

**DECLARATION**  
**OF**  
**PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,**  
**CHARGES AND LIENS – PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**  
**(HICKORY HOLLOW SENIOR COMMUNITY (RESUBDIVISON OF LOTS 78, 79)**  
**DECLARATION)**

**MADE BY:**                   **Ogden Center Development Corp.**  
                                  **24 West Avenue, Suite 206**  
                                  **Spencerport, New York 14559**

**DATED:**                   \_\_\_\_\_ , 2006

**Pirates Cove**  
**Town of Ogden**  
**County of Monroe**  
**State of New York**

**Karen A. DiNardo, Esq.**  
**PHILLIPS LYTTLE LLP**  
**1300 First Federal Plaza**  
**Rochester, New York 14614**

(

(

(

(

(

(

(

(

(

(

(

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS -  
PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.  
(HICKORY HOLLOW SENIOR COMMUNITY (RESUBDIVISION OF LOTS 78, 79)  
DECLARATION)**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I</b>	<b>DEFINITIONS.....2</b>
Section 1.01.	Definitions.....2
<b>ARTICLE II</b>	<b>PROPERTY SUBJECT TO THIS DECLARATION.....3</b>
Section 2.01.	Property .....3
Section 2.02.	Additional Property.....3
Section 2.03.	Mergers .....3
<b>ARTICLE III</b>	<b>THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS .....4</b>
Section 3.01.	Formation of the Association.....4
Section 3.02.	Membership .....4
Section 3.03.	Voting; Mortgagee's Control of Votes .....4
Section 3.04.	Lots Owned or Held by More Than One Person or by a Corporation.....4
Section 3.05.	Holder of Security Interest Not a Member.....5
Section 3.06.	Assigning Right to Vote.....5
Section 3.07.	Meeting and Voting Regulations .....5
Section 3.08.	Selection, Powers and Duties of Directors.....5
Section 3.09.	Indemnification of Officers and Directors .....5
Section 3.10.	Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.....6
<b>ARTICLE IV</b>	<b>PROPERTY RIGHTS AND EASEMENTS.....6</b>
Section 4.01.	Dedication of Association Property .....6
Section 4.02.	Rights and Easements of Lot Owners .....6
Section 4.03.	Rights of Association .....7
Section 4.04.	Easements of Association .....9
Section 4.05.	Rights and Easements of Sponsor .....9
Section 4.06.	Damage Resulting from Use of Easement .....10
Section 4.07.	Hearing Procedures .....10
Section 4.08.	Notice of Condemnation of Association Property and Resolution of Dispute as to Allocation of Award .....11

(

(

(

(

(

(

(

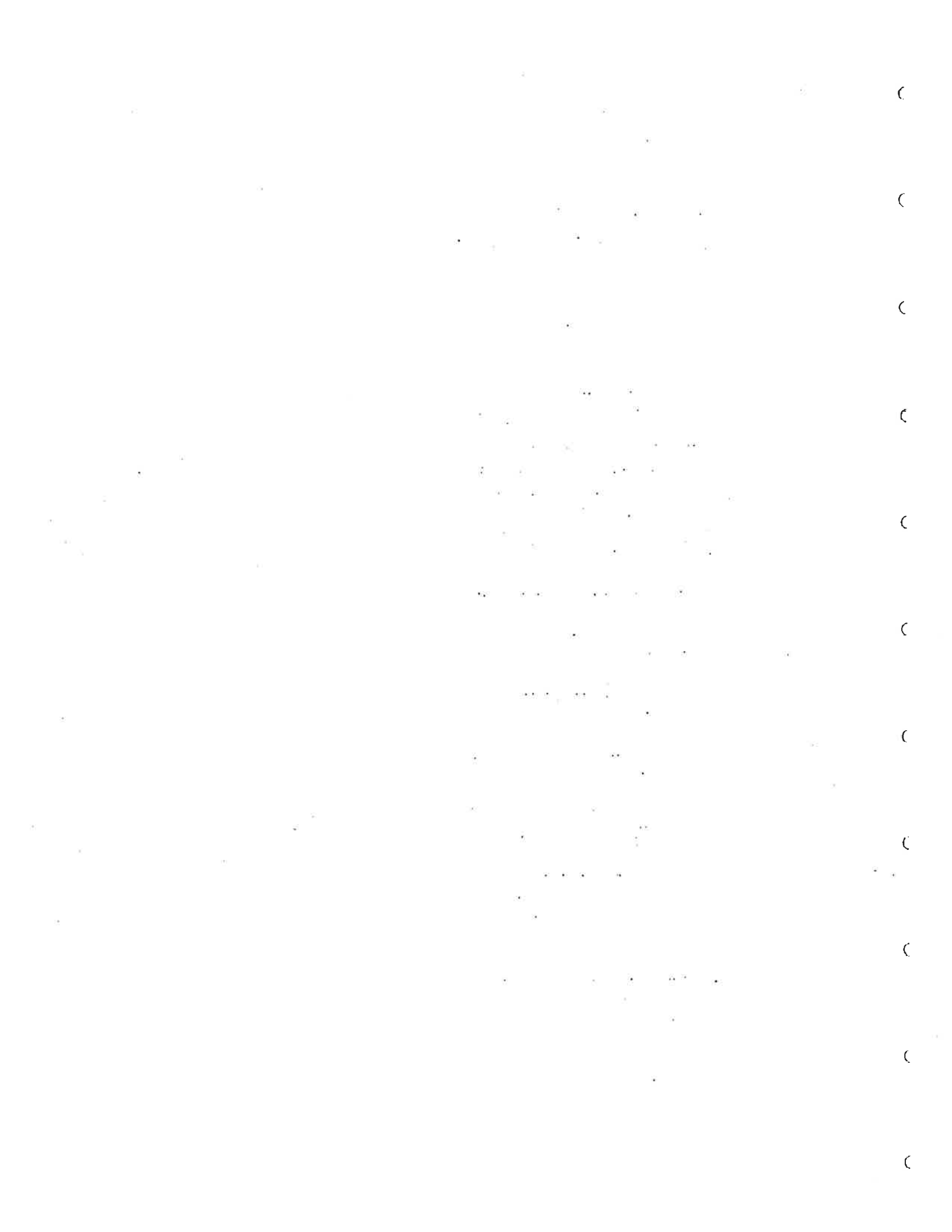
(

(

(

(

<b>ARTICLE V</b>	<b>ASSESSMENTS AND RIGHT OF ASSOCIATION</b>	
	<b>TO BORROW</b> .....	11
Section 5.01.	Imposition, Personal Obligation, Lien .....	11
Section 5.02.	Purpose of Maintenance Assessment .....	12
Section 5.03.	Basis for Maintenance Assessment.....	12
Section 5.04.	Special Assessments .....	12
Section 5.05.	Date of Commencement and Notice of Assessments .....	13
Section 5.06.	Assessments for Specific Lots .....	13
Section 5.07.	Change in Basis of Assessments .....	14
Section 5.08.	Non-Payment of Assessment .....	14
Section 5.09.	Notice of Default.....	15
Section 5.10.	Right to Maintain Surplus .....	15
Section 5.11.	Assessment Certificates .....	15
Section 5.12.	Subordination of Assessment Lien to Mortgages .....	15
Section 5.13.	Adjustment of Assessments on Transfer.....	15
Section 5.14.	Right to Borrow and Mortgage .....	16
Section 5.15.	Repayment of Monies Borrowed .....	16
<b>ARTICLE VI</b>	<b>MAINTENANCE</b> .....	17
Section 6.01.	Maintenance and Repair by Association.....	17
Section 6.02.	Repairs and Maintenance Which Are Not Responsibility of the Association .....	18
Section 6.03.	Quality and Frequency of Maintenance and Repairs .....	18
<b>ARTICLE VII</b>	<b>ARCHITECTURAL CONTROLS</b> .....	18
Section 7.01.	Control by Association.....	18
Section 7.02.	Submission of Plans to Board of Directors.....	18
Section 7.03.	Basis for Disapproval of Plans by Board of Directors.....	19
Section 7.04.	Approval of Board of Directors .....	19
Section 7.05.	Written Notification of Disapproval .....	20
Section 7.06.	Failure of Board of Directors to Act .....	20
Section 7.07.	Board of Director's Right to Promulgate Rules and Regulations.....	20
Section 7.08.	Delegation of Functions .....	20
Section 7.09.	Records of Meetings; Regulations .....	20
Section 7.10.	Liability of Board of Directors.....	20
Section 7.11.	Architectural Certificate.....	21
Section 7.12.	Restrictions on Change of Architectural Controls, Rules or Regulations .....	21
<b>ARTICLE VIII</b>	<b>ENCROACHMENTS</b> .....	21
Section 8.01.	Encroachments or Projections.....	21
<b>ARTICLE IX</b>	<b>INSURANCE AND RECONSTRUCTION</b> .....	22
Section 9.01.	Insurance to be Carried .....	22
Section 9.02.	Restoration or Reconstruction	



	After Fire or Other Casualty;	
	Responsibility for Insurance Deductible.....	25
Section 9.03.	Insurance Carried by Unit Owners.....	26
Section 9.04	Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property .....	26
<b>ARTICLE X</b>	<b>GENERAL COVENANTS AND RESTRICTIONS.....</b>	<b>27</b>
Section 10.01.	Advertising and Signs.....	27
Section 10.02.	No Animals, Birds and Insects .....	27
Section 10.03.	Protective Screening and Fences .....	27
Section 10.04.	Garbage and Refuse Disposal .....	27
Section 10.05.	No Above Surface Utilities Without Approval .....	27
Section 10.06.	No Noxious or Offensive Activities .....	28
Section 10.07.	Dwelling in Other Than Residential Units .....	28
Section 10.08.	No Television and Communication Antennas .....	28
Section 10.09.	Trees and Other Natural Features .....	28
Section 10.10.	Residential Use Only .....	28
Section 10.11.	No Commercial and Professional Activity on .....	28
Section 10.12.	No Outdoor Repair Work .....	28
Section 10.13.	No Oversized, Commercial, Recreational, or Unlicensed Vehicles, Camper Bodies, Boats or Trailers .....	29
Section 10.14.	No Parking on Private Road .....	29
Section 10.15.	No Clotheslines .....	29
Section 10.16.	Lease of Entire Unit Only .....	29
Section 10.17.	Initial Lease Term of Unit .....	29
Section 10.18.	No Operation of Snowmobiles, Motorcycles, All Terrain Vehicles or Similar Motor Vehicles.....	29
Section 10.19	No Rock Salt .....	29
Section 10.20	"55 or over housing" .....	29
<b>ARTICLE XI</b>	<b>ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION .....</b>	<b>30</b>
Section 11.01.	Declaration Runs With the Land .....	30
Section 11.02.	Enforceability.....	30
Section 11.03.	No Waiver by Failure to Enforce .....	30
Section 11.04.	Obligation and Lien for Cost of Enforcement by Association .....	30
Section 11.05.	Inspection and Entry Rights .....	31
Section 11.06.	Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagee .....	31
Section 11.07.	Amending Declaration .....	31
Section 11.08.	Owner Responsible for Tenants and Guests .....	32
Section 11.09.	When Amendment or Termination Becomes Effective .....	32
Section 11.10.	Duration .....	33

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000



Section 11.11. Construction and Interpretation .....	33
Section 11.12. Conflict with Municipal Laws .....	33
Section 11.13. Change of Conditions .....	33
Section 11.14. Effect of Unenforceability or Invalidity of Provision of Declaration .....	33
<b>ARTICLE XII GENERAL .....</b>	<b>34</b>
Section 12.01. Headings and Captions .....	34
Section 12.02. Right Reserved to Sponsor to Impose Additional Protective Covenants .....	34
Section 12.03. Notice .....	34
Section 12.04. Right of Association to Transfer Interes .....	34
Section 12.05. Right of Association to Transfer Functions .....	34
 <b>SCHEDULE A Legal Description of Property Subject to the Declaration</b>	
 <b>SCHEDULE B Legal Description of Additional Property</b>	



**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS -  
PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.  
HICKORY HOLLOW SENIOR COMMUNITY  
(RESUBDIVISION OF LOTS 78, 79)**

THIS DECLARATION, made this \_\_\_ day of \_\_\_\_\_, 2006, by Ogden Center Development Corp., a New York corporation, having an office at 24 West Avenue, Suite 206, Spencerport, New York 14559, being referred to hereinafter as "Ogden" and LoPresti Homes Corp., a New York corporation being referred to hereinafter as the "Sponsor."

**WITNESSETH**

WHEREAS, Ogden is the owner of the real property described in Article II of this Declaration; and

WHEREAS, the Sponsor is the contract vendee of the real property described in Article II of this Declaration which the Sponsor desires to develop into a residential community known or to be known as Hickory Hollow Senior Community (Resubdivision of Lots 78, 79); and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of the exteriors of the dwelling units to be constructed in said community and yards; and, to this end, desires to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Sponsor desires that such real property be subdivided into lots upon which are, or will be constructed residential dwelling units, which lots and units will be individually owned; and

WHEREAS, the Sponsor 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 common property and facilities and maintaining the exteriors of the dwelling units and yards, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Sponsor has incorporated PIRATES COVE HOMEOWNERS' ASSOCIATION, INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions; and

WHEREAS, Michael J. LoPresti and Joan LoPresti (collectively "LoPresti") are the owners of Lot AR80U (the "LoPresti Lot") and Michael S. LoPresti and Tracy L. LoPresti (collectively "Michael S. and Tracy L. LoPresti") are the owners of Lots AR80A, AR80V, AR80W

and AR80Y (the "Michael S. and Tracy L. LoPresti Lots") all as shown on a map of Hickory Hollow Senior Community (Resubdivision of Lots 78, 79), which map is filed in the Monroe County Clerk's Office in Liber 316 of Maps, page 80; and LoPresti and Michael S. and Tracy L. LoPresti wish to subject such lots to the covenants, restrictions, easements, charges and liens hereinafter set forth;

**NOW, THEREFORE:**

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

LoPresti, for itself, its successors and assigns declares that the LoPresti Lot as described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

Michael S. and Tracy L. LoPresti, each for itself, its successors and assigns declares that the Michael S. and Tracy Lots as described in Section 2.01 hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I**

**DEFINITIONS**

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

- A. "Association" shall mean and refer to PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.
- B. "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.
- C. "Declaration" shall mean and refer to this Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Pirates Cove Homeowners' Association, Inc. (Hickory Hollow Senior Community (Resubdivision of Lots 78, 79) as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Ogden or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "Lot Owner" shall mean the owner of a "Lot."

- F. **"Owner"** shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- G. **"Property"** shall mean and refer to all properties as are subject to this Declaration.
- H. **"Recording Office"** shall mean and refer to the office for the recording of land documents in the County in which the Property is located.
- I. **"Sponsor"** shall mean and refer to LoPresti Homes Corp., its successors and assigns.
- J. **"Unit"** shall mean and refer to a residential dwelling situated on a Lot.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

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

**Section 2.02. Additional Property.** Other lands as described in Schedule B ("Additional Property"), in addition to the lands described in Schedule A may become subject to the Declaration in the following manner:

The four existing, ranch style, single family dwelling Units on Lots AR80A, AR80V, AR80W, and AR80Y are required by the Zoning Code of the Town of Ogden to be covered by the Declaration. These dwelling Units are currently occupied by tenants and may be offered for sale and made subject to the Declaration in the future.

Sponsor may, at its election and subject to obtaining the necessary municipal approvals subdivide the westerly one-half of Lot R79 of Hickory Hollow Senior Community to create 20 lots, each improved with a townhouse to be offered for sale and subject those 20 lots to the Declaration. In addition, the Sponsor may develop the easterly half of Lot R79 into an additional 20 lots with attached townhouses to be offered for sale and subjected to the Declaration.

Sponsor reserves the right to subject the foregoing premises to the Declaration without the consent of the Owners.

**Section 2.03. Mergers.** Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, 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 this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

### ARTICLE III

#### THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed Pirates Cove Homeowners' Association, Inc. (the "Association"), to own, operate, and maintain the Association Property, maintain the exteriors of the Units and yards, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members Lot Owners and the Sponsor for as long as the Sponsor holds title to a Lot. All Lot Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Lot Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting: Mortgagee's Control of Votes. Each Lot Owner, including the Sponsor, shall be entitled to one (1) vote, except as otherwise provided in this Declaration. Notwithstanding anything to the contrary which may be contained in this Declaration, if an institutional first mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Lots Owned or Held by More Than One Person or by a Corporation. When any Lot is owned or held by more than one person as tenants by the entirety, in joint or common ownership or interest, such Owners shall collectively be entitled to only one (1) vote and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed.

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

In the case of a partnership or limited liability company Lot Owner, the Lot Owner's vote may be cast by a general partner of the partnership or a manager or authorized member of a limited liability company.

