

EXHIBIT 3

BY-LAWS AND HOMEOWNERS ASSOCIATION RULES

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Directors shall be located at THOMAS CREEK HOMEOWNERS ASSOCIATION, INC., Patera Avenue, Perinton, New York.

ARTICLE TWO

BOARD OF DIRECTORS

Section 2-01. Number and Qualifications.

The affairs of the Association shall be governed by a Board of Directors. Until five (5) years have elapsed from the date of conveyance of the first townhouse lot or until 120 days after 75% of the townhouse lots have been sold by Sponsor and paid for (whichever shall first occur) and thereafter until their successors shall have been elected by the members, the Board of Directors shall consist of such of the officers and directors of Sponsor as Sponsor shall from time to time designate. Thereafter, the Board of Directors shall be composed of five (5) persons, all of whom shall be owners, co-owners, spouses of owners, or mortgagees of lots, or, in the case of corporate owners, officers, directors, shareholders, or employees of such corporations, or in the case of fiduciary owners, shall be the fiduciary or officers or employees of such fiduciaries.

Section 2-02. Powers and Duties.

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things, except as by law, or

by the Certificate of Incorporation, or by the Declaration, or by these By-laws, may not be delegated to the Board of Directors by the members. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

A. Care, upkeep, maintenance and operation of the common areas;

B. The determination of amounts required to defray common expenses of the Association (such as amounts required for operation and maintenance of the common areas);

C. Collection of common charges from members;

D. Maintenance of detailed and accurate records, in chronological order, of receipts and disbursements arising from the operation of the property, which records shall be made available for examination by members at convenient hours on weekdays;

E. Authorization and prosecution of suits to foreclose liens for non-payment of common charges, or to recover money judgments for unpaid common charges, on behalf of all members;

F. Authorization and prosecution of actions or proceedings on behalf of the owners of two (2) or more lots as their respective interests may appear, with respect to any cause of action relating to the common areas or to more than one (1) lot;

G. Employment and dismissal of personnel necessary or appropriate for the maintenance and operation of the Property, the common areas and facilities and the restricted common areas

and facilities;

H. Adoption and amendment of rules and regulations not inconsistent with these By-laws, covering the details of operation and use of the Property.

I. Establishment of bank accounts in the name of the Association, and authorization of signatories therefore;

J. Purchasing, leasing, or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members, lots offered for sale, lease or surrender by their owners to the Board of Directors;

K. Purchasing lots at foreclosure or other judicial sale in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all members;

L. Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with lots acquired by, and subleasing lots leased by the Board of Directors or its designee, corporate or otherwise on behalf of all members;

M. Organizing corporations to act as designees of the Board of Directors in acquiring title to or leasing lots on behalf of all of the members;

N. Procuring of insurance for the Property, including the lots thereof, as set forth in Article Five, Section 5-13 and 5-14, hereof;

O. Contracting for and/or making of repairs, additions, and improvements to the Property, and for repairs to and restor-

ation of the property in accordance with the provisions of these By-laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

P. Levying fines against members for violations of the rules and regulations established by it to govern the conduct of the members, provided, however, that no fine may be levied in an amount in excess of TWENTY-FIVE DOLLARS (\$25.00) for any one (1) violation. But for each day a violation continues after notice, it shall be considered a separate violation. Such fines may be collected as if they were common charges owed by the member(s) against whom the fines are levied. Where a member is fined for an infraction of the rules and regulations and fails to pay the fine within ten (10) days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine. Where a member persists in violation of the rules and regulations, the Board may require him to post a bond to secure future compliance with the rules and regulations;

Q. Controlling the use of all common areas of the property, including restricted common areas;

R. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common elements, provided, however, that (1) the consent two-thirds (2/3) in number of all voting Association members, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-laws, shall be required for the borrowing of any sum in excess of

THREE THOUSAND DOLLARS (\$3,000.00) and (2) no lien to secure repayment of any sums borrowed may be created on any lot without the consent of the lot owner;

S. Employment of a Managing Agent and/or Manager at such reasonable compensation and to perform such duties as the Board of Directors may authorize; provided however, that the Board of Directors shall not delegate to any such Managing Agent and/or Manager any of the powers set forth in subsections F., H., I., K., L. and M., of this Section;

T. Exercising all other necessary and proper actions for the sound management of the Association and fulfillment of the terms and provisions of the Association Certificate of Incorporation, Declaration and By-laws.

Section 2-03. Election and Term of Office.

At the first annual meeting of members, the terms of office of the Board of Directors shall be fixed as follows:

A. The terms of office of two (2) members shall be set at three (3) years;

B. The terms of office of two (2) members shall be set at two (2) years; and

C. The term of office of one (1) member shall be set at one (1) year.

At the expiration of the initial term of office for each Board Member, his successor shall be elected to serve for a term of three (3) years. Board Members shall hold office until

their successors have been elected and hold their first meeting.

Section 2-04. Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the members, shall be filled by vote of the majority of the remaining Board Members, even though they may constitute less than a quorum; each person so elected shall hold office until his successor is elected at the next annual meeting of Association members.

Section 2-05. Removal of Board Members.

