or detention pond which is

immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, or which is being conducted or performed by the Town of Marlborough in the maintenance of the town highways and drainage easements as described in Paragraph 12 of this Declaration.

14. Lots "10", "13", "14", "17" and "18" shall redirect all runoff from new impervious surfaces away from delineated Federal Wetlands and lands now or formerly of Nicklin-McKay situate westerly and northwesterly of the house locations upon said lots and as otherwise described upon the subdivision map.

15. The Subdivider reserves for themselves, their successors and assigns, the Town of Marlborough and its instrumentalities an easement for emergency ingress, egress and regress over across and through the existing farm lane situate upon Lot 18 and which lane shall be gated nearby Mount Zion Road as shown on the Subdivision Map to Orchard View Drive and vice versa, in a southerly and/or northerly fashion. The Subdivider, its successors and assigns, the future fee owners of lot 18 and all other lot owners effected by this Declaration shall not block or otherwise obstruct the emergency access as described above and the deed to lot 18 will contain a recital which references said easement and/or this Declaration. The fee owners of lot 18,

their successors and assigns shall have an affirmative obligation and duty to keep and maintain said farm lane in good and passable seasonal condition commensurate with its existing condition as of the date hereof. This easement is to be expressly limited to utilization by the foregoing persons and entities for emergency purposes only. The foregoing obligation may be enforced by the Town of Marlborough, which municipal entity shall have the right, but not the obligation to so enforce.

16. Lot number 5, which contains the detention pond wholly thereon, shall not be built upon for residential purposes in any manner whatsoever by the Subdivider and/or its successors and assigns. Lot number 5 shall be utilized in accordance with the subdivision maps and plans to facilitate stormwater drainage, management and detention for the subdivision. The Subdivider therefore reserves for itself, its successors and assigns an easement over and upon such portions of lot 5 containing the detention pond, its drainage channels and associated areas [hereinafter collectively referred to as "facilities"] as shown upon the subdivision map.

At the Subdivider's sole election, the Subdivider, its successors and assigns or a neighborhood association consisting of holders of the fee title to a minimum of seventy-five (75%) percent of the lots in the subdivision,

or a Homeowners Association shall maintain ownership of lot 5 in fee simple absolute and shall be responsible for the maintenance, upkeep and improvement of the facilities aforesaid.

Notwithstanding anything in the foregoing recitals to the contrary, all lot owners in the subdivision shall have the affirmative obligation to maintain, keep and otherwise improve the facilities situate upon lot 5 consistently herewith and comport with all laws pertaining thereto in the event the Subdivider, its successors and assigns, a neighborhood group or Homeowners Association as aforesaid fails to do so and the Subdivider hereby grants the right to enter upon lot 5 for purposes consistent with this paragraph and further confers the said obligations upon all lot owners of lots "1", "2", "3", "4", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17" "18", "19" and "20" in accordance with this Declaration.

The foregoing obligation may be enforced by the Subdivider and/or any lot owners adversely affected thereby and/or by the Town of Marlborough, which municipal entity shall have the right, but not the obligation to so enforce.

17. The Subdivider reserves for themselves, their successors and assigns and the Town of Marlborough and its instrumentalities, visibility easements over the northeasterly property corner of lot 20, near and adjacent

to the connection of Truncali Road with Mount Zion Road, as well as over the northwesterly corner of lot 1 near and adjacent to the connection of Truncali Road with Mount Zion Road. The fee owners of lot 20 and lot 1 shall have an affirmative obligation and duty to keep and maintain said visibility easements free and clear of said obstructions upon their respective lot, which obligation may be enforced by any lot owners affected thereby and/or by the Town of Marlborough, which municipal entity shall have the right, but not the obligation to so enforce.