**Section 3.05. Holder of Security Interest Not a Member.** Any person or entity which holds an interest in a Lot or Unit merely as security for the performance of an obligation shall not be a member.

**Section 3.06. Assigning Right to Vote.** Subject to the filing of an amendment to the offering plan filed with the New York State Department of Law, pursuant to which the Sponsor has offered interests in the Association, the Sponsor may assign its right to vote in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such right to vote, may make successive like assignments. Any other Lot Owner shall be entitled to assign such Owner's right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

**Section 3.07. Meeting and Voting Regulations.** The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Owner members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot Owners for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

**Section 3.08. Selection, Powers and Duties of Directors.** The nomination, election, powers and duties of the Board of Directors and filling of vacancies shall be governed as set forth in the By-Laws of the Association.

**Section 3.09. Indemnification of Officers and Directors.** Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that (i) the acts of the director or officer were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or (ii) such director or officer (or a member of such director's or officer's family) personally gained a financial profit or other advantage to which such beneficiary was not legally entitled; provided, that in the event of a settlement or other nonadjudicated disposition, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. Funds to cover the above expenses, including fees of counsel, may be advanced by the

Association, prior to the final disposition of the matter, upon receipt of an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that (i) the recipient is not entitled to indemnification or (ii) where indemnification is granted, the expenses so advanced exceed the amount to which such officer or director is entitled.

**Section 3.10. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.** Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to any portion of the Property, the Board of Directors of the Association may not, without the Sponsor's written consent, which consent must not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any portion of the Property, this Section shall not be amended without the written consent of the Sponsor.

The Sponsor shall not, so long as the Sponsor is in control of the Board of Directors of the Association, use its position of control to (i) reduce the level of services described in the offering plan filed with the New York State Department of Law pursuant to which the Sponsor offered Lots for sale together with interests in the Association, (ii) prevent capital repairs to the Association Property or (iii) prevent expenditures required to comply with applicable laws or regulations.

#### **ARTICLE IV PROPERTY RIGHTS AND EASEMENTS**

**Section 4.01. Dedication of Association Property.** There will be no land conveyed to the Association in connection with Phase I. In the event future phases are developed, the Sponsor intends to convey or cause to be conveyed to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land more particularly described on Schedule B as Additional Property for the use and enjoyment of the Owners. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property." The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

**Section 4.02. Rights and Easements of Lot Owners.** Subject to the rights and easements of the Association set forth in Sections 4.03 and 4.04 below, and the rights and easements of the Sponsor set forth in Section 4.05 below, each Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have the following rights and easements provided the



Association Property is conveyed to the Association in connection with the development of future phases:

- a. Enjoyment - to enjoy all Association Property;
- b. Ingress and Egress - an easement by vehicle or on foot for ingress and egress in common with other Lot Owners and the Sponsor over all walkways, driveways and roadways located on Association Property; and
- c. Utilities and Conduits - to use, maintain, repair and replace any pipes, wires, cables, conduits, sewer lines, water lines, drainage areas, other utility lines and heating, ventilating and air conditioning equipment servicing such Owner's Lot (Unit) but located on Association Property, on another Lot or in another Unit.

All of such rights and easements shall be appurtenant to and shall pass with the interest of a Lot Owner as defined in Article I, Section 1:01 of this Declaration.

Section 4.03. Rights of Association. In accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the following rights:

- a. Promulgate Rules and Regulations - to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Lot Owners;
- b. Grant Easements to Utility Companies and Governmental Entities - to grant easements or rights of way, with or without consideration to any public or private utility corporation, cable television company, governmental agency or political subdivision;
- c. Transfer, Lease, Sell, Exchange or Encumber Association Property or Acquire or Lease Real Property - to dedicate, sell, transfer, donate, lease, abandon, partition, encumber or otherwise dispose of, all or any part of the Association Property which the Association owns or to acquire or lease other real property for such purposes (except for a conveyance from the Sponsor which must be accepted pursuant to Section 4.01 above) and subject to such conditions as may be agreed to by the Association and the transferee or transferor. Such action (except for (i) any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Lot Owners, (ii) the dedication and conveyance of a street to a municipality without consideration for use as a public street, and (iii) any conveyance from the Sponsor) shall require a "Hearing" as described in Section 4.07 below and the consent of not less than 67% of all Lot Owners independent of the Sponsor who shall vote by written ballot which shall, not less than 10 days nor more than 50 days in advance of the date or initial date

of the canvass thereof, be sent to all Lot Owners and to those lending institution first mortgagees of Lots whose names appear as such on the books or records of the Association. No such conveyance shall be made if lending institution first mortgagees of 51% or more of the Lots subject to first mortgages held by lending institutions whose names appear as such on the books or records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable;

- d. Enter into Agreements with other Associations to Share Facilities - to enter into agreements, reciprocal or otherwise, with other homeowners' associations, condominiums and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of the Lot Owners of 67% of the total votes of all Lots voting upon written ballot which shall be sent to every Lot Owner not less than 10 days nor more than 50 days in advance of the date or initial date of the canvass thereof;
- e. Enter into Agreements for Performance of Duties - to enter into agreements for the performance of its various duties and functions including agreements with other homeowners' associations, condominiums and cooperatives for common maintenance, management and other services, materials and supplies;
- f. Designate Parking Spaces - to designate specific parking spaces on Association Property, if any, for the use of Lot Owners;
- g. Inspect Lots for Possible Violations of Provisions of this Declaration - to enter upon and inspect Lots for the purpose of ascertaining compliance with the provisions of this Declaration or with rules and regulations promulgated pursuant to this Declaration; and
- h. Construct, Modify, Alter or Demolish Improvements on Association Property or Change the Use of Association Property - to construct, modify, add to, alter or demolish improvements on Association Property or change the use of Association Property following (i) the affirmative vote of the Board of Directors proposing any of the above, and (ii) a Hearing as described in Section 4.07 below.

Not less than 15 nor more than 45 days after a Hearing, the Board of Directors shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three-fourths of the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall not be in violation of the zoning laws or any other laws, ordinances, rules or regulations of the Town of Ogden or any other governmental authority.

If a proposed acquisition of land or improvements or the construction, addition, modification, alteration to, or the demolition of Association property, will result in the imposition of

a Special Assessment as provided in Section 5.04 of this Declaration, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 4.07 hereof, and the provisions of Section 5.04, prior to finally authorizing such action.

Notwithstanding the provisions of this Section, the decision of the Board with respect to any proposal may not be contrary to the position of Owners of 51% or more of the Lots, expressed in a written petition or petitions signed by such Owners and delivered to the Board prior to its scheduled vote in the proposal.

Section 4.04. Easements of Association. The Association (and its employees, contractors and agents) shall have the following easements over each Lot:

- a. Utility Line Maintenance - for the use, installation, maintenance, repair and replacement of any pipes, wire, cables, conduits, sewer lines, water lines, drainage areas and other utility lines located on such Lot and servicing Association Property or other Lots (Units);
- b. Utility Banks and Telephone Pedestals - for installation, maintenance, repair and replacement of utility banks and telephone pedestals on the exterior walls of buildings on the Lots;
- c. Other Maintenance on Lots - for the installation, maintenance, repair and replacement of walkways, lawns, landscaping, driveways, roadways and building exteriors on the Lots, and for snow removal to the extent the Association has the obligation for such installation, maintenance, snow removal, repair and replacement under this Declaration or pursuant to the authorized vote of the Members; and
- d. In Conjunction with Maintenance of Association Property - to the extent such entry is reasonably necessary in order to install, maintain, repair or replace any improvement on Association Property, or the exterior or structural components of any building(s) constructed on the Lots which the Association is obligated to maintain and repair; and
- e. Water for Watering of Lawns - to tie into and use water from any Unit for the watering of any lawns which the Association is obligated to maintain, subject to reimbursement by the Association to the Owner of the Unit for the cost of water consumed, if individually billed to such Units(s).

To the extent reasonably appropriate any such entry onto a Lot (i) shall be on reasonable notice to the Owner of the Lot to be entered, except that, in an emergency, such entry may be without notice, (ii) may include entry to any improvement on such Lot.

Section 4.05. Rights and Easements of Sponsor. With respect to Association Property and subject to the rights and easements set forth in Sections 4.02, 4.03 and 4.04 above, so long as the Sponsor holds title to any portion of the Property, the Sponsor shall have the right to:

- a. Easements for Utility Lines - to grant and reserve easements and rights of way over the Property covered by this Declaration for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone and sewer to service the Property, or adjacent property;
- b. Connect with Utility Lines to Service Additional Property - to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property, or adjacent property;
- c. Ingress and Egress - to use the Association Property for ingress and egress to the Property; and
- d. Sales Center and Signage - to operate a sales center, install and maintain signs, and have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and
- e. Unit Construction and Property Improvement. Use the Association Property as necessary and appropriate in the process of constructing Units on the Property and installing improvements on the Association Property.

In the event any "Additional Property" as described in Section 2.02 above, is added to the scope of this Declaration, such lands shall be responsible for payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those facilities servicing such lands.

The easements, rights-of-way and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor and their successors and assigns. With respect to its exercise of the above rights, the Sponsor agrees to repair any damages resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs. So long as the Sponsor holds title to any portion of the Property, this Section shall not be amended without the prior consent of the Sponsor.

Section 4.06. Damage Resulting from Use of Easement. Subject to rights of recovery under law or pursuant to other provisions of this Declaration, any damage to any Lot or other portion of the Property or to any improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement granted or reserved herein, shall be promptly repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, to the condition in which it existed immediately prior to the damage.

Section 4.07. Hearing Procedures. Where the Board of Directors is required in accordance with the provisions of this Declaration to hold a public hearing prior to taking certain

action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.07 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Lot Owners in accordance with any provisions of this Declaration relating to the giving of notice. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearings. The Hearing will be held on the Property or in a place reasonably accessible to the Property. All Lot Owners and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a proposal, a Hearing is required pursuant to more than one section of the Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

**Section 4.08. Notice of Condemnation of Association Property and Resolution of Dispute as to Allocation of Award.** The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding affecting Association Property to all Lot Owners and to those lending institution first mortgagees of Lots whose names appear as such on the books or records of the Association.

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

## ARTICLE V

### ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

**Section 5.01. Imposition, Personal Obligation, Lien.** Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- a. annual assessments or charges for the maintenance and operation of Association Property or other property which the Association is obligated to maintain ("Maintenance Assessments");
- b. special assessments for capital improvements and repairs to Association Property (or property which the Association is obligated to maintain), and unbudgeted or extraordinary expenses of the Association ("Special Assessments");

together hereinafter being referred to as "Assessments."

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late

charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Unless otherwise agreed upon between the parties to the transfer upon the transfer of a Lot, Association Maintenance Assessments and any Special Assessments which (i) may be payable in installments or (ii) are specifically applicable to a defined period of time, shall be adjusted between the grantor and grantee, with the grantor being entitled to a credit from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period and grantee being entitled to a credit from the grantor for the portion of any payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Special Assessments payable in installments shall, unless otherwise provided by the Board of Directors of the Association in the adoption of the Assessment, be adjusted as if the payment due was for a period following the date due, equal to the interim period between installments.

**Section 5.02. Purpose of Maintenance Assessment.** The purpose of the Maintenance Assessment shall be to fund (i) the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Lot Owners, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance obtained pursuant to Article IX of this Declaration; (ii) the maintenance, repair and replacement of all facilities commonly servicing the Lot Owners, whether on or off the Lots, such as parking areas (if any), lawn and landscaped areas, including snow removal from driveways located on the Lots; (iii) the maintenance, repair and replacement of the Unit exteriors - siding, brick, roofs, gutters, and driveways (but not window replacement and not those items set forth in Section 6.02 below); (iv) the painting of the exterior doors and exterior trim; (v) the cost of labor, equipment, materials, management and supervision for all of the above; and (vi) such other needs as may arise, including without limitation, lease payments for a community building, if constructed. Any material increase or decrease in the maintenance responsibilities of the Association shall require the consent of the Owners of not less than 67% of all Lots other than the Sponsor, as well as the Sponsor, if the Sponsor holds title to 10% or more of the Lots at the time such increase or decrease is voted upon. The Maintenance Assessments may include reasonable reserves for any of the above. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots.

**Section 5.03. Basis for Maintenance Assessment.** Subject to the provisions of Section 5.06 below which describes limits on the obligation of the Sponsor for the payment of Maintenance Assessments, the annual Maintenance Assessment chargeable to each Lot assessed shall be the same for all Lots, so that the annual Maintenance Assessment for each Lot shall be determined each year by dividing the number of Lots liable for the payment of Maintenance Assessments pursuant to Section 5.01 above, into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained).

**Section 5.04. Special Assessments.** In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that

year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction or replacement of, or repair of the Association Property or to any improvements or landscaping on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, and (ii) any unbudgeted, unanticipated or extraordinary expense, claim against or liability of the Association. Before levying such a Special Assessment the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.07 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall (i) for any Special Assessment for the construction of any capital improvement, (rather than the reconstruction, replacement or repair) obtain the consent of the Owners of 67% or more of all Lots who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Lot Owners at least 30 days in advance, setting forth the purpose of the meeting, and (ii) for any Special Assessment, obtain the approval of not less than three-fourths of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.05. Date of Commencement and Notice of Assessments. The Maintenance Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such date thereafter as determined by the Sponsor. The first Maintenance Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Maintenance Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Maintenance Assessments shall be due and payable monthly unless the Board of Directors establishes other installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial annual Maintenance Assessments as long as said Maintenance Assessments are established at least 30 days before due. Written notice of the annual Maintenance Assessments shall be sent to every Lot Owner subject thereto. Should the Board of Directors determine at any time that the Maintenance Assessments are insufficient to fully fund the then current year's expenditures, the Board may assess additional amounts on a pro rata basis to all Lot Owners.

Section 5.06. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.05 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments and Special Assessments, if any, except that with respect to Maintenance Assessments, the Sponsor will only be obligated for the lesser of (i) the difference between the actual Association expenses (including budgeted amounts for reserves) and the Association charges levied on Lot Owners who have closed title to their Lots as projected in the offering plan filed with the New York State Department of Law pursuant to which interests in the Association were initially offered for sale; or (ii) Maintenance Assessments on all unsold Lots which have not been granted a certificate of occupancy by the Town of Ogden. The Sponsor will be responsible for Special Assessments on all unsold Lots which have not been granted a certificate of occupancy by the Town of Ogden. Sponsor shall pay this obligation to the Association within 60 days of the end of each of the Association's fiscal years but only as long as Sponsor owns any unsold Lots.

**Section 5.07. Change in Basis of Assessments.** The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of the Owners of 67% or more of all Lots, excluding the Sponsor, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association, at least 40 days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any portion of the Property, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold dwelling units or subdivision lots containing unsold dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, and (ii) no such change shall be made if lending institutions which together are first mortgagees on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Recording Office as an amendment to this Declaration.

Any change in the basis of Assessments shall be equitable and non-discriminatory within the following classifications: (i) Lots paying full Maintenance Assessments, and (ii) Lots paying less than full Maintenance Assessments pursuant to Section 5.06 above.

**Section 5.08. Non-Payment of Assessment.** If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.05 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien encumbering the Lot which shall bind such Lot in the hands of the then Lot Owner and such Lot Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Lot Owner to pay such Assessment shall remain such Lot Owner's personal obligation and shall not pass to such Lot Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within 10 days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors establishes from time to time, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied. The initial late charge shall be \$15.00.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Lot Owner and (iii) the Association may bring legal action against the Lot Owner personally obligated to pay the same or foreclose the lien against the Lot of such Lot Owner, and the cost of such proceedings, including actual attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Lot Owner shall be applied in the following order: attorneys' fees, other costs of collection,



late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

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

Section 5.09. Notice of Default. The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Association's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of such Assessments.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of the Lot Owner or lessee of a Lot (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender, on the Lot on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Lot from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.13. Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Lot, Maintenance Assessments and any Special Assessments which (i) may be payable in installments or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with

the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in its adoption, (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installation due dates and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the Lot on the date which such Assessment is initially due.

**Section 5.14. Right to Borrow and Mortgage.** In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors of the Association acting in its absolute discretion, except that (i) any member of the Board of Directors who has been elected or appointed by the Sponsor shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Sponsor, and (ii) any consent of the Sponsor as required by Section 3.10 of this Declaration must be obtained.

**Section 5.15. Repayment of Monies Borrowed.** In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
  - (1) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.03 hereunder, to assess the same at a particular rate or rates;
  - (2) establish sinking funds and/or other security deposits;
  - (3) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
  - (4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
  - (5) provide for the custody and safeguarding of all funds received by it.