At any regular or special meeting duly called, any one or more members of the Board of Directors may be removed with or without cause by a majority of voting Association members, and a successor may then and there be elected to fill the vacancy so created. Any Board Members so elected shall serve for the unexpired term of his predecessor in office. Any Director whose removal has been proposed by the Association members shall be given an opportunity to be heard at the meeting at which a vote is to be taken on the issue of his removal.

Section 2-06. Organizational Meetings.

The first (1st) meeting of the Board of Directors shall be held within fifteen (15) days of the first (1st) annual meeting of Association members at which Board Members are elected and at such place as may be fixed by the Board of Directors in order legally to constitute such a meeting, providing a majority of the Board shall be present.

Section 2-07. Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least six (6) of such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Board Member personally, or by mail, telephone, or telegraph at least three (3) business days prior to the date set for such meeting.

Section 2-08. Special Meetings.

Special meetings of the Board of Directors may be called by the President, and shall be called by the President or Secretary on the written request of at least two (2) Board Members on two (2) business days' notice to each Board Member, given personally or by mail, telephone, or telegraph. Any such notice shall state the time, place, and purpose of the meeting.

Section 2-09. Waiver of Notice.

Any Board Member may at any time waive notice of any meeting of the Board of Directors in writing, and any such written waiver shall be deemed equivalent to the giving of the notice required herein. Attendance by any Board Member of any meeting of the Board shall constitute a waiver by him of notice of the time and place thereof. If all Board Members are present at any meeting of the Board, no notice shall be required, and any business may be transacted at any such meeting.

Section 2-10. Quorum of Board of Directors.

At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at a meeting of the Board of Directors there is less than a quorum present, a majority of those present may adjourn the meeting. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 2-11. Fidelity Bonds.

The Board of Directors shall in their discretion, obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums of such bonds shall constitute a common expense.

Section 2-12. Compensation.

No member of the Board of Directors shall receive compensation from the Association for acting as such, provided, however, that nothing herein contained shall be construed to preclude any Board Member from serving the Association or the Board of Directors in any other capacity and receiving compensation therefor.

Section 2-13. Liability of Board of Directors.

The members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liabilities to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Certificate of Incorporation, the Declaration or of these By-laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the Board of Directors or by the Managing Agent or by the Manager on behalf of the Association shall provide that the members of the Board of Directors, or the Managing Agent, or the Manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

ARTICLE THREE

LOT OWNERS

Section 3-01. Annual Meetings.

Within 120 days after 75% of the Townhouse lots have been sold by Sponsor and paid for or within five (5) years from

the date of conveyance of the first Townhouse lot, whichever shall first occur, Sponsor shall notify all lot owners thereof, and the first annual meeting of members shall be called by the President to be held within thirty (30) days thereafter. At such meeting officers and directors of the Sponsor holding office as members of the Board of Directors shall resign, and all lot owners, including Sponsor, shall elect a new Board of Directors. Thereafter, annual meetings of members shall be held, at the property, on the first Monday in February of each succeeding year, or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Directors delivered to the members not less than fifteen (15) days prior to the date fixed for said meeting. At such meetings there shall be elected by ballot of the members, a Board of Directors in accordance with the requirements of Section 2-03 of these By-laws. The members may also transact such other business of the Association as may properly come before the meeting.

Section 3-02. Special Meetings.

The President may, and shall if directed by resolution of the Board of Directors or by Petition signed and presented to the Secretary by members representing twenty-five percent (25%) of the voting Association membership, call a special meeting of the Association. The notice of any special meeting shall state the time and place of the meeting, and the purpose thereof. No

business shall be transacted at a special meeting except as stated in the notice.

Section 3-03. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association, or at such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 3-04. Notice of Meetings.

It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose, the time and the place thereof, to each Association member, at least ten (10), but not more than thirty (30) days prior to such meeting. Any notice so mailed shall be considered served.

Section 3-05. Quorum; Majority Voting.

At all meetings of the Association, members holding in the aggregate in excess of fifty percent (50%) in voting interests, shall constitute a quorum for transaction of business. If a quorum is present at a meeting, the acts of a majority of voting members present shall bind all members for all purposes other than those for which a higher percentage is required by law, by the Declaration or by these By-laws. If, at any meeting of members, less than a quorum is present, a majority of voting members present may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was

called. At any such subsequent meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice. As used in these By-laws, the term "majority of members" shall mean those members holding in excess of fifty percent (50%) in the aggregate in voting interests.

Section 3-06. Order of Business.

The order to business at all meetings of Association members shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of the preceeding meeting;
- D. Reports of officers;
- E. Report of Board of Directors;
- F. Reports of committees;
- G. Election of voting inspectors (when appropriate);
- H. Election of members of Board of Directors (when required);
- I. Unfinished business;
- J. New business.

Section 3-07. Title to Lots.

Title to lots may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or a partnership, or in the name of a fiduciary.

Section 3-08. Voting.

The Association shall have one class of voting membership. Members shall be entitled to no more than, nor less than one vote. The appointment of any proxy shall be made in a writing filed with the Secretary, and shall be revocable at any time by notice in writing to the Secretary.