18. The Subdivider reserves for themselves, their successors and assigns, the Town of Marlborough and its instrumentalities certain driveway easements over portions of lots "9", "10", "13" and "14" for ingress, egress and regress to and from Orchard View Drive over, across and through the lots aforesaid. Said lots and the driveway easements aforesaid shall be further and more particularly governed by a Private Driveway Right-of-Way and Maintenance Agreement which shall be recorded in the Office of the Ulster County Clerk. The foregoing obligation may be enforced by the Town of Marlborough, which municipality shall have the right, but not the obligation to so enforce.

19. The Subdivider reserves for themselves, their, successors and assigns, the Town of Marlborough and its instrumentalities building envelope limits of clearing upon

lots 10", "13", "14" and "17" of 100 feet in the front yards, 50 feet in both side yards and 50 feet in the rear yards of the planned houses thereon. No trees shall be felled, cut or removed, excepting dead, damaged and/or diseased trees, beyond the limits of clearing aforesaid and except as reasonably necessary for emplacement of the sewage disposal systems required to service the said lots. The foregoing obligation and limits of clearing for building envelopes may be enforced by any lot owners adversely affected thereby and/or by the Town of Marlborough, which municipal entity shall have the right, but not the obligation to so enforce.

20. The Subdivider reserves for themselves, their successors and assigns, the Town of Marlborough and its instrumentalities a 25 foot wide agricultural buffer easement, which shall be appurtenant to and benefit the continued agricultural uses upon abutting lands situate southerly and now or formerly of Douglas and Mary Ellen Glorie, their successor and assigns, upon lot 5 and lot 8. Said buffer shall be in accordance with the "Buffer Zone Notes" as contained upon the filed Subdivision Plat in all manner and respects, including but not limited to the following recital which shall be set forth in the deeds to lots 5 and 8:

"An evergreen tree buffer zone shall be planted and/or maintained in rows of six (6) feet apart parallel to the south boundary line and six (6) feet apart in each row but staggered such that planting do not form north-south lines. Natural wild trees and brush are also permitted to grow in the buffer zone. Evergreen trees to be permitted to attain at least twenty (20) feet in height. The buffer zone shall exist so long as Glorie or subsequent owners of the Glorie Farms actively farm land south of the common Glorie/Truncali boundary line".

The foregoing obligation and agricultural buffer zone may be enforced by Douglas Glorie, Mary Ellen Glorie, their successors and assigns and any neighboring lot owners adversely affected thereby and/or by the Town of Marlborough, which municipal entity shall have the right, but not the obligation to so enforce.

21. No delay or omission on the part of the owners of other lots in the subdivision in exercising any rights, powers or remedies herein provided to be exercised in the event of any breach of the covenants, conditions, easement, reservations, restrictions or servitudes herein contained shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue, nor shall any action be brought or maintained by any person whatsoever, against the Subdivider or an account of the Subdivider's failure to bring any action in connection with the breach of these covenants, reservations, conditions, easements, restrictions or servitudes. The Subdivider, for themselves and their successors and assigns assumes and accepts no

responsibility or liability for the enforcement of any of the above covenants, conditions, easements, reservations, restrictions and servitudes. The Declarations and Restrictions set forth herein are further construed as equitable servitudes which shall be enforceable by any and all of the lot owners, as well as the Subdivider, their successors and assigns.

22. In the event that any one or more of the covenants, conditions, easements, reservations, restrictions or servitudes herein contained shall be declared, for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not, in any manner whatsoever, affect, modify, change, abrogate or nullify the covenants, conditions, reservations, restrictions and servitudes not so declared to be void; and all of the remaining covenants, conditions, easements, reservations, restrictions and servitudes not so expressly held to be void shall continue unimpaired and in full force and effect.

23. All of the covenants, restrictions, reservations, easements, conditions and servitudes set forth herein shall run with the land; and each grantee of a lot in this subdivision, by acceptance of the deed thereto, accepts the same subject to the covenants, restrictions, reservations, easements, conditions and servitudes, which will be filed of record in the Office of the Ulster County Clerk and each

grantee agrees, for himself, his heirs, distributes, administrators, successors and assigns, to be bound by each of the said covenants, restrictions, reservations and servitudes jointly, separately and severally.