## ARTICLE VI MAINTENANCE

Section 6.01. Maintenance and Repair by Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements on Association Property, including the maintenance, repair and replacement of all driveways and walkways on the Association Property, snow removal from all driveways up to the Units, and the maintenance of all lawn and landscaped areas shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of fire hydrants, wires, conduits and public utility lines servicing the Units and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) along with water and sewer lateral lines servicing a Unit shall also be the responsibility of, and an expense of, the Association, except that the Association shall not be responsible for cleaning or unclogging sewer lateral lines servicing a Unit, which shall be the responsibility of the owner of the Lot and Unit served by such sewer lateral.

The Association shall be responsible for the maintenance of all shrubbery and other plantings installed by the Sponsor or the Association on the Association Property, or on the Lots, installed by or at the direction of the Sponsor or the Association but not for shrubbery, flower beds or other plantings installed by or at the direction of any Lot Owner or Unit occupant.

Units. With respect to the Units, the Association shall repair and replace the exterior siding, brick, gutters, roofs, paint the exterior trim, but shall not (i) repair or replace window panes or (ii) maintain, repair or replace doors or (iii) maintain, repair or replace garage doors, garage door hardware, tracks or openers, or (iv) maintain, repair or replace foundation walls, or (v) maintain, repair or replace decks attached to the Units.

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall repair and replace driveways on the Lots, but shall not be responsible for the maintenance, repair and replacement of concrete patios attached or adjacent to the Units or the fences around the patios.

The Association may increase (or decrease) its maintenance responsibilities, provided (i) such increase or decrease is approved in writing by the Owners of two-thirds (b) of all Lots owned independently of the Sponsor and (ii) if such increase or decrease is proposed while the Sponsor holds title to any portion of the Property, the written consent of the Sponsor will be required, which consent shall not be unreasonably withheld.

Any responsibility for maintenance, repair or replacement with respect to the Lots and Units which is not the responsibility of the Association is the responsibility of and shall be made at the cost and expense of, the respective Owner(s) of such Lots or Units.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Sections 4.03 and 4.04 of this Declaration.

**Section 6.02. Repairs and Maintenance Which Are Not Responsibility of the Association.** Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Lot Owner (including: (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) or the Sponsor shall be made at the cost and expense of such Lot Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

The Lot and Unit Owners shall be responsible for the maintenance, repair and replacement of concrete patios attached to or adjacent to the Units and the fencing around or adjoining such patios. The Lot and Unit Owners shall be responsible for maintenance, repair and replacement of windows, doors, garage, doors, pole lights, pole lamps, hose bibs, doorbells, screens, stormdoors, and air conditioner pads.

Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing only the Units and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall be the responsibility of, and at the expense of the Association. The Owner of the Unit served by the sewer lateral shall be responsible for cleaning or unclogging it.

**Section 6.03. Quality and Frequency of Maintenance and Repairs.** All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of Property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such Property.

## **ARTICLE VII ARCHITECTURAL CONTROLS**

**Section 7.01. Control by Association.** After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Board of Directors.

**Section 7.02. Submission of Plans to Board of Directors.** After transfer of title to any Lot or other portion of the Property by the Sponsor, no exterior addition, modification or alteration,

including change of color, shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Board of Directors requires, have been submitted to, and reviewed and approved by, the Board of Directors. The Board of Directors may charge and collect a reasonable fee for the examination of plans submitted for approval.

**Section 7.03. Basis for Disapproval of Plans by Board of Directors.** The Board of Directors may disapprove any plans submitted pursuant to Section 7.02 above for any of the following reasons

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Board of Directors would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

**Section 7.04. Approval of Board of Directors.** Upon approval or qualified approval by the Board of Directors of any plans submitted pursuant to Section 7.02 above, the Board of Directors shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in this Declaration which benefit or encumber the Lot or portion of the Property, and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the

Board of Directors to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.05. Written Notification of Disapproval. In any case where the Board of Directors disapproves any plans submitted hereunder, the Board of Directors shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.03. In any such case, the Board of Directors shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.06. Failure of Board of Directors to Act. If any applicant has not received notice of the Board of Directors approving or disapproving any plans within 35 days after submission thereof; said applicant may notify the Board of Directors in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Board of Directors not later than the later of:

- a. 15 days after the date of receipt of such second notice, if such second notice is given;
- b. 70 days after the date the plans were originally submitted.

Section 7.07. Board of Director's Right to Promulgate Rules and Regulations. The Board of Directors may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Board of Directors to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.08. Delegation of Functions. The Board of Directors may authorize its staff, subcommittees, or individual members of the Board of Directors to perform any or all of the functions of the Board as long as the number and identity of such staff or members, and their functions and scope of authority have been established by a resolution of the entire Board of Directors. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Board of Directors, in accordance with procedures to be established by the Board.

Section 7.09. Records of Meetings; Regulations. The Board of Directors shall keep minutes of meetings and maintain records of all votes taken at meetings. The Board of Directors shall make such records and current copies of its rules and regulations available at a reasonable place and at reasonable times for inspection by all persons.

Section 7.10. Liability of Board of Directors. No action taken by the Board of Directors or any member, committee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the

physical or other condition of any Lot or other portion of the Property. Neither the Association, nor any member, committee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Lot Owner, member, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Board of Directors agrees, by submission of such plans, that no action or suit will be brought against the Association or the Board of Directors (or any member, committee, employee or agent thereof) in connection with such submission.

**Section 7.11. Architectural Certificate.** Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Board of Directors shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Certificate") signed by a member of the Board of Directors stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Board of Directors, may be imposed for issuance of such Architectural Certificate. Any such Architectural Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

**Section 7.12. Restrictions on Change of Architectural Controls, Rules or Regulations.** The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than 67% of the total votes of all Lot Owners (excluding the Sponsor) voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least 30 days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

## ARTICLE VIII

### ENCROACHMENTS

**Section 8.01. Encroachments or Projections.** If any Unit encroaches or projects up to two (2) feet upon or over any other Unit or Lot or upon or over any portion of the Association Property or if any deck or patio servicing a Unit encroaches or projects any distance upon or over any portion of the Association Property which is in excess of the Association Property on which the deck or patio was originally installed by the Sponsor as a result of: (i) original construction, (ii) settling or shifting, or (iii) replacement, as a result of fire, condemnation, eminent domain proceedings or proceedings of similar import and effect; such encroachment or projection shall be permitted and a valid easement for such encroachment or projection and the maintenance thereof shall exist so long as such improvements shall stand. With respect to encroachment or projection of

a Unit onto or over another Lot or Unit, if such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

## ARTICLE IX

### INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, (and review at least once each year) with such deductible amounts as the Board of Directors shall deem appropriate: (1) fire and casualty insurance, (including flood insurance if required for the mortgaging of individual Units) (2) liability insurance for occurrences on the Association Property, (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association, (4) fidelity bond covering those who handle Association funds, and (5) workers' compensation insurance covering Association employees and those who perform work for the Association as follows:

1. Fire and Casualty. The policy shall cover the interests of the Association, the Board of Directors and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value, (without deduction for depreciation) of all improvements on the Property, i.e. covering the Units and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings, all machinery servicing the Units and common facilities, and, if available, improvements and betterments (including upgrading of appliances, kitchen cabinets, carpeting, and lighting fixtures, etc.) made by present or prior Lot or Unit Owners or occupants, excluding (i) the land and foundations, and (ii) the personal property of Lot Owners and occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, sprinkler leakage (if applicable), debris removal, vandalism, malicious mischief, windstorm and water damage, (ii) inflation guard, or Blanket property limits (iii) coverage for loss of maintenance assessments from Lot Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of any right to claim by way of subrogation against individual Lot Owners and the members of their households and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association, (v) that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Lot Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Lot Owners or mortgagees, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control, (vii) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated or suspended, without at least 30 days' prior written notice to all of the insureds (10 days notice for non-payment of premium), including all mortgagees of Lots reported to the insurance carrier or its agent, and (viii) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain a valuation from an insurance company or from such other source as the Board of



Directors shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

**Flood Insurance.** If any portion of the Property is located in an area identified by the Federal Emergency Management Agency as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Units and other insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program or 100% of the current replacement cost of all such Units and other insurable property, whichever is less.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less, shall be payable to the Association, and if \$50,000.00 or more, to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Lot Owners pursuant to Section 9.02 of this Declaration. This \$50,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (b) of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Board of Directors. The obligation to restore or reconstruct after damage due to fire or other insured peril supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

The interest of the Association, each Lot Owner and such Lot Owner's known mortgagee shall be acknowledged on the policy, as their interests may appear. Each Lot Owner and such Owner's known mortgagee shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished by the Board of Directors to all mortgagees of Lots requesting the same for a reasonable charge.

2. **Liability.** The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Lot Owners as their interests may appear, but not the liability of Lot Owners arising from occurrences within such Owner's Unit or on such Owner's Lot. The policy shall include the following endorsements: (i) commercial general liability including bodily injury, property damage and personal injury, (libel, slander, false arrest and invasion of privacy), (ii) medical payments, (iii) cross liability under which the rights of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured, (iv) "severability of interest" precluding the insurer from denying coverage to a Lot

Owner because of negligent acts of the Association or any other Lot Owner, (v) contractual liability, and (vi) host liquor liability coverage with respect to events sponsored by the Association.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least 30 days' prior written notice to the insureds (10 days for non-payment of premium), including all known mortgagees of Units or Lots as shown on the records of the Association. The Board of Directors shall review such coverage at least once each year.

Until the first meeting of the Board of Directors after the first annual meeting of Lot Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts (wrongful performance or failure to perform) of a director or officer of the Association. The policy shall be on a "claims made" and shall include all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each claim. The policy shall provide for "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as obligee and be in an amount not less than a sum equal to three (3) months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall provide that the bond may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 30 days' prior written notice to the Association (10 days notice for non-payment of premium) and to all institutional first mortgagees of Lots whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot.

5. Workers' Compensation. To the extent deemed reasonable and necessary by the Board of Directors, workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage, and hired and non-owned vehicle coverage.

No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from

reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

**Deductible.** With respect to property insurance, the deductible shall apply to each occurrence, not each item of damage. The Association may pay the portion for which an individual Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

**Section 9.02. Restoration or Reconstruction After Fire or Other Casualty: Responsibility for Insurance Deductible.** In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by or through the Association, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Units in a building are destroyed or substantially damaged and the Owners of 75% or more of all Lots and of all Lots in the building decide within 90 days after such damage or destruction not to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the Board of Directors, to their insured property in relation to the total damage (including demolition) to all the insured property, provided, however, that no payment shall be made to a Lot Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Lot.

In the event that insurance proceeds are, for any reason, including the deductible amount or insurance trustee's fees, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against the Lot Owners of the damaged property, which special assessment shall be levied in proportion to the damage, as determined by the Board of Directors, to their insured property in relation to the total damage to all the insured property. If the Board of Directors cannot reasonably determine the allocation of damage among Units and Association Property, the insufficiency of funds can be deemed a common expense.

In the event of damage or destruction of any Unit or other improvements on the Property as a result of fire or other casualty covered by insurance obtained by or through the Association, the deductible amount of any insurance proceeds shall apply to each occurrence, not to each item of damage, and shall be funded as follows:

1. If the property is damaged from a cause which emanates from improvements which the Association has the responsibility to maintain, the Association shall be responsible for the deductible amount, except that, if the cause of such damage is the result of gross negligence or the wantonly malicious act of any Owner (or of a member of such Owner's family or of a tenant of such Owner or of a guest or invitee of such Owner or of a member of such Owner's family) the Owner shall be responsible for such deductible amount.

2. If the property is damaged from a cause which emanates from or within a Unit the Owner or Owners of such Unit shall be responsible for the deductible amount.

The Association may, at its option, pay the deductible amounts for which an individual Owner is responsible, and the amounts so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Association, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Lot Owner or any other party shall have priority to receive any portion of such surplus over such Lot Owner's mortgagee.

**Section 9.03. Insurance Carried by Unit Owners.** Each Unit Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty and theft coverage for such Owner's personal property, (2) coverage for such Owner's personal liability within such Owner's Unit and on such Owner's Lot and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

**Section 9.04 Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property.** In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Lots, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

## ARTICLE X

### GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots or Units, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property (including temporary signs advertising property for sale or rent) except with the consent of the Board of Directors.

Section 10.02. No Animals, Birds and Insects. Dogs that weigh over forty (40) pounds shall be prohibited. No animals, birds or insects shall be kept or maintained on any Lot on which a Unit is constructed or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. In any event, pets may be allowed outdoors only when accompanied by a responsible person and leashed. The Board of Directors of the Association shall have the right to require any Lot Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to permanently remove from the Development any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Lot Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled. All dogs must be leashed when on the Property.

Section 10.03. Protective Screening and Fences. Any screen, planting, fence enclosures or walls initially placed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Board of Directors. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said Lot or other portion of the Property unless approved by the Board of Directors. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate, outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Board of Directors, so as to provide access to persons making such pick-up. The Board of Directors may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All facilities for the storage or disposal of trash, shall be kept in a clean and sanitary condition.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or

maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association's Board of Directors.

Section 10.06. No Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Lot Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 10.07. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association.

Section 10.08. No Television and Communication Antennas. No outside television, radio, "C.B." or other communication antenna shall be erected on any Lot or other portion of the Property except satellite dishes of such a size and in such a location as approved by the Association's Board of Directors.

Section 10.09. Trees and Other Natural Features. After the transfer of title by the Sponsor to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Association's Board of Directors. The Association's Board of Directors in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

Section 10.10. Residential Use Only. Except as provided in Section 10.11 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto except that, prior to transfer of title by the Sponsor to all of the Property, the Sponsor may use one or more Lots or other portions of the Property for model homes and/or a real estate sales office.

Section 10.11. No Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry shall be conducted on the Property without the consent of the Board of Directors, except (i) by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots and Units and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above; to the extent approved by the Town of Ogden.

Section 10.12. No Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association's Board of Directors.

**Section 10.13. No Oversized, Commercial, Recreational, or Unlicensed Vehicles, Camper Bodies, Boats or Trailers.** Unless used in connection with the construction or sale of Lots and Buildings by the Sponsor, or maintenance of the Property, or unless garaged or otherwise consented to by the Board of Directors of the Association, the following shall not be permitted on the Property:

- a. oversized vehicles (vehicles which will not fit into a garage);
- b. commercial vehicles (as determined by the Board in its sole discretion);
- c. recreational vehicles;
- d. unlicensed motor vehicles of any type;
- e. camper bodies;
- f. boats or trailers.

**Section 10.14. No Parking on Private Road.** No parking along the private roadway within the Property shall be permitted.

**Section 10.15. No Clotheslines.** No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Association's Board of Directors.

**Section 10.16. Lease of Entire Unit Only.** An Owner shall not lease any portion of a Unit (other than the entire Unit).

**Section 10.17. Initial Lease Term of Unit.** No lease of a Unit shall be for an initial term of less than six (6) months.

**Section 10.18. No Operation of Snowmobiles, Motorcycles, All Terrain Vehicles or Similar Motor Vehicles.** The operation of snowmobiles, motorcycles, all terrain vehicles or similar vehicles is prohibited within the Property unless authorized by the Association's Board of Directors.

**Section 10.19 No Rock Salt.** Owners shall not use rock salt to deice patios, walks or stoops.

**Section 10.20 "55 or over".** No Unit is to be sold or rented other than in compliance with the terms of the Zoning Code of the Town of Ogden and the Fair Housing Act relative to persons who are "55 years of age or older."

## ARTICLE XI

### ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

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

Section 11.02. Enforceability.

a. Actions at Law or Suits in Equity. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Sponsor and the Association (being hereby deemed the agent for all of the Owners), and by any member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or of the rules and regulations of the Association or any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

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

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise



enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Lot Owner, or (2) any family member, tenant, guest or invitee of the Lot Owner, or (3) a family member or guest or invitee of the tenant of the Lot Owner, or (4) a guest or invitee of (i) any member of such Lot Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot owned by such Owner.

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

In addition to the above, if the Board of Directors determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location, the height to which, or the manner in which it has been permitted to grow, is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

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

**Section 11.07. Amending Declaration.** The Sponsor, during the time it shall own any portion of the Property, or the Association may make amendments to this Declaration to correct omissions or errors, which amendments shall not substantially or adversely modify rights of any Owner without such Owner's written consent. Notwithstanding the foregoing, the Additional Property (as discussed in Section 2.02 of this Declaration) may be subjected to the provisions of the Declaration by the Sponsor without the consent of the Owners.

Except as otherwise specifically provided for in this Declaration, including Sections 2.02, 3.10, 4.05, 5.06, and the above portion of this Section 11.07, the Board of Directors on its own initiative, or pursuant to a written petition signed by Owners of not less than 25 percent of the Lots owned by persons independent of the Sponsor, may propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 4.07 herein for the purpose of considering such proposed amendment. Notice shall be given as required by Section 4.07.

