

Ontario County

**FIRST AMENDED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE DRUMLINS HOMEOWNERS ASSOCIATION, INC.**

**THIS DECLARATION**, made the 15th day of June, 2005, by 7203 Rawson Road, LLC, hereinafter called "Declarant"

**WHEREAS**, Declarant is the owner of certain subdivided real property in the Town of Victor, Ontario County, New York, and

**WHEREAS**, Declarant has subjected the Properties to those certain covenants, agreements, easements, restrictions, charges, and liens pursuant to a Declaration recorded in the Ontario County Clerk's Office on October 14, 2003 in Book 1106 of Deeds at Page 172; and

**WHEREAS**, certain amendments and clarifications were required to be made to the original Declaration;

**WHEREAS, THE DRUMLINS II HOMEOWNERS ASSOCIATION, INC.** is a New York Not-for-Profit Corporation formed for the purpose described in its Certificate of Incorporation;

**NOW, THEREFORE**, Declarant hereby declares that all of the Properties (and the common area herein described) shall be subject to the following amended easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, burden and bind the Properties for and during the period of time specified hereafter, and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Hiscock & Barclay  
201 S. Warren St  
Syracuse, NY 13221

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation shall be The Drumlins II Homeowners Association, Inc., located at 197 W. Main Street, in the Town of Victor, Ontario County, New York.

**ARTICLE II  
DEFINITIONS**

**SECTION 1:** "Association" shall mean and refer to The Drumlins II Homeowners Association, Inc., its successors and assigns.

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**SECTION 2:** "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

The Common Area to be owned by the Association at the time of the conveyance of the first lot shall include all of the premises described as "Properties," excepting therefrom the townhome lots, as shown on the map of the Properties filed in the Clinton County Clerk's Office.

**SECTION 3:** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

**SECTION 4:** "Declarant" shall mean and refer to 7203 Rawson Road, LLC, its successors and assigns if such successors or assigns shall acquire more than one undeveloped lot from Declarant for the purpose of development.

**SECTION 5:** "Properties" shall mean and refer to Schedule A, which includes all lots and common areas, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 6:** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or resubdivision map of the Properties, with the exception of the Common Areas.

**SECTION 7:** A "Fine" shall be a sum of money not to exceed ten percent (10%) of the total annual common assessment for an individual lot. A fine may be a penalty.

### ARTICLE III PROPERTY RIGHTS

**SECTION 1: Owner's Easements of Enjoyment:** Every owner shall have a right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress to owner's property over the Common Area, which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association, pursuant to its By-Laws, to adopt rules and regulations governing the use of the Common Area and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

(b) The right of the Association to suspend the right to the use of the Common Area other than the common access road, by an owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

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(c) The right of the Association to grant easements in, dedicate or transfer title to the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members approving such transfer. No such dedication or transfer shall be effective unless an instrument agreeing to such a dedication or transfer has been signed by 85% of each class of members and their mortgagees has been recorded.

(d) The right of the Association to designate certain portions of the Common Area as paths, community gardens, specific recreation areas, and parking areas for the use of owners, their invitees and guests. However, invitees and guests are restricted from the use of garden areas, and the parking of trailers, except as permitted under the Rules and Regulations.

(e) The right of invitees and visitors of any owner to ingress and egress over the Common Area.

**SECTION 2: Delegation of Use:** Owners may delegate, in accordance with the By-Laws and Rules and Regulations, their right of enjoyment to the Common Area to family members, tenants, or contract purchasers who reside on the property.

**ARTICLE IV  
EASEMENTS**

**SECTION 1: EASEMENTS for UTILITIES.** The Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Properties.

**SECTION 2: OTHER EASEMENTS.** There is hereby created a blanket easement, provided use of said easement does not interfere with any improvements. upon, across, over and under all of the Properties, for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, wastewater, surface water, gas, telephones, electricity, Cable TV, and a master TV antenna system.

By virtue of this easement, it is expressly permissible to erect and maintain the necessary equipment on the Properties, and to affix and maintain electrical or telephone wires and conduits, wastewater, surface water, and water lines, on, above or below any land owned by the Association and/or owners.

An easement is hereby reserved to the officers, agents, or employees of the Association, including the employees of any management company under contract with the Association, over all of the Common Areas, to protect its interest by entrance to any Common Area, and to maintain any utilities for which an easement has been granted.

An easement is hereby reserved to Declarant to enter the Common Areas and Lots during the period of development and sale of the Properties, or any additions to the Properties, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the development and sale of lots, including,

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without limitation, a sales office, storage area, and signs, provided that this does not unreasonably obstruct access by members of the Association.