24. None of the covenants, conditions, easements, restrictions, reservations and servitudes set forth herein shall restrict or affect any other or remaining lands or interest in lands now owned or hereafter acquired by the Subdivider.

25. As shown upon a certain map to be filed within the Ulster County Clerk's Office and as prepared by Brinnier and Larios, PC, the Subdivider reserves for themselves, their successors and assigns two (2) certain easements and right-of-ways for motorized and non-motorized travel and the installation, use and maintenance of all utilities and drainage, and/or other development related infrastructure twenty-five (25) feet in width throughout their length, over, across and through lots 9 and 10 as well as Lots 13, 14, 17 and 18 for all uses as aforesaid to and from 2.30 acres of lands of Jackson [S/B/L# 108.001-1-3] and/or their successors and assigns as well as for access for all of the uses as aforesaid to and from Orchard View Drive and Mount Zion Road over, across and through the lots aforesaid to and from lands of the Jackson and/or their successors and/or assigns [f/k/a Lands of Poyer]. The Subdivider has no

current plans to develop or construct the improvements and appurtenances as aforesaid at the time of recording of this Declaration.

26. The Subdivider has contracted to sell and convey 17 of 20 lots, together with all of the cost and responsibility for the installation and care of all roadways and infrastructure improvements for the Truncal₁ Subdivision to Boneh Zion Realty, LLC. Upon such conveyance, the recording of which Deed shall be immediately preceded by the recording of this Declaration, the Subdivider shall automatically and sue sponte be deemed to be succeeded, of record and otherwise, by Boneh Zion Realty, LLC for all Subdivision purposes, requirements and conditions consistent with all administrative approvals, documents and filings of record. Notwithstanding this fact, the current Subdividers [Joel and Frances E. Truncal₁] hereby reserve for themselves and their successors and assigns, all rights at law and in equity as set forth hereunder and relating in any manner whatsoever to lots 4, 8 and 20, as well as the two (2) hereinbefore stated easements and right-of-ways running to and from the 2.30 acre lot [S/B/L# 108.001-1-3], together with any and all rights, powers and actions as may be necessary in their sole opinion to forward all reservations as aforesaid. Boneh Zion Realty, LLC as Contract Vendee agrees to execute any documents and cooperate with any and

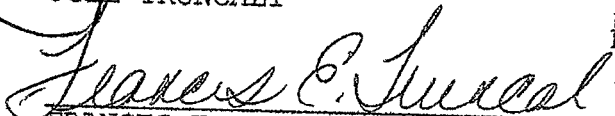
all acts reasonably necessary in the future to forward the purposes of the rights and reservations in favor of Joel and Frances E. Truncali, their successors and assigns, as set forth herein.

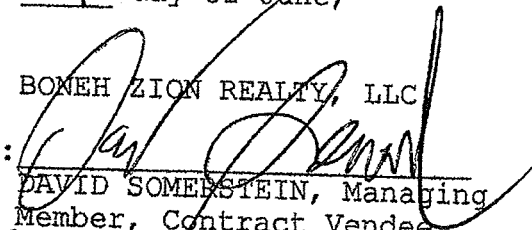
27. Joel and Frances E. Truncali, for themselves and their successor and assigns, assume and accept no responsibility or liability for the enforcement of any of the covenants, conditions, easements, reservations, restrictions and servitudes as set forth within this Declaration.

28. Any and all litigation relating to the Declaration shall be require to be determined in the Court of New York State with venue in Ulster County.

IN WITNESS WHEREOF, the Subdivider herein hereby executes this Declaration this 24TH day of June, 2004.


JOEL TRUNCALI


FRANCES E. TRUNCALI

BONEH ZION REALTY, LLC
By: 
DAVID SOMERSTEIN, Managing
Member, Contract Vendee