The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of Owners of 67% or more of the total number of Lots shall be required for approval of a proposed amendment, except that (i) an amendment to shorten the duration of this Declaration or to terminate this Declaration shall require the affirmative vote of Owners of not less than 80% of the total number of Lots after a hearing as provided in Section 11.10 below, and (ii) so long as the Sponsor holds title to any portion of the Property, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld; and (iii) no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date or initial date set for voting on the proposed amendment.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose Owners specifically consent in writing to such termination, extinguishment or modification, except as provided in Section 11.10 of this Declaration.

**Section 11.08. Owner Responsible for Tenants and Guests.** Any lease of a Unit shall provide and specify in writing within the lease specific reference to the "Declaration" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant or any guest of a Lot Owner or Tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings are not commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

**Section 11.09. When Amendment or Termination Becomes Effective.** Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County where the Property is situated. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. Duration. This Declaration shall continue with full force and effect perpetually unless terminated or its duration shortened by affirmative vote of not less than 80% of the total number of Lot Owners after a Hearing is held in accordance with Section 4.07 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, duration, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Lot Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Section 11.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

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

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

Section 11.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority with jurisdiction over the Property, or by specific restrictions imposed by any deed or lease.

Section 11.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.14. Effect of Unenforceability or Invalidity of Provision of Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII

### GENERAL

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

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

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

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

Section 12.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

**OGDEN CENTER DEVELOPMENT CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**PIRATES COVE HOMEOWNERS'  
ASSOCIATION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LOPRESTI HOMES CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
**Michael J. LoPresti**

\_\_\_\_\_  
**Joan LoPresti**

\_\_\_\_\_  
**Michael S. LoPresti**

\_\_\_\_\_  
**Tracy L. LoPresti**

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF MONROE )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF MONROE )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF MONROE )

On the \_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**

**REAL PROPERTY SUBJECT TO DECLARATION**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Ogden, County of Monroe and State of New York, more particularly described as Lots AR80A - AR80N, and AR80P - AR80Y, inclusive of Hickory Hollow Senior Community, as shown on a maps filed in the Monroe County Clerk's Office in Liber 303 of Maps at page 80.**

**SCHEDULE B**

**ADDITIONAL PROPERTY TO BE SUBJECT TO DECLARATION**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Ogden, County of Monroe and State of New York, more particularly described as Lot R79 of Hickory Hollow Senior Community, as shown on a map filed in the Monroe County Clerk's Office in Liber 303 of Maps at page 80.**



**EXHIBIT H**

**CERTIFICATE OF INCORPORATION FOR ASSOCIATION**

**OF**

**PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**

**Under Section 402 of the Not-for-Profit Corporation Law**

(

(

(

(

(

(

(

(

(

(

(

State of New York }  
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **August 18, 2006**



A handwritten signature in black ink, appearing to be "D. A. ...", is written over the seal area.

*Special Deputy Secretary of State*

CERTIFICATE OF INCORPORATION OF  
PIRATES COVE HOMEOWNERS ASSOCIATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the sole incorporator, for the purpose of forming a corporation under Section 403 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

FIRST: The name of the Corporation is Pirates Cove Homeowners Association, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) of Section 402 of the Not-for-Profit Corporation Law. The purposes for which the corporation is formed is to provide for the maintenance, preservation and architectural control of the community facilities, common areas and the exterior of the dwelling units and yards of the residential community known as Hickory Hollow Senior Community, and to insure the enjoyment of rights, privileges and easements with respect thereto for the benefit of those persons who own or occupy certain dwelling units in such community which is located in the Town of Ogden, County of Monroe and State of New York, which community is the Hickory Hollow Senior Community which lands are hereinafter referred to as the "Property".

THIRD: In furtherance of the purposes of the Corporation and in addition to the powers provided for by law, the Corporation shall have the power:

- (a) to purchase, lease, hire, receive donations of, or otherwise acquire, hold, own, develop, improve, maintain, and operate, and to aid and subscribe toward the acquisition, development or improvement of, real and personal property, and rights and privileges therein, suitable or convenient for any of the purposes of the Corporation;

(b) to make payment of its liabilities and to secure the same (i) by the mortgage of all or any part of its real property, fixtures and income of the Corporation and/or (ii) by the pledge of all or any part of the personal property of officers and the liens on such property, and to guarantee the completion of any work which it may be interested in financing of the purposes of the Corporation;

(c) to lease, sell or donate to the State of New York, the County of Madison, or any Town or Order or any agency, subdivision, authority or instrumentality of said State, County, Town or to any condominium or homeowners' association or to any club or other similar organization any of the property or facilities acquired or constructed by the Corporation, when in the opinion of the Board of Directors such leasing, sale or donation is desirable for and beneficial to the social welfare of the members of the Corporation, upon such terms and conditions as the Board of Directors may deem acceptable;

(d) to undertake and prepare or cause to be prepared, studies and plans (for submission to any public authority or for its own use) which relate to any phase or aspect of physical, social or cultural development of those who reside on the Property and to create or cause to be created, facilities, boards, councils, associations and the like for the supervision and implementation thereof;

(e) to fix, levy, collect and enforce payment by any lawful means all charges or assessments for the use of the facilities or, for the services rendered by the Corporation, not for profit, but for the purpose of providing for the payment of the expenses of the Corporation, the cost of the construction, improvement, repair, equipping, furnishing, maintenance and operation of its facilities, the cost of its services and the principal and interest on its obligations;

(g) to accept, receive and accept donations or gifts of money or property from the State of New York, the County of Monroe or any other governmental agency or instrumentality thereof, or from any individual, to raise money for any particular facility or service which the Corporation proposes to provide by means of a special assessment within the property, generally or in part thereof to be specially benefited thereby and to condition the providing of such facility or service upon the voluntary payment of all or a specified percentage of the agreed amount of such assessment;

(h) to enforce any protective covenant or restriction, and any other covenant or obligation for the payment of any charges, assessments or fees, not for profit, but for the purpose of providing for the payment of the expenses of the Corporation, the cost of construction, improvement, repair, equipping, furnishing, maintenance and operation of its facilities, the cost of the services, and the principal and interest on its obligations and to create any facilities, boards or associations, deemed to be convenient by the Board of Directors for such enforcement;

(i) to have and exercise, to the extent necessary or desirable for the accomplishment of the aforesaid purposes and to the extent they are not inconsistent with the purpose of this Corporation, any and all powers conferred upon corporations of similar character by the laws of the State of New York.

FOURTH: This Corporation is a "Type A" Not-for-Profit Corporation as defined under Section 201 of the Not-for-Profit Corporation Law of the State of New York.

FIFTH: The office of the Corporation shall be located in the County of Monroe and State of New York.

SIXTH: The management of the affairs of the Corporation shall be vested in a Board of Directors of not less than three (3) Directors, the exact number of Directors to be established by the By-Laws of the Corporation.

SEVENTH: The names and addresses of the initial members of the Board of Directors of the Association are:

Michael S. LoPresti  
24 West Avenue, Suite 206  
Spencerport, New York 14559

Tracy L. LoPresti  
24 West Avenue, Suite 206  
Spencerport, New York 14559

Diane Marino  
24 West Avenue, Suite 206  
Spencerport, New York 14559

EIGHTH: The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of the State of New York shall mail a copy of any process against it served upon him is: Phillip Lytle LLP, 1300 First Federal Plaza, Rochester, New York 14614.

IN WITNESS WHEREOF, I have signed this Certificate of Incorporation and hereby affirm the same to be true under the penalties of perjury this 6th day of April, 2006.

  
Karen A. DiNardo, Incorporator  
1300 First Federal Plaza  
Rochester, New York 14614

CERTIFICATE OF INCORPORATION

OF

PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

FILED

2005 APR 7 AM 11:14

SERVICE CODE: AT  
DRAWDOWN ACCOUNT

Filed by:  
Phillips Lytle LLP  
1300 First Federal Plaza  
Rochester, New York 14614  
Phone No.: (585) 238-2000

RECEIVED

2005 APR 7 AM 10:05

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 07 2005

TAX BY: *Tim B*

*Monroe*

S

470



FILING RECEIPT

B-5

-----  
ENTITY NAME: PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: A COUNTY: MONR

SERVICE COMPANY: PHILLIPS LYTLE LLP

SERVICE CODE: AT

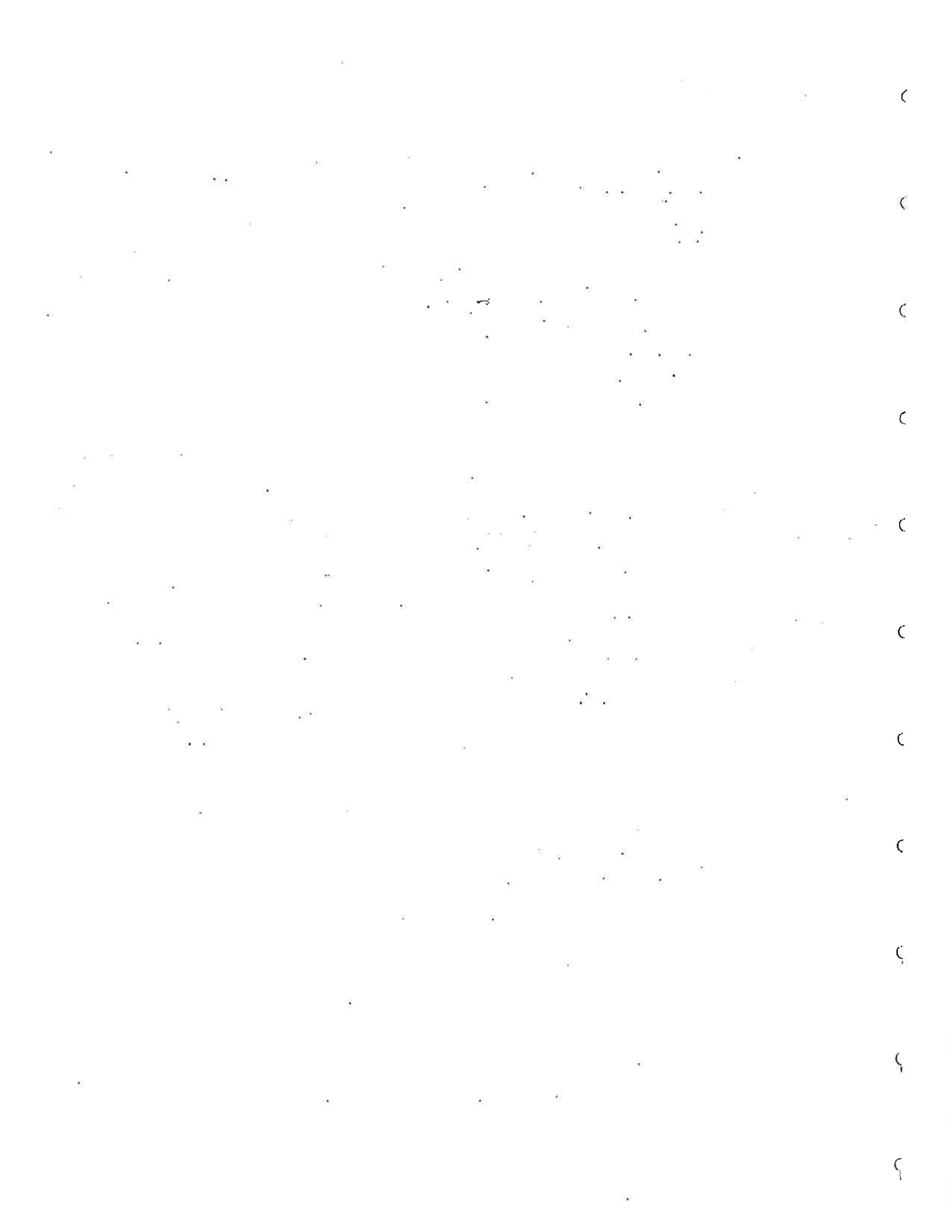
-----  
FILED: 04/07/2006 DURATION: PERPETUAL CASH#: 060407000470 FILM #: 060407000452

ADDRESS FOR PROCESS  
-----  
PHILLIPS LYTLE LLP  
1300 FIRST FEDERAL PLAZA  
ROCHSTER, NY 14614

EXIST DATE  
-----  
04/07/2006

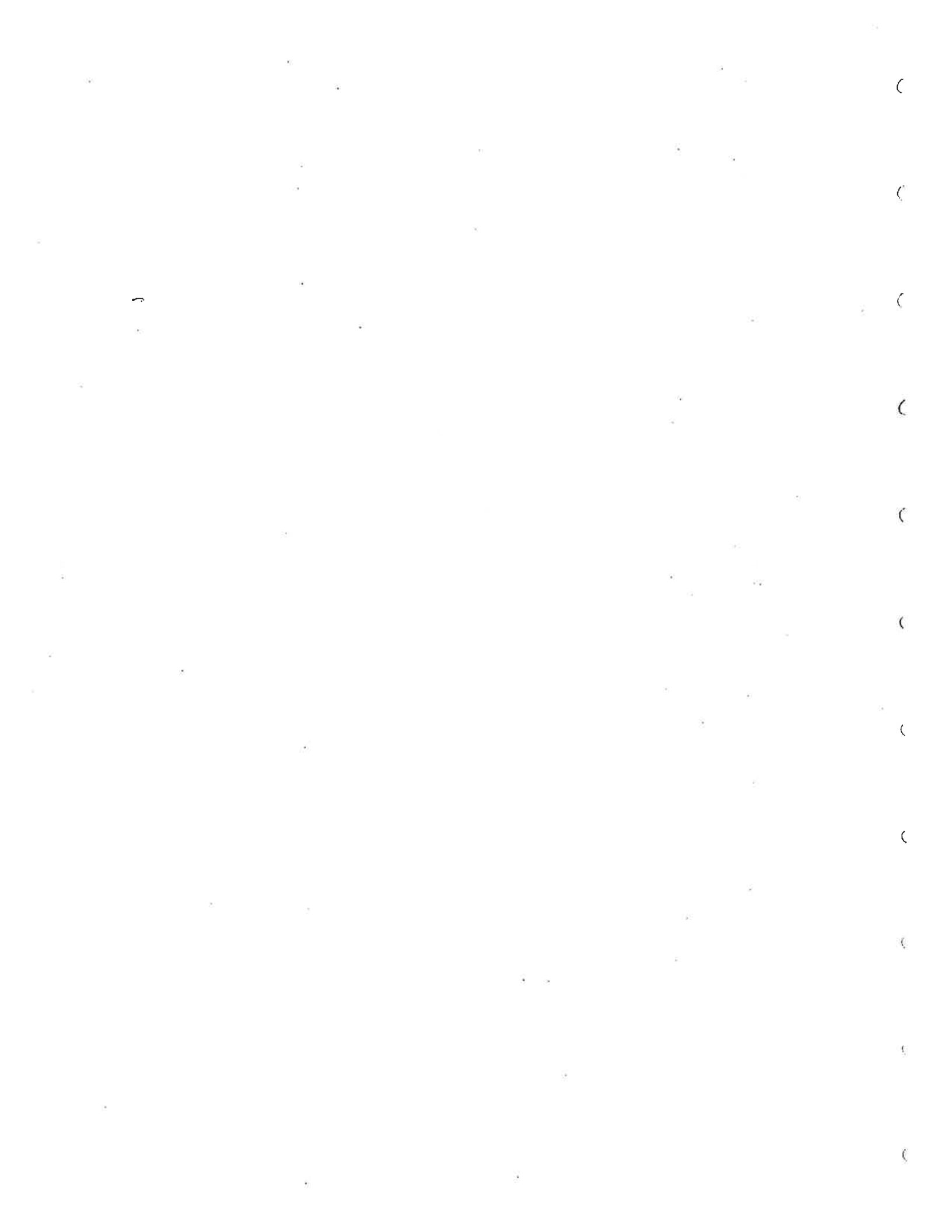
REGISTERED AGENT  
-----

-----  
FILER FEES 110.00 PAYMENTS 110.0  
-----  
PHILLIPS LYTLE LLP FILING 75.00 CASH 0.0  
1300 FIRST FEDERAL PLAZA TAX 0.00 CHECK 0.0  
ROCHESTER, NY 14614 CERT 0.00 CHARGE 0.0  
COPIES 10.00 DRAWDOWN 110.0  
HANDLING 25.00 OPAL 0.0  
REFUND 0.0  
-----