**SECTION 3: PARTY WALLS.**

(a) Each wall built as part of the original construction of the Units which shall serve and separate two adjoining Units shall constitute a party wall and , to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Each Owner shall have an easement to enter upon the Lot of an adjacent Owner for the purpose of maintaining or making repairs to a party wall. This easement is to be limited to the area of the other owner's Lot reasonably necessary to effect said repairs , and such easement must be used in a reasonable manner so as not to unnecessarily interfere with the other Owner's enjoyment of his or her Lot. The area where such work is performed is to be restored to its condition prior to entry , as near as possible.

(c) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(d) If a party wall is destroyed or damaged by fire or other casualty , then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance , any Owner who has used the wall may restore it , and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in equal proportions, without prejudice , however , to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

(e) Notwithstanding any other provision of this section, to the extent that such damage is not covered and paid by the insurance provided for herein , an Owner who by willful acts or negligence causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(f) The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title."

**ARTICLE V  
MEMBERSHIP & VOTING RIGHTS**

**SECTION 1: MEMBERSHIP** — Every owner of a Lot which is subjected by this Declaration to assessment by the Association shall be a member of the Association. Membership

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shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

**SECTION 2: The Association shall have two CLASSES OF VOTING MEMBERSHIP**

*CLASS A* Class A members shall be all Owners, with the exception of Declarant. Each Class A member shall be entitled to one vote. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

*CLASS B.* The Class B member(s) shall be the Declarant or its successors or assigns and shall be entitled to one vote for so long as one lot is owned by Declarant. The Class B membership shall cease and be converted to Class A membership when title to all Lots in all phases has been transferred, or 7 years after the first Lot has been conveyed by Declarant, whichever occurs first. Class A members shall not be entitled to vote for members of the Board of Directors until all lots in all phases have been transferred or 7 years after the first Lot is transferred, whichever occurs first.

**ARTICLE VI  
COVENANT FOR ASSESSMENTS**

**SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance, of a deed for such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual common assessments and special assessments. Annual common assessments are for maintenance charges including real estate tax charges for the Common Area. Special assessments shall include the cost of reconstructing those portions of the Common Areas which can not be repaired, and for emergencies as the need therefor arises. All assessments shall be established and collected as hereinafter provided. The covenant in this Section shall not constitute, a guarantee, or promise of any kind by Declarant to pay any assessment, or any other obligation of any Owner, other than Declarant.

The annual common maintenance assessments and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, late charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.

In spite of any provision to the contrary in this Article VI, the Declarant shall be obligated to pay only the difference between the amount collected on transferred Lots (which

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amount will not exceed the budgeted amount per transferred Lot) and the actual cost of operation of the Association.

**SECTION 2: PURPOSE OF ASSESSMENTS.** Assessments levied by the Association shall be used exclusively (i) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees, and (ii) to provide service for the individual Lots as described further in this Declaration.

**SECTION 3: SPECIAL ASSESSMENTS.** In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, emergency repair, service or replacement of any improvement upon the Common Area, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting duly called for this purpose.

**SECTION 4: NOTICE AND QUORUM.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article VI shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of Members, in person or by proxy, entitled to cast two-thirds (2/3) of all the votes of the membership shall constitute a quorum.

**SECTION 5: RATE OF ASSESSMENT.** Annual common and special assessments, shall be fixed at a uniform rate for all Lots, and may be collected on a quarterly or annual basis.

**SECTION 6: DUE DATES FOR ANNUAL COMMON & SPECIAL ASSESSMENTS.** The Board of Directors shall annually fix the amount of the assessments against each Lot. Written notice of any change in the assessments shall be sent to every owner subject thereto not less than thirty (30) days prior to the effective date of such change.

Due date(s) for payment of assessments shall be the first day of each month or as established by the Board. Payments received after the 10th of the month may, at the discretion of the Board, be subject to a late charge, which charge shall be a percentage of the assessment not to exceed the prime lending rate charged by Canandaigua National Bank and Trust Company at the time of the charge plus three (3) percent.

The Association shall, upon demand of a buyer or seller or their attorney, furnish a certificate signed by an officer of the Association or the Managing Agent, setting forth whether the assessments on a specified Lot have been paid. The Association may assess a reasonable charge for the preparation of any such certificate.

**SECTION 7: EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION.** Any assessment not paid within thirty (30) days after the date said assessment is due shall become a lien against the Lot, and shall bear interest as set

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forth in Section 6 above from its due date. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.

