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Riverton Board of Directors

RE: DISSOLUTION OF THE RIVERTON COMMUNITY ASSOCIATION AND TERMINATION OF THE 2ND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS.

Dissolution of the Riverton Community Association and termination of the 2nd Amended Declaration of Covenants and Restrictions should analyzed as if the Association wished to either sell all the Common Area and/or effectively cease to carry out the obligations the Declaration placed upon the Association. The Association acts through its Board to carry out the Declaration obligations.

Article 10 of the New York State Not for Profit Corporation Law sets forth the process for a Non-judicial Dissolution of a Not for Profit Corporation.

Section 1001. Plan of dissolution and distribution of assets.

- (a) The board shall adopt a plan for the dissolution of the corporation and the distribution of its assets. Such plan shall implement any provision in the certificate of incorporation prescribing the distributive rights of members.
- (b) If the corporation is a charitable corporation and has no assets to distribute and no liabilities at the time of dissolution, the plan of dissolution shall include a statement to that effect.
- (c) If the corporation has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution, the plan of dissolution shall include a statement to that effect.
- (d) If the corporation has assets to distribute or liabilities, the plan of dissolution shall contain:
 - (1) a description with reasonable certainty of the assets of the corporation and their fair value, and the total amount of debts and other liabilities incurred or estimated by the corporation, including the total amount of any accounting and legal fees incurred or estimated, in connection with the dissolution procedure.
 - (2) a statement as to whether any gifts or other assets are legally required to be used for a particular purpose.
 - (3) if there are assets received and held by the corporation either for a charitable purpose or which are legally required to be used for a particular purpose, a statement that the assets owned by the corporation, subject to any unpaid liabilities of the corporation, shall

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be distributed as required by any gift instrument or to a charitable corporation or organization or organizations exempt from taxation pursuant to federal and state laws and engaged in activities substantially similar to those of the dissolved corporation. Each such recipient organization shall be identified and the governing instrument and amendments thereto of each of the proposed recipient organizations shall be annexed to such statement, along with the most recent financial report of each recipient organization and a sworn affidavit from a director and officer of each recipient organization stating the purposes of the organization, and that it is currently exempt from federal income taxation.

(4) if any of the assets of the corporation are to be distributed to a recipient for a particular legally required purpose, an agreement by the recipient to apply the assets received only for such purpose shall be included.

Pursuant to Section (a) "The board shall adopt a plan for the dissolution of the corporation and the distribution of its assets. Such plan shall implement any provision in the certificate of incorporation prescribing the distributive rights of members."

The Board would need to adopt a plan for the distribution of the assets of the Association. The Association was deeded certain property within the Riverton community and owns the Common Areas. The seminal question is what entity would voluntarily accept the Association Property?

Further, how all of these amenities would be managed and who would own them, how access would be provided to current members of the Association and other issues would need to be addressed in the Plan. In light of the very extensive common property, the plan to address future maintenance, repair and replacement would be difficult to put together, not to mention the potential impact on resale value of the individual owners lots as they bought into a planned unit development which is benefitted by the obligations of maintenance, repair and replacement set forth in the Declaration.

It is my belief that the effort and cost to produce such a plan is prohibitive.

Section 1002. Authorization of plan.

(a) Upon adopting a plan of dissolution and distribution of assets, the board shall submit it to a vote of the members, if any, and such plan shall be approved at a meeting of members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members) of this chapter; provided, however, that if the corporation is a charitable corporation, other than a corporation incorporated pursuant to article 15 (Public cemetery corporations) of this chapter, the vote required by the corporation's board of directors for adoption of the plan of dissolution of such a corporation or by the corporation's members for the authorization thereof shall be:

(1) In the case of a vote by the board of directors: (i) the number of directors required under the certificate of incorporation, by-laws, this chapter and any other applicable law; or (ii) if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors under

the certificate of incorporation, the by-laws, this chapter or any other applicable law, the remaining directors unanimously;

(2) In the case of a vote by the members, (i) the number of members required under the certificate of incorporation, by-laws, this chapter and any other applicable law; or (ii) by the vote of members authorized by an order of the supreme court pursuant to section 608 (Quorum at meeting of members) of this chapter permitting the corporation to dispense with the applicable quorum requirement. Notice of a special or regular meeting of the board of directors or of the members entitled to vote on adoption and authorization or approval of the plan of dissolution shall be sent to all the directors and members of record entitled to vote. Unless otherwise directed by order of the supreme court pursuant to section 608 (Quorum at meeting of members) of this chapter, the notice shall be sent by certified mail, return receipt requested, to the last known address of record of each director and member not fewer than thirty, and not more than sixty days before the date of each meeting provided, however, that if the last known address of record of any director or member is not within the United States, the notice to such director shall be sent by any other reasonable means.

(b) If there are no members entitled to vote on the dissolution of the corporation, the plan of dissolution and distribution of assets shall be deemed authorized upon its adoption by the board.

(c) Whenever a statute creating, or authorizing the formation of, a corporation requires approval by a governmental body or officer for the formation of such corporation, dissolution shall not be authorized without the approval of such body or officer.

(d)

(1) The plan of dissolution and distribution of assets shall have annexed thereto the approval of the attorney general in the case of a charitable corporation, and in the case of any non-charitable corporation which at the time of dissolution holds assets legally required to be used for a particular purpose.

(2) Application to the attorney general for such approval shall be by verified petition, with the plan of dissolution and distribution of assets and certified copies of the consents prescribed by this section annexed thereto.

(3) The attorney general may approve the petition if the corporation has adopted a plan in accordance with the requirements of section 1001 (Plan of dissolution and distribution of assets) of this article, and any other requirements imposed by law or rule. At any time, including if the attorney general does not approve the petition, or the attorney general concludes, in his or her discretion, that court review of the petition is appropriate, the corporation may apply for approval to the supreme court in the judicial district in which the principal office of the corporation is located, or in which the office of one of the domestic constituent corporations is located, for an order dissolving the corporation. Application to the supreme court for an order for such approval shall be by verified petition upon ten days written notice to the attorney general, and shall include all information required to be included in the application to the attorney general pursuant to this section.

Even if a plan were produced in accordance with Section 1001, the Plan would need to be approved by the Board and submitted to the members. Per Section 11.1 of the 2nd A&R Declaration, a majority of the total number of Members would need to approve.

The Plan would also need to be submitted to the New York Attorney General for approval. That approval would almost certainly only come after the Attorney General found that all the interests of the Association property owners' interests were protected. Further, the Attorney General would require that the Supreme Court also approve the dissolution.

As a practical matter, with so much common area and a Declaration enforcing a plan for a mixed commercial, residential community with common area amenities, it is unrealistic to expect that a dissolution would be approved or that any approval to change the scope of the development and obligations to no longer serve any category of member would ever be obtainable.

The only possible perceived exception to this outcome would be if the Town of Henrietta or another entity were to accept a deed to all the Common Area and to effectively agree to provide all the benefits that the Declarations anticipated and granted.

Sincerely,

James A. Marino, Esq.