**EXHIBIT I**

**BY-LAWS OF ASSOCIATION**



**EXHIBIT I**

---

**BY-LAWS  
OF  
PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**

**NAME:** Hickory Hollow Senior Community (Resubdivision of Lots 78, 79)

**SPONSOR:** LoPresti Homes Corp.

**DATED:** \_\_\_\_\_

**Karen A. DiNardo, Esq.  
PHILLIPS LYTTLE LLP  
1400 First Federal Plaza  
Rochester, New York 14614**

---

(

(

(

(

(

(

(

(

(

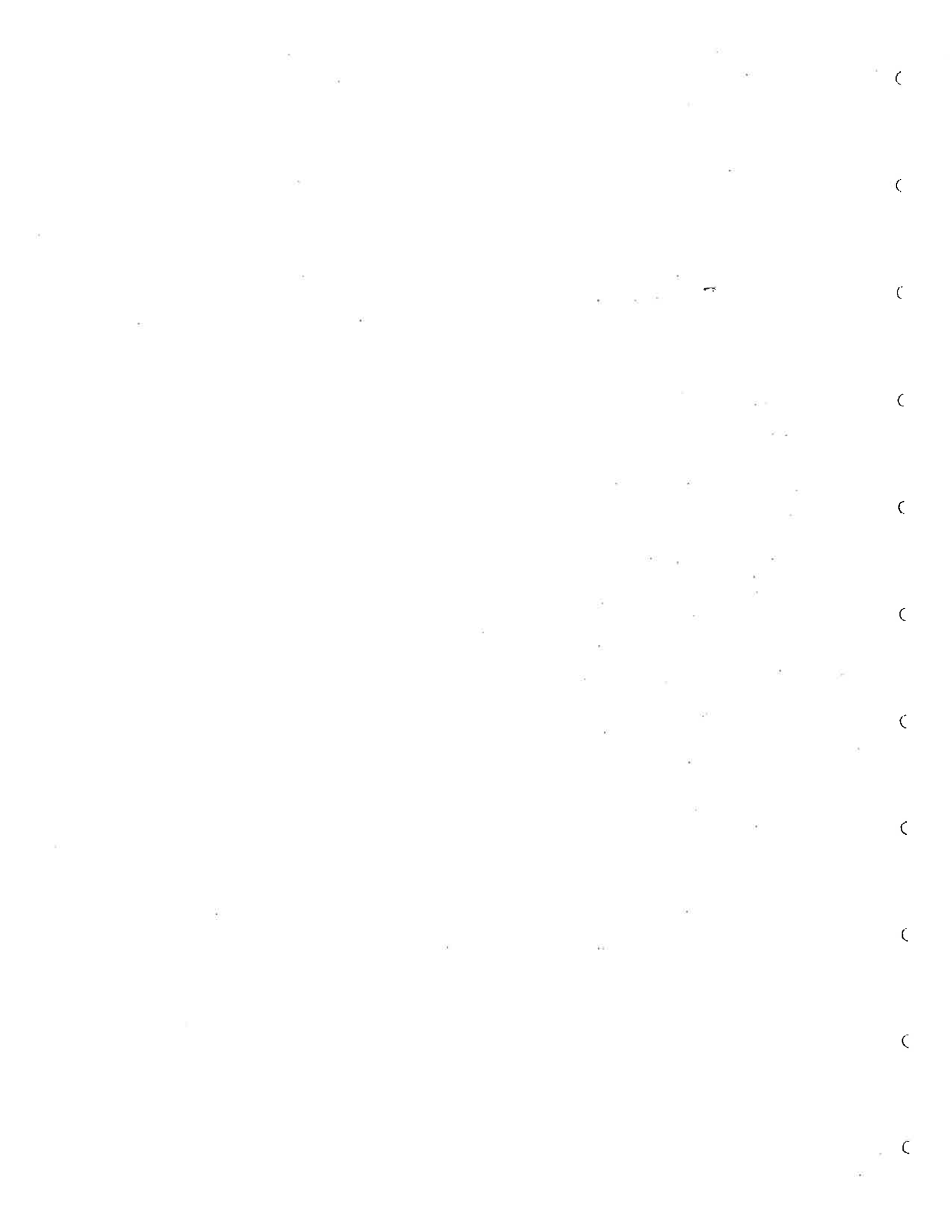
(

(

**BY-LAWS OF  
PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**

Table of Contents

	<u>Page</u>
<b>ARTICLE I</b>	
<b>NAME AND LOCATION</b> .....	1
Section 1.01. Name and Location.....	1
<b>ARTICLE II</b>	
<b>DEFINITIONS</b> .....	1
Section 2.01. Declaration.....	1
Section 2.02. Lot 1 .....	1
Section 2.03. Member.....	1
Section 2.04. Lot Owner.....	1
Section 2.05. Property .....	1
Section 2.06. Sponsor.....	2
Section 2.07. Unit .....	2
<b>ARTICLE III</b>	
<b>MEMBERS</b> .....	2
Section 3.01. Membership in the Association .....	2
Section 3.02. Right of Sponsor to Assign.....	2
Section 3.03. Voting Rights.....	2
Section 3.04. Voting Regulations.....	2
Section 3.05. Corporate Members .....	2
Section 3.06. Joint or Common Ownership.....	2
Section 3.07. Absentee Ballots and Proxy Voting.....	2
<b>ARTICLE IV</b>	
<b>MEETINGS OF MEMBERS</b> .....	3
Section 4.01. First Meeting and Annual Meeting.....	3
Section 4.02. Special Meetings.....	3
Section 4.03. Notice of Meetings .....	3
Section 4.04. Quorum.....	4
Section 4.05. Waiver and Consent.....	4
Section 4.06. Actions Without a Meeting.....	4
Section 4.07. Appointment of Inspectors of Election.....	4
Section 4.08. Duties of Inspectors of Election .....	4
Section 4.09. Order of Business at Meeting .....	4
<b>ARTICLE V</b>	
<b>BOARD OF DIRECTORS</b> .....	5
Section 5.01. Number and Qualification of Directors .....	5
Section 5.02. Nominations.....	5
Section 5.03. Election and Term .....	7
Section 5.04. Vacancies.....	7
Section 5.05. Removal of Members of Board of Directors .....	7
Section 5.06. Compensation .....	8
Section 5.07. Organizational Meeting .....	8





Section 5.08. Regular Meetings.....	8
Section 5.09. Special Meetings.....	8
Section 5.10. Quorum and Voting.....	8
Section 5.11. Action Without a Meeting.....	8
Section 5.12. Regulations.....	8
Section 5.13. Powers and Duties.....	8
Section 5.14. Managing Agent and Manager.....	10
<b>ARTICLE VI OFFICERS.....</b>	<b>10</b>
Section 6.01. Officers.....	10
Section 6.02. Election and Appointment of Officers.....	10
Section 6.03. Term and Vacancies.....	10
Section 6.04. Removal of Officers.....	11
Section 6.05. President.....	11
Section 6.06. Vice President.....	11
Section 6.07. Secretary.....	11
Section 6.08. Treasurer.....	11
Section 6.09. Other Officers.....	11
Section 6.10. Delegation of Authority and Duties; Control of Officers.....	11
Section 6.11. Fidelity Bonds.....	11
<b>ARTICLE VII COMMITTEES.....</b>	<b>12</b>
Section 7.01. Committees of Directors.....	12
Section 7.02. Committees of Lot Owners.....	12
Section 7.03. Rules and Records.....	12
<b>ARTICLE VIII FINANCE AND RECORDS.....</b>	<b>12</b>
Section 8.01. Checks.....	12
Section 8.02. Fiscal Year.....	12
Section 8.03. Annual Reports.....	12
Section 8.04. Record Keeping.....	13
Section 8.05. Separate Account for Capital Reserve Funds.....	13
Section 8.06. Books, Records and Legal Documents.....	13
<b>ARTICLE IX GENERAL POWERS OF THE ASSOCIATION.....</b>	<b>14</b>
Section 9.01. Common Expenses.....	14
Section 9.02. No Active Business to be Conducted for Profit.....	15
Section 9.03. Miscellaneous Income.....	15
Section 9.04. Special Services.....	15
Section 9.05. Delegation of Duties.....	16
Section 9.06. Acquisition, Lease, Sale or Exchange of Real Property.....	16
<b>ARTICLE X CORPORATE SEAL OPTIONAL.....</b>	<b>16</b>
Section 10.01. Corporate Seal Optional.....	16
<b>ARTICLE XI AMENDMENTS.....</b>	<b>16</b>
Section 11.01. Alteration, Repeal or Amendment.....	16
Section 11.02. Form of Amendment Proposals.....	17

(

(

(

(

(

(

(

(

(

(

(

**Section 11.03. Nonmaterial Errors or Omissions ..... 17**  
**Section 11.04. Effective Date of Amendment..... 17**  
**ARTICLE XII MISCELLANEOUS ..... 17**  
**Section 12.01. Notices ..... 17**  
**Section 12.02. Conflict with Certificate of Incorporation or with Declaration ..... 18**  
**Section 12.03. No Waiver for Failure to Enforce..... 18**  
**Section 12.04. Gender ..... 18**  
**Section 12.05. Captions ..... 18**  
**Section 12.06. Severability ..... 18**

C  
C  
C  
C  
C  
C  
C  
C  
C  
C  
C

F

**BY-LAWS  
OF  
PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

Section 1.01. Name and Location. The name of the corporation is the Pirates Cove Homeowners' Association, Inc. hereinafter referred to as the "Association". The principal office of the corporation shall be located in the Town of Ogden, County of Monroe and State of New York.

**ARTICLE II**

**DEFINITIONS**

As used in these By-Laws, the following terms shall be defined as:

Section 2.01. Declaration. The document entitled A Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens – Pirates Cove Homeowners' Association, Inc. imposed by the Sponsor on the "Property", as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.02. Lot. Any portion of the Property under the scope of the Declaration (with the exception of Association Property as defined in the Declaration) and (i) identified as a separate parcel on the tax records of the Town of Ogden or (ii) shown as a separate lot on any recorded or filed subdivision map.

Section 2.03. Member. The Owner of a Lot or Unit subject to the Declaration whether the holder of record title of the fee interest in the Lot or Unit or the record holder of any leasehold estate, whether or not such holder actually resides on the part of the Property.

Section 2.04. Lot Owner. The holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.

Section 2.05. Property. All lands which are subject to the Declaration.

Section 2.06. Sponsor. LoPresti Homes Corp., its successors and assigns.

Section 2.07. Unit. Any residential dwelling situated on the Property or any dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Ogden) which has been occupied as a residence.

### ARTICLE III

#### MEMBERS

Section 3.01. Membership in the Association. The members of the Association shall be only Lot Owners and the Sponsor for as long as the Sponsor holds title to a Lot.

Section 3.02. Right of Sponsor to Assign. The Sponsor may, subject to (i) a duly filed amendment to the offering plan which has been filed with the New York State Department of Law for the offering of interests in the Association together with the Lots and (ii) the written consent of the percentage of Lot Owners as set forth in the Declaration, assign its membership, in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 3.03. Voting Rights. Each Lot Owner shall have one (1) vote, except to the extent such right to vote conflicts with the provisions of Sections 4.01 or 5.01 of these By-Laws. Any Lot Owner who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Lot Owner's voting rights be suspended for nonpayment of Assessments to the Association.

Section 3.04. Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Lot Owners, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot Owners for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.05. Corporate Members. Any votes of a corporate Lot Owner may be cast by an appropriate officer of such corporation.

Section 3.06. Joint or Common Ownership. If a Lot is owned by more than one person, as joint tenants, tenants by the entirety or as tenants in common, the persons owning such Lot shall reach agreement as to the matter voted upon and cast their vote for their Lot.

Section 3.07. Absentee Ballots and Proxy Voting. On any matter submitted to the Lot Owners for vote, other than the election of Directors of the Association, any Lot Owner entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Lot Owner intends to vote and that the Lot Owner votes for or against the same. Lot Owners unable to attend a

meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the Secretary of the Association.

## ARTICLE IV

### MEETINGS OF MEMBERS

Section 4.01. First Meeting and Annual Meeting. The first meeting of the Association shall be held not later than six (6) months from the date of the transfer of the first Lot. The first annual meeting of the Association shall be held within 30 days after (i) the Sponsor has transferred title to nine (9) Lots or (ii) within 12 months after the first meeting of the Association, whichever first occurs. Thereafter, there shall be an annual meeting of the Lot Owners on the first Tuesday of the month in which the first annual meeting was held or on such other date and time and at such place convenient to a majority of the Lot Owners as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. Failure to hold an annual meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts. The first meeting of the Association or the first annual meeting of the Association may be called by the Board of Directors and held at any time earlier than the times provided for herein.

Section 4.02. Special Meetings. Special Meetings of the Lot Owners may be called at any time by the President or by the Board of Directors, or at the request in writing of Lot Owners of the Association holding not less than one-third (1/3) of the votes entitled to be cast at the meeting.

Section 4.03. Notice of Meetings. Not less than seven (7) days or more than 60 days before the date of any Annual or Special Meeting of Lot Owners, the Association shall give to each Lot Owner entitled to vote at such meeting, written or printed notice stating the time and place of the meeting, and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Lot Owner personally, or by leaving it at such Lot Owner's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage paid, addressed to the Lot Owner at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Lot Owners, Annual or Special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum. Except as may otherwise be provided in these By-Laws, the presence in person or by proxy of Lot Owners having one-half (1/2) of total authorized votes of all Lot Owners shall constitute a quorum at any meeting of Lot Owners. If any meeting of Lot Owners cannot be held because a quorum is not present, a majority of the Lot Owners who are present at

such meeting, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present in person or by proxy. The quorum required in each reconvened meeting shall be one-half of the quorum required for the previous meeting. The act of a majority of the Lot Owners present at a meeting at which a quorum was present shall be the act of the Lot Owners unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

**Section 4.05. Waiver and Consent.** Wherever the vote of the membership is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Lot Owners who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

**Section 4.06. Actions Without a Meeting.** All actions, except removal of a Director, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of, and in a writing or writings signed by Lot Owners having the percentage of voting power required to take such action if it had been taken at a meeting. Such writings shall set forth the action so taken and shall be filed with the Secretary of the Association. A copy of such action when so approved shall be mailed promptly to all Lot Owners.

**Section 4.07. Appointment of Inspectors of Election.** The Board of Directors may, in advance of any meeting of the Lot Owners, appoint one or more inspectors to act at the meeting or at any adjourned meeting thereof. If inspectors are not so appointed in advance of the meeting, the person presiding at such meeting may, and on the request of any Lot Owner entitled to vote thereat shall, appoint one or more inspectors. In case any inspector appointed fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to faithfully execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. No person who is a candidate for the office of Director of the Association shall act as an inspector at any meeting of the Lot Owners at which Directors are elected. An inspector of elections need not be a member of the Association.

**Section 4.08. Duties of Inspectors of Election.** Whenever one or more inspectors of election may be appointed as provided in these By-Laws, such inspector or inspectors shall determine the number of Lot Owners entitled to vote, the Lot Owners represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or consents, determine the result, and to do such acts as are proper to conduct the election or vote with fairness to all Lot Owners.

**Section 4.09. Order of Business at Meeting.** The order of business at all regular meetings of members of the Association shall, unless otherwise determined by the Board of Directors from time to time, be as follows:



- (1) Calling of meeting to order;
- (2) Proof of notice of meeting or waiver of notice;
- (3) Reading of minutes of preceding meeting;
- (4) Reports of officers;
- (5) Reports of committees;
- (6) Appointment of inspectors of election;
- (7) Election of Directors, if any;
- (8) Unfinished and/or old business;
- (9) New business;
- (10) Adjournment.

## ARTICLE V

### BOARD OF DIRECTORS

Section 5.01. Number and Qualification of Directors. The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three (3) persons designated by the Sponsor. The Board of Directors shall meet within 90 days after the conveyance of title to the first Lot by the Sponsor to a purchaser. Within 30 days after title has been transferred to 13 Lots, one of such Directors shall resign and shall be replaced by a person who must be a Lot Owner independent of the Sponsor and who shall be elected to the Board by those Lot Owners independent of the Sponsor. Such elected member shall serve until the first annual meeting of the Association (See Section 4.01 above). Subject to the rights of the Sponsor to appoint or elect a portion of the Directors as provided in Section 5.03 below, a full Board shall be elected by the Lot Owners at the first annual meeting of the Association held pursuant to Section 4.01 of these By-Laws. Commencing with the election at the annual meeting next following the transfer of title to 13 Lots, the Board of Directors shall be increased to five persons. (If there has not been a transfer of title to 13 Lots at the time of an annual meeting, the Board of Directors shall continue to consist of three (3) persons.) All elected Directors shall be (i) Lot Owners, (ii) spouses of Lot Owners, (iii) members or employees of a partnership Lot Owner, (iv) officers, directors, shareholders, employees or agents of a corporate Lot Owner or (v) designees of the Sponsor.

Section 5.02. Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who may or may not be a Director, and two (2) or more other Lot Owners of the Association. Nominations may also be made from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least 30 days prior to each Annual Meeting of the Lot Owners and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its sole discretion, determine, but not less than the number of vacancies that are to be filled.