The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the Lot, and interest, late charges, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment.

Each such owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such owner personally for the collection of such charge, and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such owner hereby expressly grants to the Association the power of sale in connection with such lien.

The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all owners. The Association, acting on behalf of the owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**SECTION 8: SUBORDINATION OF THE LIEN TO FIRST MORTGAGES.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect the lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

**SECTION 9: RESERVES AND SURPLUSES.** The Association's Board shall establish, from time to time, reserves for such lawful purposes as in its sole discretion it may determine necessary or desirable for the greater financial security of the Association and the effectuation of its purposes. The Association shall not be obligated to spend in any fiscal year all the sums collected in such year, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward the same from year to year.

**SECTION 10:** In spite of any provision to the contrary in this Article VI, the Declarant shall not be liable for the payment of common charges for unsold Lots owned by it. The Declarant shall, however, contribute to the Association that amount equal to the difference between the cost of operating the Association and the assessments collected from owners as set forth in the projected budget.

**SECTION 11: CONTRACTUAL AUTHORITY.** The Association shall be entitled to contract with any corporation, firm or other entity in the performance of the various duties imposed on the Association hereunder and the performance by any such entity shall be deemed the performance of the Association hereunder.

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## ARTICLE VII MAINTENANCE

Assessments levied by the Association shall be used exclusively (1) to operate, maintain, repair, improve, construct, reconstruct and preserve the Common Area owned by the Association, exclusively for the benefit of its members, their guests, tenants and invitees; and (2) to provide the following services:

maintenance, repair, improvement, and snow plowing of driveways and parking areas:

garbage and trash removal;

snow shoveling of sidewalks and steps;

landscape and maintenance of common areas; and

maintenance of Common Area drainage swales and retention areas for surface water.

establish reserves for driveway/road maintenance, minor exterior painting and repairs and roof replacement.

The above obligation does not include any maintenance or repairs caused by fire or other casualty to the premises owned individually by members of the Association.

## ARTICLE VIII USE OF PROPERTY

The use of the properties shall be restricted to and in accordance with the following provisions:

A. A Lot shall be used for single family residential purposes only. For the purpose of this section Single Family Residential shall mean the immediate family and no more than two (2) unrelated adults.

B. The Common Areas shall be used for the use and enjoyment of the Owners, their guests, invitees and assigns.

C. The Board of Directors is empowered to serve written notice of any violations of these restrictions. Such written notice shall be given at least two (2) times. If an Owner fails to comply within five (5) days after receipt of the second notice, the Board of Directors is empowered to assess a fine. A separate fine may be imposed for each violation. Unpaid fines will be considered additional assessments and will become a lien upon the property.

D. THE FOLLOWING SHALL APPLY TO ALL LOTS AND COMMON AREAS



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(1) Only one (1) single-family dwelling and garage shall be erected, altered, placed or permitted to remain on any Lot.

(2) Each Member's dwelling and Lot shall be maintained in good repair and overall appearance. If a member fails to maintain his house or Lot in a reasonably well maintained and orderly manner, the Board of Directors may contract for exterior maintenance and any expenses incurred shall be considered additional common charges against the Lot in question.

(3) All private passenger motorized vehicles will be parked and stored in garages or on driveways and not on any other portion of the Lot. Trailers and boats shall be stored in garages or in designated areas. Large vehicles and trailers, other than small private passenger types, shall be parked and stored only at the direction of and with prior written approval of the Board of Directors. Motor vehicles making deliveries or providing services to the Lots are permitted as needed. No part of any Lot or Common Area shall be used continuously for tent camping or the parking of sleeper vans, campers or tent trailers.

(4) The Board of Directors may designate certain portions of the Common Area for use as paths, restricted common areas, community garden areas, specific recreation areas, and parking areas for the use of Owners, their invitees and guests. Invitees and guests may use community garden areas and designated parking areas only as provided in the Rules.

(5) Garbage and rubbish shall not be dumped or allowed to remain on any Lot or Common Area except in accordance with the rules of the Association.

(6) No radio, television or similar towers or antennae shall be erected on any Lot or attached to the exterior of any dwelling. Satellite Dishes up to 14 inches in diameter will be allowed only with prior permission of the Board of Directors, and shall not be placed on the front of the house.

(7) Nothing shall be stored in the Common Areas except with the prior written consent of the Board of Directors.

(8) Motorized vehicles of any kind shall not be allowed on any pedestrian path, except for maintenance vehicles employed by the Association, and except for motorized assistance given to disabled people.

(9) Access to the Common Areas shall be by way of the Common Areas and not through private Lots.

(10) Mobile homes are not permitted on the Properties.

(11) No livestock or animals shall be permitted on any Lot except for two (2) domestic pets not kept for breeding. Pets cannot be kenneled outside.

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## ARTICLE IX ARCHITECTURAL & LANDSCAPE CONTROL

**SECTION 1:** Landscape care of the Common Area and the landscaped area of each Lot is the responsibility of and shall be controlled by the Association.

No fence, mailboxes, or walls shall be erected or maintained upon the Properties except those erected at the time of the original construction of the buildings located thereon, or of a substantially similar nature, without the written application to and approval by the Board of Directors.

**SECTION 2:** No alterations, additions, rebuilding, exterior modification of any kind, or re-painting of the exterior of any building shall be made unless it shall conform in architecture, is similar in material and color to the building as originally constructed, and is approved by the Board of Directors.

**SECTION 3:** No building, fence, wall or other structure or change in landscaping, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to, and approved in writing as to the harmony of external design and location in relation to surrounding structures by the Board of Directors of the Association.

If an individual Owner wishes to maintain the landscaping of that part of the Owner's Lot within ten (10) feet of the Owner's townhouse foundation that Owner must submit a written request for approval along with a proposed landscape plan to the Board of Directors.

In the event that the Board of Directors fails to approve or disapprove any such request, design or location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made.

## ARTICLE X INSURANCE & CASUALTY DAMAGE

A. The Association, for the Common Areas and the Townhome Units, will obtain and maintain in force and effect a policy of liability, casualty, and other necessary insurance. in an amount, and with such coverages as are acceptable to the Association.

B. An annual evaluation shall be made by the Board of Directors to determine the adequacy of the insurance.

C. The Owner of any Lot shall be solely responsible for securing public liability, fire, and all insurance necessary to protect his interests as he shall be so advised.

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**ARTICLE XI  
ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION**

**SECTION 1:** Declarant, its successors or assigns, shall have the right, without the consent of the members of the Association, to subject additional Properties to this Declaration within seven (7) years of the original date of this instrument, such Properties to be developed substantially as the Properties contained herein.

However, neither Declarant, nor its successors or assigns, shall be bound to make such additions.

Such additions shall be made by recording in the Ontario County Clerk's Office a supplemental Declaration with respect to the additional Properties, which shall extend the scheme of the Declaration to such Properties.

**SECTION 2:** Additions to the Properties by the Association. Annexation of additional property by other than Declarant shall require the assent of seventy-five percent (75%) of members, at a meeting duly called for this purpose on the same notice, and in the same manner as is required for meetings and voting by the By-Laws.

**ARTICLE XII  
GENERAL PROVISIONS**

**SECTION 1: Duration & Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, the Association, or the owner of any land subject to this Declaration, their respective heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change such covenants and restrictions, in whole or part.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than eighty percent (80%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendments must be recorded in the Ontario County Clerk's office to become effective,

**SECTION 2: Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

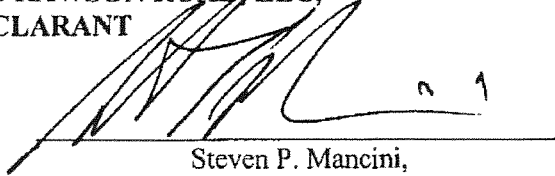
**SECTION 3: Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed by the provisions of this Declaration.

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Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Expenses of enforcing the covenants herein contained shall be chargeable to the Owner violating these covenants and the expense so incurred by the Association shall constitute a lien on such Owner's Lot, collectible in the same manner as assessments under the prior provisions hereof.

7203 RAWSON ROAD, LLC,  
DECLARANT

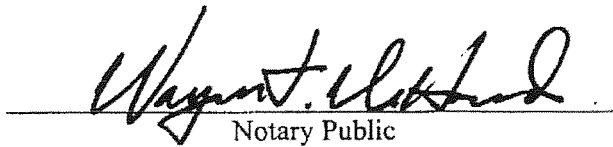
By:



Steven P. Mancini,  
Managing Member

STATE OF NEW YORK )  
COUNTY OF ONTARIO ) SS:

On the 26 day of JUNE in the year 2005 before me, the undersigned, a Notary Public in and for said State, personally appeared Steven P. Mancini, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

WAYNE F. DeHOND  
Notary Public, State of New York  
Qualified in Monroe County  
No. 02DE0903433  
N.Y. Commission Expires Nov. 30, 2005