Section 5.03. Election and Term. Except for members of the Board of Directors initially appointed by the Sponsor, who shall serve until the first annual meeting of the Association

as provided in Section 4.01 of these By-Laws or until replaced by the Sponsor, whichever first occurs, the term of office of members of the Board of Directors shall be fixed at three (3) years, except that the term of office of the minority of persons elected as members of the Board of Directors receiving the lowest number of votes at the first annual meeting of the Association or at any subsequent annual meeting at which the number of Board members is increased shall be fixed at one (1) year. Successors shall be elected to serve for terms of three (3) years. Members of the Board of Directors shall hold office until their successors have been elected. Tie votes shall be decided by a runoff election unless all parties tying agree to a drawing of lots. Voting shall be by secret written ballot which shall:

- a. set forth the number of vacancies to be filled;
- b. set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- c. contain space for a write-in for each vacancy.

The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Notwithstanding any contrary provision of these By-Laws, the Declaration and/or the Offering Plan:

- (1) the Sponsor may cast its votes to appoint or designate a majority of the Board of Directors at any election if the Sponsor owns 50% or more of the Lots at the time of such election, provided five (5) years have not passed since the date of recording of the Declaration;
- (2) whenever the Sponsor at the time of an election of the Board of Directors shall own 30% or more of the Lots, the Sponsor shall have the right to appoint up to 40% of the members of the Board of Directors, (until five (5) years after the date of recording of the Declaration, if the Sponsor owns more than 50% of the Lots, the Sponsor may cast its votes to elect a majority of the Board of Directors);
- (3) whenever the Sponsor, at the time of an election shall own at least 10%, but less than 30% of the Lots, the Sponsor shall have the right to appoint up to 20% of the members of the Board of Directors; and
- (4) whenever the Sponsor at the time of an election of the Board of Directors owns less than 10% of the Lots, the Sponsor shall have no right to appoint any member of the Board of Directors.
- (5) when the Sponsor appoints a majority of the members of the Board of Directors, such controlling Directors shall not prevent expenditures

required to comply with applicable laws or regulations or, without the consent of a majority of those Directors elected by Lot Owners independent of the Sponsor, (i) reduce the level of services described in the Offering Plan filed by the Sponsor with the New York State Department of Law for the offering of interests in the Association, (ii) prevent capital repairs to Association Property, or (iii) prevent expenditures required to comply with applicable laws or regulations.

In applying the above percentages to determine the number of directors which the Sponsor may appoint, all decimals will be rounded up to the next highest whole number.

**Section 5.04. Vacancies.** Except for (i) Directors appointed or elected by the Sponsor who shall be replaced by the Sponsor and (ii) Directors elected by the Lot Owners other than the Sponsor, who shall be replaced by the majority vote of the remaining Directors similarly elected, or, if none, by a special election by Lot Owners other than the Sponsor, any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Lot Owners of the Association.

Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Lot Owners or until a successor is elected and qualifies.

**Section 5.05. Removal of Members of Board of Directors.** Subject to the limitations as provided in this Section 5.05, at any regular or special meeting of Lot Owners, any one or more of the members of the Board of Directors elected by the Lot Owners may be removed with cause by the affirmative vote of not less than a majority of the Lot Owners other than the Sponsor or without cause by the affirmative vote not less than two-thirds (2/3) of the Lot Owners other than the Sponsor and a successor may then and there or thereafter be elected by the Lot Owners other than the Sponsor to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed without cause only by the Sponsor, and thereafter replaced by the Sponsor. Members of the Board of Directors elected or appointed by the Sponsor may be removed with cause by the Lot Owners, but their successor shall be appointed by the Sponsor. In addition, the other Directors may, by the affirmative vote of not less than two-thirds (2/3) of the other Directors, declare the position of the Director vacant in the event the person filling such position (i) shall be absent from three (3) consecutive meetings or (ii) shall be absent from 50% or more of the regularly scheduled meetings of the Board of Directors in any calendar year, (iii) is physically incapacitated or has been judicially determined to be of unsound mind.

**Section 5.06. Compensation.** Directors shall not receive any compensation or salary for their services. Any Director may be reimbursed for actual expenses incurred in the performance of duties as Director. A Director who serves the Association in any other capacity, however, may receive compensation therefor.

**Section 5.07. Organizational Meeting.** Immediately after each annual meeting of Lot Owners, the newly elected Directors and those Directors whose terms hold over shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meeting of Directors need not be given.

**Section 5.08. Regular Meetings.** Regular meetings of the Board of Directors shall be held not less than three (3) times a year without formal notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors.

**Section 5.09. Special Meetings.** Special Meetings of the Board of Directors may be called at any time at the request of the President or any two (2) Directors after not less than two (2) days' notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of, any Special Meeting, need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association or by these By-Laws.

**Section 5.10. Quorum and Voting.** Unless otherwise provided in the Declaration, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, or by these By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote of those Directors present, and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted at the meeting which might have been transacted as originally called.

**Section 5.11. Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be, and provided further that such written consent is filed with the minutes of proceedings of the Board or committee.

**Section 5.12. Regulations.** The Board of Directors may establish such regulations consistent with these By-Laws and the Declaration as they deem appropriate for the government of its actions.

**Section 5.13. Powers and Duties.** The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to the following:

- (a) Maintain, repair and replace, as necessary, all properties and facilities owned by the Association or for which the Association has maintenance responsibilities under the Declaration;
- (b) Determine and levy the maintenance assessments, special assessments and other charges as provided for in the Declaration;
- (c) Collect, use and expend the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association, and the maintenance, care and preservation of the exteriors of the Units and other improvements to the Property;
- (d) To the extent it deems the same necessary and reasonable, procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees and procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Units as it deems appropriate;
- (e) Subject to the provisions of the Declaration, repair, restore or alter the properties of the Association after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
- (f) Adopt and publish rules and regulations governing the use of the Property, and the personal conduct of the Lot Owners and other guests thereon, and establish penalties for infractions thereof;
- (g) Collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin, or seek damages from or impose penalties on Lot Owners for violations of the provisions of the Declaration or of any rules or regulations of the Association;
- (h) Pay all taxes owing by the Association, and file tax returns;
- (i) Declare the office of a member of the Board of Directors to be vacant in the event such member (i) shall be absent from three (3) consecutive meetings of the Board of Directors, or (ii) shall be absent from 50% or more of the regularly scheduled meetings of the Board of Directors in any calendar year, or (iii) is physically incapacitated or has been judicially determined to be of unsound mind;
- (j) Keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and present a statement thereof to the Lot Owners at the annual meeting of Lot Owners, or at any special meeting of Lot Owners when such a statement is

requested in writing by not less than one-fourth (1/4) of the Lot Owners entitled to vote;

- (k) Issue, or cause to be issued, upon demand by any person an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessments for any Lot, and impose a reasonable charge for issuance of such Assessment Certificate;
- (l) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Lot Owners by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration;
- (m) Enter into contracts;
- (n) Borrow money as permitted by the Declaration;
- (o) Employ a managing agent and such other persons or firms to perform such duties and services as the Board of Directors may authorize.

Section 5.14. Managing Agent and Manager. The Board of Directors may employ for the Association a managing agent and/or a manager at a compensation established by the Board of Directors, to perform such services and duties as the Board of Directors shall authorize, including but not limited to those duties listed in subdivisions (c), (d), (e), (h), (j) and (k) of Section 5.13 of these By-Laws.

## ARTICLE VI

### OFFICERS

Section 6.01. Officers. The officers of the Association shall be the President, one or more Vice Presidents, (the number thereof to be determined by the Board of Directors), the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. The President, but no other officer, must be a member of the Board of Directors.

Section 6.02. Election and Appointment of Officers. The elective officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors. Appointive officers shall be appointed at such time and shall hold their office for such terms as the Board of Directors shall determine from time to time.

Section 6.03. Term and Vacancies. Each elective officer shall hold office until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death,

resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.04. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor to such office may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 6.05. President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Lot Owners, shall, if there is no Chairman of the Board of Directors, preside at all meetings of Directors, and shall perform such other duties and functions as may be assigned to him or her by the Board of Directors. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board of Directors or these By-Laws.

Section 6.06. Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association any and all contracts or other instruments authorized by the Board of Directors, and shall perform such other duties and functions as may be assigned to him or her by the President or by the Board of Directors.

Section 6.07. Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal, if any, and corporate records of the Association, shall keep records of the Lot Owners of the Association and the mortgagees of dwelling units on the Property, and shall perform such other duties as are assigned to him or her by the President or by the Board of Directors. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

Section 6.08. Treasurer. The Treasurer shall have the custody of all monies and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and to the Board of Directors, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President or by the Board of Directors.

Section 6.09. Other Officers. Such other officers as the Board of Directors may appoint shall perform such duties and have such authority as the Board of Directors may determine.

Section 6.10. Delegation of Authority and Duties; Control of Officers. In the absence of any officer of the Association, or for any other reason the Board of Directors may deem sufficient, the Board of Directors may delegate the power or duties, or any of them, of such officers, to any other officer or to any Director or the managing agent. In addition, the Board of Directors is authorized generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

Section 6.11. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds furnish adequate

fideli ty bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.

## ARTICLE VII

### COMMITTEES

Section 7.01. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided, however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to the By-Laws or a plan of merger or consolidation.

All actions by any such committee shall be reported to the Board of Directors at its meeting next succeeding such actions. Such actions shall be subject to control, revision and alteration by the Board of Directors provided that no rights of any third parties shall be prejudiced by any such control, revision or alteration.

Section 7.02. Committees of Lot Owners. The Association shall have such committees as the Board of Directors shall deem desirable with such duties and functions as the Board shall determine to be appropriate for them from time to time. Each committee shall consist of a chairman and two (2) or more Lot Owners and shall include a member of the Board of Directors.

Section 7.03. Rules and Records. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. Each committee shall keep regular minutes of its proceedings and shall report such proceeding to the Board of Directors as required by the Board.

## ARTICLE VIII

### FINANCE AND RECORDS

Section 8.01. Checks. All checks, drafts, and orders for the payment of money, notes and other evidences of indebtedness, issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President, or Treasurer and countersigned by one Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

Section 8.02. Fiscal Year. The fiscal year of the Association shall be the 12 calendar months ending December 31 of each year, unless otherwise provided by the Board of Directors.

Section 8.03. Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation



for the preceding fiscal year prepared by a public or certified public accountant and including a certificate signed by a public or certified public accountant to the effect that the financial statement presents fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as specified therein. The statement of the financial affairs of the Association shall be prepared in accordance with the then current guidelines for "common interest realty associations" promulgated by the American Institute of Certified Public Accountants or any successor organization. Such report shall be distributed to all Lot Owners and to all mortgagees of Lots who have requested the same, 90 days after the end of each fiscal year. Taking into consideration the cost of an audit vs. a review, the complexity and volume of the Association's financial affairs and such other factors the Board of Directors deems relevant, the Board of Directors of the Association shall determine each year whether such statement shall be in the form of an audit or review, except that (i) an audit, at the expense of the Association shall be required if authorized in writing by at least 67% of all Lot Owners independent of the Sponsor and (ii) any Lot Owner or mortgage holder shall be entitled to obtain an audited statement at such Lot Owner's or mortgagee's own expense.

**Section 8.04. Record Keeping.** The Board of Directors or the managing agent retained by the Board of Directors shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meetings of the Board of Directors, minutes of the meetings of Lot Owners, and financial records and books of account of the Association, including chronological listing of receipts and expenditures, as well as a separate account for each Lot which, among other things, shall contain the amount of each maintenance assessment, special assessment and other charges, if any, against such Lot, the dates when installments of assessments are due, the amounts paid thereon, and the balance remaining unpaid.

**Section 8.05. Separate Account for Capital Reserve Funds.** Any funds of the Association collected or designated as reserves for the replacement of capital items shall be segregated from all other funds of the Association in one or more separate accounts. This shall not preclude the Association from segregating other portions of its funds in separate accounts for a specific purpose (e.g., reserves for noncapital items) or otherwise. So long as the Sponsor is in control of the Board of Directors of the Association, no reserve funds shall be used to reduce projected assessments or charges or the Sponsor's obligation to fund a deficit of the Association.

**Section 8.06. Books, Records and Legal Documents.** The Board of Directors shall make available for inspection upon reasonable notice and during normal business hours, to existing and prospective Lot Owners, tenants, title insurers, mortgagees, mortgage insurers and mortgage guarantors, current copies of the Declaration, By-Laws, Certificate of Incorporation, rules and regulations, budget, schedule of assessments, balance sheet and any other books, records and financial statements of the Association. The Board of Directors may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

## ARTICLE IX

### GENERAL POWERS OF THE ASSOCIATION

Section 9.01. Common Expenses. The Association, for the benefit of all the Lot Owners, shall pay for out of Association funds as common expenses, the following:

- a. Utilities and Related Facilities. The cost of electricity, telephone, heat, power or any other necessary utility service, if any, for the Association Property, and the cost of maintaining and/or repairing and/or replacing common gas, water, hot and cold water lines, waste removal and any utilities which costs are not otherwise directly charged or separately metered to individual Lot Owners. In the event any utility service for a Lot is paid by the Association of a kind or nature not furnished to all Lot Owners, the Association shall charge monthly to the owner of such Lot an estimated cost for such usage. However, the Association may discontinue payments of such utility service at any time, in which case each Lot Owner shall be responsible for direct payment of his share of such expense as shall be determined by the Board of Directors of the Association. The Association shall have the right to levy additional assessments against any Lot Owner to reimburse it for excessive use of any utility service by such Lot Owner in such amounts as shall be determined by the Board of Directors.
- b. Insurance. Premiums for all insurance obtained as required or permitted by the Declaration including fire and casualty insurance on the property of the Association and the dwelling units constructed on the Lots and liability insurance covering the Association and its Directors and officers.
- c. Wages and Fees for Services. The fees for services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Association, and legal, accounting or other services or expenses necessary or proper in the conduct of the affairs of the Association or the enforcement or interpretation of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association.
- d. Care of Association Property. The cost of landscaping, gardening, security, snow removal, painting, cleaning, decorating, refurbishing, maintenance, repair, replacement and rehabilitation of the property of the Association and the exteriors of the dwelling units on the Lots as required by the Declaration or determined to be appropriate by the Board of Directors from time to time.

- e. Certain Maintenance of Lots. The cost of the reasonable maintenance and repair of any improvement on a Lot if such maintenance or repair is necessary, in the discretion of the Board of Directors, for public safety or to protect the property of the Association, and the Owner of such Lot has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity thereof delivered by the Association to such Lot Owner; provided that the Association shall levy a Special Assessment against such Lot Owner for the cost of such maintenance or repair.
- f. Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Association or its property. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging such lien, and any costs incurred by the Association by reason of such lien shall be specially assessed against such Lot Owner or Lot Owners.
- g. Additional Expenses. The cost of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, or other expenses which the Association is required or permitted to secure or pay for pursuant to the terms of the Declaration, these By-Laws, or by law or which in the opinion of the Board of Directors shall be necessary or proper for the maintenance and operation of the Association Property to preserve the Property as a first class community.

Section 9.02. No Active Business to be Conducted for Profit. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Lot Owners or any of them.

Section 9.03. Miscellaneous Income. Except as may otherwise be provided in the By-Laws or in the Declaration, all monies received for the rental of or for the use of any Association Property, shall also be added to the Association's general fund and used to defray the items of common expense.

Section 9.04. Special Services. The Association may arrange for the providing of any special services and facilities for the benefit of such Lot Owners and/or occupants of Lots as may desire to pay for the same, such as the interior cleaning of Units, or the furnishing of firewood for consumption in fireplaces in the Units. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to the Lot Owners receiving such services, or paid from the Association's general funds and levied as a Special Assessment against the Lot Owners receiving such services.

Section 9.05. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through the Board of Directors or officers of the Association, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Board of Directors shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 9.06. Acquisition, Lease, Sale or Exchange of Real Property. Whenever the Board of Directors determines to acquire, lease, sell or exchange real property or any interest therein, the Board shall, unless otherwise provided in Article IV of the Declaration, submit such acquisition, sale, lease or exchange to the vote of the Lot Owners, and, upon the affirmative vote of the Lot Owners of 67% or more of the Lots present in person or by proxy at an annual meeting or a special meeting duly held for such purpose, the Board of Directors may proceed with such acquisition, lease, sale or exchange, in the name of the Association and on behalf of the Lot Owners, and the costs and expenses incident thereto shall constitute part of the common expenses of the Association.

## ARTICLE X

### CORPORATE SEAL OPTIONAL

Section 10.01. Corporate Seal Optional. If decided by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

## ARTICLE XI

### AMENDMENTS

Section 11.01. Alteration, Repeal or Amendment. These By-Laws may be modified, altered, repealed, amended or added to at any regular or special meeting of the Lot Owners provided that:

- a. a notice of the meeting containing a full statement of the proposed modification, alteration, repeal, amendment or addition has been sent to all Lot Owners and Lot mortgagees as listed on the records of the Association, not less than 10 nor more than 40 days prior to the date or initial date set for the canvass of the vote thereon; and
- b. 67% or more of the Lot Owners present at the meeting in person or by proxy approve the change; and
- c. prior to date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from either (i) Owners of more than 33% of all Lots or (ii) mortgagees of 51% or more of Lots on which there are mortgages as shown on the records of the Association.

Notwithstanding the above (i) so long as the Sponsor holds title to any portion of the Property, Sections 3.01, 3.02, 3.03, 5.01, 5.03, 5.04, 5.05 and 11.01 of these By-Laws shall not be amended without the consent of the Sponsor, and (ii) the Sponsor, during the time it shall own any portion of the Property, may make amendments to these By-Laws to correct omissions or errors provided such amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent.

Section 11.02. Form of Amendment Proposals. No By-Laws shall be modified, altered, amended or added to by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be modified, altered, amended or added to, new words shall be inserted in the text underlined, or italicized, and words to be deleted shall be lined through. If the proposed change is so extensive that the above procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and interlining as indicators of words added or deleted, but a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Law. See Section \_\_\_ of By-Laws for present text."

Section 11.03. Nonmaterial Errors or Omissions. Nonmaterial errors or omissions in the By-Law amendment process shall not invalidate an otherwise properly promulgated amendment.

Section 11.04. Effective Date of Amendment. An amendment to these By-Laws shall be effective in accordance with the terms of its adoption.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01. Notices. All notices hereunder shall be in writing and delivered personally or sent by first class mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, (i) if to go to the Board of Directors, or to the Association, to any member of the Board of Directors or to the secretary of the Association (if the secretary is not a member of the Board), (ii) if to go to a Lot Owner to such permanent address of such Lot Owner as appears on the books of the Association, (iii) if to go to a mortgagee, to the address of such mortgagee as appears on the books of the Association, and (iv) to a devisee or personal representative of a deceased Lot Owner to the address of such devisee or personal representative as appears on the records of the Court wherein the estate of such deceased Lot Owner is being administered.

All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received. 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.

**Section 12.02. Conflict with Certificate of Incorporation or with Declaration.** In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**Section 12.03. No Waiver for Failure to Enforce.** No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**Section 12.04. Gender.** The use of the masculine gender in these By-Laws shall be deemed to include the masculine, feminine or neuter and the use of the singular shall be deemed to include the plural, whenever the context so requires.

**Section 12.05. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

**Section 12.06. Severability.** Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability or effect of the balance of these By-Laws shall not be impaired or affected in any manner.

**EXHIBIT J**

**ESCROW AGREEMENT**





**ESCROW AGREEMENT****PIRATES COVE HOMEOWNERS' ASSOCIATION, INC.**

THIS AGREEMENT ("ESCROW AGREEMENT") made this 23rd day of June, 2006, between LOPRESTI HOMES CORP. ("SPONSOR") and FREDERICK J. HOLBROOK, ATTORNEY AT LAW ("ESCROW AGENT") as escrow agent.

WHEREAS, SPONSOR is the sponsor of an offering ("OFFERING") for interests in the homeowners' association known or to be known as PIRATES COVE HOMEOWNERS' ASSOCIATION, INC. ("ASSOCIATION") for real property located in the Town of Ogden, County of Monroe, New York (interests in the Association and the real property are collectively known as the "PROJECT"); and

WHEREAS, ESCROW AGENT is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-e.2-b and the Attorney General's regulations promulgated thereunder; and

WHEREAS, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers of lots or homes in the PROJECT, pursuant to the terms of this ESCROW AGREEMENT.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, SPONSOR and ESCROW AGENT hereby agree as follows:

**I. ESTABLISHMENT OF THE ESCROW ACCOUNT.**

- 1.01 SPONSOR and ESCROW AGENT hereby establish an escrow account ("ESCROW ACCOUNT") with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers of interests in the PROJECT. The ESCROW ACCOUNT has been opened with M&T Bank ("Bank") at its Spencerport Branch located at Spencerport Village Plaza, Spencerport, New York 14559. The number of the ESCROW ACCOUNT is 9842677727.
- 1.02 The name of the ESCROW ACCOUNT is "FREDERICK J. HOLBROOK - PIRATES COVE ESCROW ACCOUNT."
- 1.03 The following is the sole signatory on the ESCROW ACCOUNT: Frederick J. Holbrook.
- 1.04 Frederick J. Holbrook may sign for the release of funds from the ESCROW ACCOUNT.

- 1.05 The ESCROW ACCOUNT will be an Interest-On-Lawyers Account ("IOLA") pursuant to Judiciary Law 497. Interest earned will not be the property of the purchaser, Sponsor or Escrow Agent, but rather will be paid to the New York State IOLA Fund.

## II. DEPOSITS INTO THE ESCROW ACCOUNT.

- 2.01 All funds received from prospective purchasers prior to the closing of the interest which such purchaser contracted to purchase, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be deposited in the ESCROW ACCOUNT. All instruments to be deposited into the ESCROW ACCOUNT shall be made payable to, or endorsed by the purchaser to the order of FREDERICK J. HOLBROOK, as ESCROW AGENT. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such Escrow Account, shall be promptly returned to the prospective purchaser, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this ESCROW AGREEMENT.
- 2.02 Within 10 business days after tender of any deposit by a Purchaser, the ESCROW AGENT shall notify the purchaser of the deposit of such funds in the Bank and provide the account number of the ESCROW ACCOUNT. If the purchaser does not receive notification of such deposit within 15 business days after tender of the deposit, the purchaser may cancel the purchase and rescind within 90 days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with the Attorney General's regulations and requisite notice was timely mailed to the purchaser.

## III. RELEASE OF FUNDS.

- 3.01 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser to SPONSOR until after consummation of the OFFERING. Consummation of the OFFERING shall not relieve SPONSOR of its fiduciary obligations pursuant to General Business Law Section 352-h.
- 3.02 ESCROW AGENT shall continue to hold the funds in escrow until (i) otherwise directed in a writing signed by both SPONSOR and purchaser or (ii) 10 business days after purchaser receives notice of the proposed release of such funds and has not objected to such release in the manner provided in Section 3.04 below or (iii) a determination of the Attorney General or (iv) a judgment or order of a court of competent jurisdiction or (v) released pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.

3.03 SPONSOR shall not object to the release of the escrowed funds to (i) a purchaser who timely rescinds in accordance with an offer of rescission or (ii) all purchasers if the OFFERING is abandoned and notice of such abandonment is given to the New York State Department of Law ("DEPARTMENT OF LAW"). (The DEPARTMENT OF LAW is headed by the Attorney General. References to "DEPARTMENT OF LAW" and "Attorney General" are sometimes synonymous in this Agreement.)

3.04 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT had given the purchaser written notice of not fewer than 10 business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the DEPARTMENT OF LAW pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.

#### **IV. RECORDKEEPING.**

4.01 ESCROW AGENT shall maintain all records concerning the ESCROW ACCOUNT for seven (7) years after release of the funds.

4.02 Upon the dissolution of the ESCROW AGENT law firm within the 7 year period set forth in Section 4.01 above, the former partners or members of the firm shall make appropriate arrangements for the maintenance of the ESCROW ACCOUNT records by one of the partners or members of the firm or by the successor firm and shall notify the DEPARTMENT OF LAW of such transfer.

4.03 ESCROW AGENT shall make available to the Attorney General, upon the Attorney General's request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

#### **V. GENERAL OBLIGATIONS OF ESCROW AGENT.**

5.01 ESCROW AGENT shall maintain the accounts called for in this ESCROW AGREEMENT under the direct supervision and control of ESCROW AGENT.

5.02 A fiduciary relationship shall exist between ESCROW AGENT and purchasers of lots or homes in the PROJECT and ESCROW AGENT acknowledges its fiduciary obligations.

#### **VI. RESPONSIBILITIES OF SPONSOR.**

6.01 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT, so that the ESCROW AGENT may deposit the same in the ESCROW ACCOUNT in the timely manner required in the Attorney General's regulations (e.g. within five (5) business days after all parties have

executed the purchase agreement or within ten (10) business days after tender of deposit by purchaser, whichever is earlier).

6.02 SPONSOR agrees that it shall not interfere with ESCROW AGENT'S performance of its fiduciary duties and compliance with the Attorney General's regulations.

**VII. TERMINATION OF ESCROW AGREEMENT.**

7.01 This ESCROW AGREEMENT shall remain in effect unless and until it is cancelled, by either:

- (a) Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of notice with the DEPARTMENT OF LAW providing for a successor ESCROW AGENT; or
- (b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of notice of such resignation with the DEPARTMENT OF LAW providing for a successor ESCROW AGENT; or
- (c) All lots and homes in the PROJECT offered pursuant to the OFFERING having been sold and all sales transactions having been consummated.

7.02 Upon termination of the duties of ESCROW AGENT as described in this Section 7.01 above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any and all contracts or documents maintained by ESCROW AGENT to the new escrow agent.

**VIII. SUCCESSORS AND ASSIGNS.**

8.01 This ESCROW AGREEMENT shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.

**IX. GOVERNING LAW.**

9.01 This ESCROW AGREEMENT shall be construed in accordance with and governed by the laws of the State of New York.

**X. ESCROW AGENT'S COMPENSATION AND INDEMNITY.**

- 10.01 SPONSOR agrees that ESCROW AGENT'S compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by any financial institution under any circumstance.
- 10.02 The ESCROW AGENT shall be reimbursed by the SPONSOR for all disbursements made in the course of carrying out its duties under this ESCROW AGREEMENT, and for legal fees and costs incurred in order to carry out its duties as set forth in this ESCROW AGREEMENT.
- 10.03. The SPONSOR shall indemnify, save and hold harmless the ESCROW AGENT from any loss or damage whatsoever arising out of or by reason of the failure of the SPONSOR to perform its obligations under this ESCROW AGREEMENT or the Attorney General's regulations.

**XI. SEVERABILITY.**

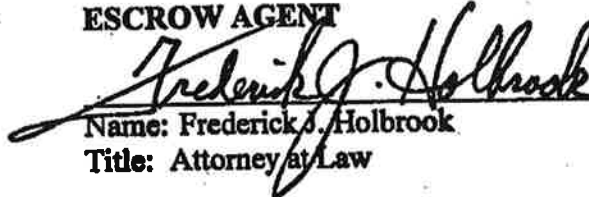
- 11.01 If any provision of this ESCROW AGREEMENT or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this ESCROW AGREEMENT or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**XII. ENTIRE AGREEMENT.**

- 12.01 This ESCROW AGREEMENT, read together with General Business Law Section 352-e.2-b and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

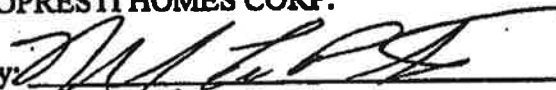
IN WITNESS WHEREOF, the undersigned have executed this ESCROW AGREEMENT as of the day and year first written above.

**ESCROW AGENT**

  
Name: Frederick J. Holbrook  
Title: Attorney at Law

**SPONSOR**

**LOPRESTI HOMES CORP.**

By:   
Name: Michael S. LoPresti  
Title: President

New Account

# MANUFACTURERS AND TRADERS TRUST COMPANY COMMERCIAL DEPOSIT ACCOUNT OPENING REQUEST

ACCOUNT TITLE AND ADDRESS

Frederick J. Holbrook -  
Pirates Cove Escrow Agent  
PO Box 116 (652 Nichols St.)  
Spencerport, NY 14559

OFFICE OF ACCOUNT  
Spencerport

ACCOUNT NUMBER

ACCOUNT TYPE

CUSTOMER PHONE #

585 352-1831

FUNDS OWNER CODE

FUNDS SUB-OWNER CODE

TIN/SSN

56-2591554

Agreement: In consideration of M&T Bank's opening the Account, the Depositor named above hereby agrees with respect to each of Depositor's accounts at M&T Bank from time to time to the terms and conditions set forth in the attached certificate or resolutions (if applicable), in each of M&T Bank's deposit account agreements, brochures and schedules of fees and charges, in each related agreement with M&T Bank, and in each of M&T Bank's rules and regulations, all as amended from time to time, and agrees to pay all applicable maintenance, service, negative available balance, and other fees and charges as in effect from time to time.

Certification: Under penalties of perjury, I certify that: (1) The number shown on this form is Depositor's correct Taxpayer Identification Number; and (2) Depositor is not subject to backup withholding because (a) Depositor is exempt from backup withholding, or (b) Depositor has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Depositor that it is no longer subject to backup withholding; and (3) Depositor is a U.S. person (including a U.S. resident alien).

Certification Instructions: You must cross out item (2) above if Depositor has been notified by the IRS that it is currently subject to backup withholding because it has failed to report all interest and dividends on its tax returns. (Also see Part III - Certification under Specific Instructions on the separate W-9 form.)

The IRS does not require your consent to any provision of this document other than the certifications required void backup withholding.

AUTHORIZED SIGNATURE *(X) Frederick J. Holbrook, agent* DATE 6-22-06

TITLE Escrow Agent

SEC CODE

IDENTIFICATION NYDL 493371109 Exp 4/09 Escrow Agreement on file.

OPENING AMOUNT DATE

### ACCOUNT SPECIFICS

CHECKING/NOW: Key Account for Analysis Annual Interest Rate Transfer Interest to Account Statement Cycle (subject to change daily)

SAVINGS: Annual Interest Rate PR Transfer Interest to Account (subject to change daily)

TIME DEPOSIT: Initial Term Automatically Renewable? Annual Interest Rate Interest Check? Interest Cycle PR Approval Initial Maturity Date Final Maturity Date (for initial term) Transfer Interest to Account Basis Points

FRONTLOADING CODE

Part of Incorp. 4/7/06.

Original - Account Services

MANUFACTURERS AND TRADERS TRUST COMPANY  
AUTHORITY OF FIDUCIARY TO OPEN DEPOSIT ACCOUNT  
(For use for trusts, estates, by escrow agents, landlords, etc.)

ACCOUNT NUMBER: 984267727

DEPOSITOR: Frederick J. Holbrook - Pirates Cove Escrow Acct.

(Use of estate, trust, escrow fund, etc.)

Fiduciary Frederick J. Holbrook  
Title Agent  
Address 57 Nichols St.  
Spencerport, NY 14559  
Telephone 352-1631  
SSN # 108-30-7566  
Signature Frederick J. Holbrook, agent

Fiduciary \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
SSN \_\_\_\_\_  
Signature \_\_\_\_\_

Ben. \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
SSN \_\_\_\_\_  
Signature \_\_\_\_\_

Ben. \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
SSN \_\_\_\_\_  
Signature \_\_\_\_\_

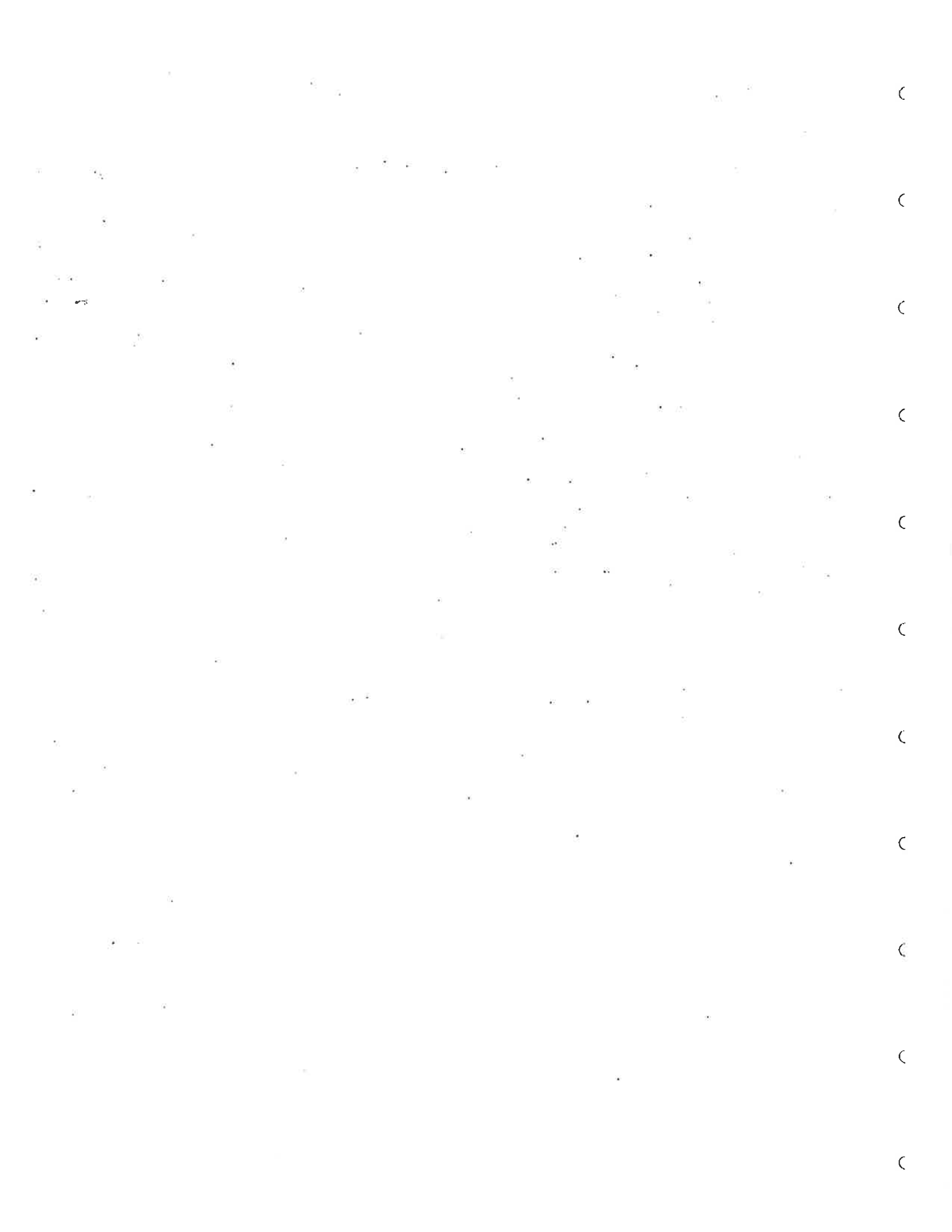
- I certify that Depositor named above is a(n) trust (trust under will, revocable trust, escrow fund, security deposit, deposit in lieu of bond, etc.) validly created or existing under the laws of the State of NY and I am authorized to act on Depositor's behalf by statute or law.
  - An agreement with Pirates Cove Homeowners Assn, Inc entitled Frederick J. Holbrook - Pirates Cove Escrow Acct. dated 4-7-06 appointing the undersigned as Escrow Agent (escrow agent, trustee, executor, landlord, etc.); or
  - The last will and testament of \_\_\_\_\_ naming me as \_\_\_\_\_; or
  - A trust agreement of grantors named \_\_\_\_\_ naming me as trustee; or
  - Court order dated \_\_\_\_\_ naming me as \_\_\_\_\_ (guardian, custodian, trustee, etc.)
- I certify that only one signature is required to authorize banking transactions for Depositor, and acknowledge that dual signature requirements or restrictions impose no duty of enforcement on M&T Bank.
- I further certify that each signature appearing above or on a Rider hereto is a true specimen of the signature of the person whose signature it purports to be.

Pirates Cove Homeowners Assn, Inc  
Name of Entity (if Fiduciary is a corporation, etc.)  
Name of Entity (for second corporate fiduciary, if any)  
By: Frederick J. Holbrook, agent Authorized Signature Capacity



**EXHIBIT K**

**FORM FOR REQUESTING DISPUTE RESOLUTION BY  
ATTORNEY GENERAL CONCERNING DOWN PAYMENT**



**New York State Office of the Attorney General  
Elliot Spitzer  
Bureau of Real Estate Finance  
120 Broadway  
New York, New York 10271  
(212) 416-8170 (phone)  
(212) 416-8179 (fax)**

**CO-OPS, CONDOS & HOMEOWNERS ASSOCIATION COMPLAINT FORM**

Please print clearly or type

**1. Name or Address of building or development**

---

---

**2. Are you a**

- (a) tenant \_\_\_\_\_ apt. no. \_\_\_\_\_
- (b) subtenant \_\_\_\_\_ apt. no. \_\_\_\_\_
- (c) owner of unit \_\_\_\_\_ apt. no. \_\_\_\_\_
- (d) offeree of unit \_\_\_\_\_ apt. no. \_\_\_\_\_

**3. If tenant, are you:**

- (a) rent-stabilized \_\_\_\_\_
- (b) rent-controlled \_\_\_\_\_
- (c) other (specify) \_\_\_\_\_

**4. Check the items below that indicate present status of building or development:**

- a \_\_\_\_\_ Conversion of occupied residential building
- b \_\_\_\_\_ Cooperative
- c \_\_\_\_\_ Condominium
- d \_\_\_\_\_ Homeowners Association
- e \_\_\_\_\_ Timeshare
- f \_\_\_\_\_ Syndication
- g \_\_\_\_\_ Other (specify)

**5. Complaint Statement :**

**Please be as specific as possible. Attach copies of any relevant documents. If necessary attach additional sheets.**

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

**Note:** In order to resolve your complaint we may send a copy of this form to the person or firm about whom you are complaining.

In filing this complaint, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from misleading or unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities at this time, it is suggested that I contact a private attorney. I have no objections to the contents of this complaint being forwarded to the business or person against whom the complaint is directed. The above complaint is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of Penal Law.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Telephone: (Home):** \_\_\_\_\_ **(Business)** \_\_\_\_\_

**Mailing Address:**

---

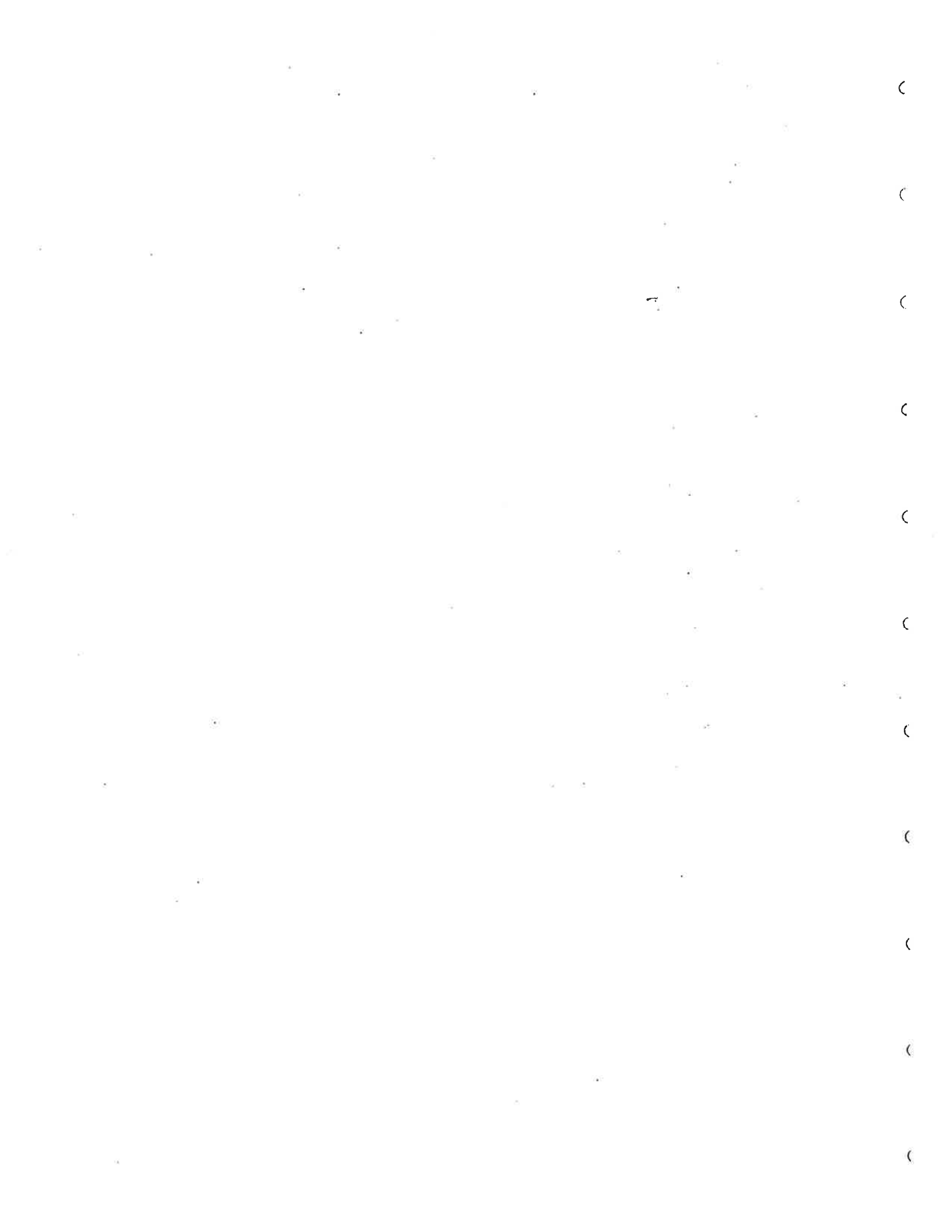
---

**Please mail the completed complaint form to:**

**Office of the Attorney General  
Real Estate Financing Bureau  
120 Broadway, 23rd Floor  
New York, NY 10271  
Attn.: Public Information Office**

**EXHIBIT L**

**CERTIFICATION OF SPONSOR AND PRINCIPALS OF SPONSOR**



Certification By Sponsor

A-1

The undersigned Sponsor certifies as follows with respect to Pirates Cove Homeowners' Association, Inc., Town of Ogden, Monroe County, New York:

We are the Sponsor and the principals of the 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 Office of 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 does, and that documents submitted hereafter by us which amend or supplement the offering plan 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 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 representation or statement made.

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.

In addition, we certify that the roads and/or sewers, and/or water lines, when constructed will be in accordance with local government specifications. There will be no conveyance of common property to the HOA in Phase I. After completion of such amenities, 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 HOA is located) stating that the roads and/or sewers, and/or water lines have, in fact, been constructed in accordance with local government specifications and indicating the date of completion. In the interim, 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 HOA is located which amount shall not be less than the amount required to complete such construction to the required specifications as approved by the jurisdiction where the HOA is located.

LoPresti Homes Corp.  
a New York corporation  
Sponsor

Sworn to before me this 6  
day of ~~June~~, 2006  
*July DLS*

By: *Michael S. LoPresti*  
Name: Michael S. LoPresti  
Its: President

*Denise L. Scalone*  
Notary Public

DENISE L. SCALONE  
Notary Public, State of New York  
Qualified in Monroe County  
My Commission Expires September 30, 2006

Sworn to before me this 6  
day of ~~June~~, 2006  
*July DLS*

*Michael S. LoPresti*  
Michael S. LoPresti  
Sole Principal of Sponsor

*Denise L. Scalone*  
Notary Public

DENISE L. SCALONE  
Notary Public, State of New York  
Qualified in Monroe County  
My Commission Expires September 30, 2006

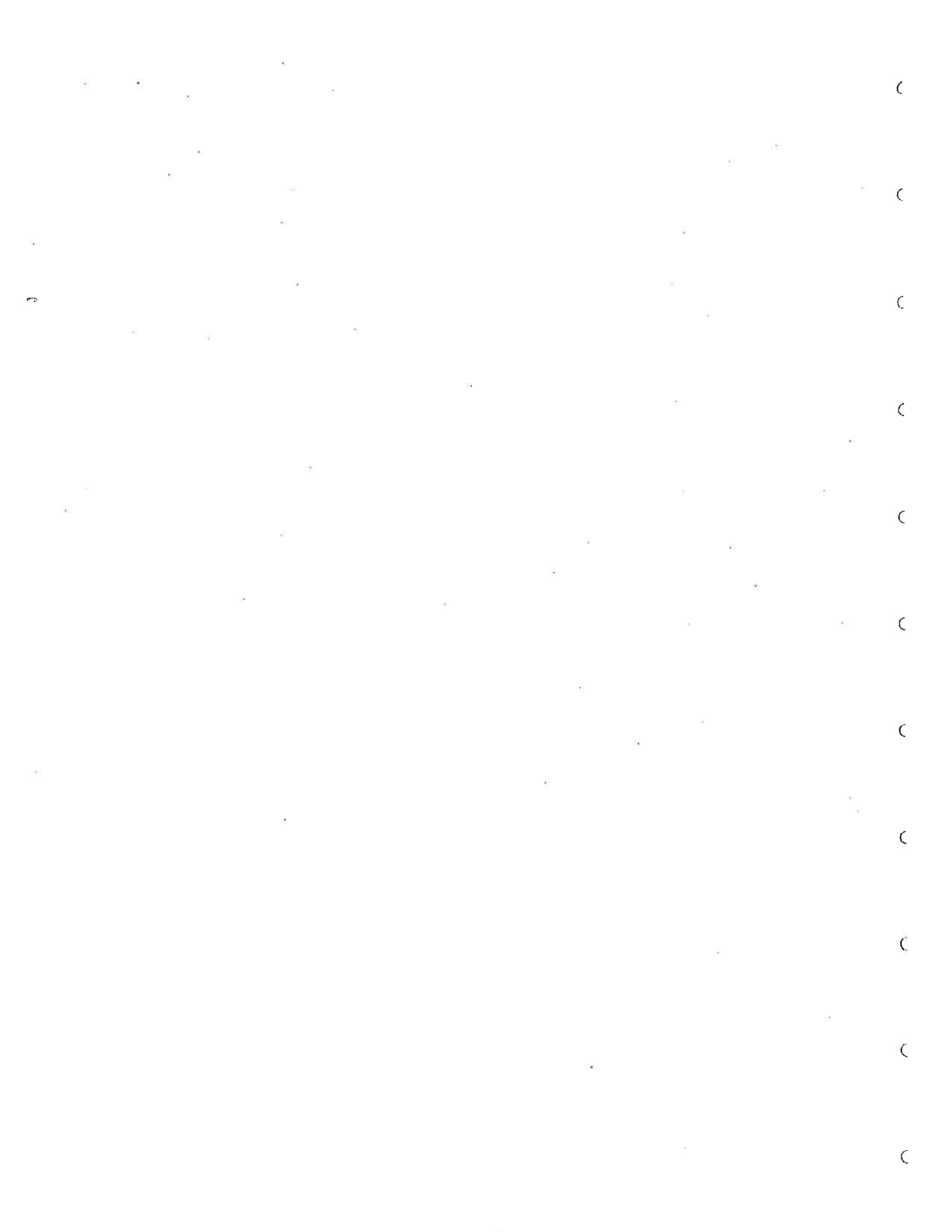


**EXHIBIT M**

**CERTIFICATION OF SPONSOR'S ENGINEER**

**NOT APPLICABLE**

T



**EXHIBIT N**

**CERTIFICATION OF SPONSOR'S EXPERT CONCERNING  
ADEQUACY OF BUDGET**

(

(

(

(

(

(

(

(

(

(

(

**▶▶▶ REALTY PERFORMANCE GROUP**

July 27, 2006

A-3

Real Estate Financing Bureau  
New York State Department of Law  
120 Broadway  
New York, NY 10271

**Re: Certification on Adequacy of Budget  
Pirates Cove Homeowners Association, Inc.**

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

Gentlemen:

The undersigned, being duly sworn, deposes and says as follows:

The sponsor of the above captioned homeowners association retained our firm to review the Budget for the First Year of Operation and Schedule A of the offering plan for Pirates Cove Homeowners Association, Inc. based on both the completion on the first 24 units in the association and the entire 64 unit development.

My experience in this field includes:

Over thirty (30) years experience in the management of homeowners associations and condominiums. I am a member of both the Community Associations Institute (CAI) and the Institute of Real Estate Management (IREM). I have been a CERTIFIED PROPERTY MANAGER (CPM) since 1977.

Realty Performance Group currently is the managing agent for sixteen homeowners associations and condominiums, totaling over 1,900 living units.

I understand that I am 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 the Budget for the First Year of Operation. I have reviewed the Schedule A and investigated the facts set forth in the Schedule and the facts underlying it with due diligence in order to form a basis for this certification. I also have relied on my experience in managing residential property.

I certify that the projections in the Budget for the First Year of Operation appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the first year of operation as a homeowners association.

I certify that the Schedule:

- (i) sets forth in detail the terms of the projected income and expense for the first year of homeowners association operations on the Schedule and is complete, current and accurate;
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where I: (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 statement made.

I further certify that we are not owned or controlled by the sponsor. I understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of operation as a homeowners association.

There are no lawsuits, or other proceedings now pending, or judgments outstanding against Realty Performance Group, Inc. which would affect the capacity of Realty Performance Group, Inc. to act as managing agent for Pirates Cove Homeowners Association, Inc.


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

**REALTY PERFORMANCE GROUP, INC.**



Richard A. Albright, CPM  
President

Sworn to before me this  
27 day of July, 2006

  
 Notary Public

CAROLYN M. WALKER  
Notary Public, State of New York  
No. 01WA611382  
Qualified in Monroe County  
Commission Expires June 7, 2008