ARTICLE FOUR

OFFICERS

Section 4-01. Designation.

The principal officers of the Association shall be President, Vice-President, Secretary, and Treasurer, all of whom shall be elected by and from the Board of Directors. The Board of Directors may also appoint an Assistant Vice-President, an Assistant Treasurer, and an Assistant Secretary and such other officers as in its judgment may be necessary.

Section 4-02. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board, and shall hold office at the pleasure of the Board of Directors.

Section 4-03. 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 his successor 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 4-04. President.

The President shall be the chief executive officer of the Association, shall supervise the functions of the other officers, shall preside at all meetings of the Association members and shall preside at all meetings of the Board of Directors. He shall keep the Board of Directors fully informed, and shall freely consult with them concerning the activities of the Association. He shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Association all contracts, agreements, deeds, leases, checks, and other instruments of the Association authorized either generally or specifically by the Board of Directors. He shall perform all duties incident to the office of President, subject however, to the control of the Board of Directors.

Section 4-05. Vice-President.

The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice-President shall also

perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

Section 4-06. Secretary.

The Secretary shall keep the minutes of all meetings of the Board of Directors and of the Association members; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary, subject however, to the control of the Board of Directors, and such other duties as shall from time to time be assigned to him by the Board of Directors.

Section 4-07. Treasurer.

The Treasurer shall have the custody of all funds and securities of the Association which may come into his hands. He shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Association, and shall deposit all monies and other valuable effects of the Association in the name and to the credit of the Association in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, he shall render a statement of his accounts. He shall at all reasonable times exhibit his books and accounts to any officer or member of the Board of Directors of the Association, and shall perform all duties incident to the office of Treasurer, subject however, to

the control of the Board of Directors, and such other duties as shall from time to time be assigned to him by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give security for the faithful performance of his duties as the Board of Directors may require.

Section 4-08. Agreements, Contracts, Deeds, Checks
And Other Instruments.

All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any one (1) officer of the Association or by such other person or persons as may be designated by the Board of Directors.

Section 4-09. Compensation of Officers.

The salaries, if any, of all officers shall be set by the Board of Directors, in their discretion, and the fact that any officer is a member of the Board of Directors shall not preclude him from receiving his salary, if any, or from voting on any resolution providing for the same.

ARTICLE FIVE

OPERATION OF PROPERTY

Section 5-01. Determining Common Charges.

Except as otherwise provided herein ,all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of or any alteration, addition

or improvement to, common areas ("common expenses") shall be determined by the Board of Directors and shall be borne by the Association members. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association which budget shall include projections of common expenses, common revenues (from sources other than assessments of lot owners), the amount of common charges required to meet the excess of the former over the latter, and an allocation and assessment of such common charges against lot owners as provided in the Declaration. As used in these By-laws, the term "common expenses" or "common charges" shall mean expenses or charges for which lot owners are proportionately liable, and shall include, but shall not be limited to the following:

A. All expenses of administration, maintenance, repair and replacement of the common areas;

B. Insurance premiums on all policies of insurance obtained by the Board of Directors, Managing Agent or Manager, as the case may be, pursuant to Section 5-13 and 5-14 of this Article;

C. Working capital reserve;

D. General operating reserve;

E. Capital Improvement fund;

F. All other amounts that the members may agree upon or that the Board of Directors may deem necessary or appropriate for the operation, administration, and maintenance of the Property;

G. All other amounts designated common expenses by the Declaration, by these By-laws, or by law.

The Board of Directors shall furnish all lot owners and mortgagees who request it with copies of the budget by which the allocations and assessments of common charges are based.

Section 5-02. Collection of Assessments.

The Board of Directors shall assess common charges against the lot owners from time to time, and at least annually, and shall advise each lot owner in writing of the amount of common charges payable by him. If any common charges remain unpaid for more than ten (10) days from the date due, the Board of Directors shall take prompt action to collect the same and impose a late charge as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue assessment or installment thereof, provided such late charges are equitable and uniformly applied.

Section 5-03. Obligation to Pay Common Charges.

All lot owners are obligated to pay common charges assessed by the Board of Directors at such times as the Board may determine. No lot owner may exempt himself from liability for any assessment for common charges by waiver of the use or enjoyment of any of the common areas or by abandonment of his lot. In all voluntary conveyances of lots, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of common expenses

up to the time of the grant or conveyance without prejudice to the grantee's right to recover against the grantor any amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Directors, or the Managing Agent or the Manager, setting forth the amount of unpaid assessments. In such event, the grantee shall not be liable for any amount in excess of the amount set forth in such statement. A mortgagee or other purchaser of a lot at a foreclosure sale, shall not be liable for non-payment of any common charges assessed prior to the date of the foreclosure sale and such lot shall not be subject to a lien for non-payment of such charges.

Section 5-04. Default in Payment of Common Charges.

In the event of default by any lot owner in paying the common charges assessed against his lot by the Board of Directors, such lot owner shall be obligated to pay the maximum legal interest rate permissible by law (or such lower interest rate as may be fixed by the Board of Directors), on such common charges from the due date thereof, together with all expenses, including reasonable attorney's fees incurred by the Board of Directors in any proceeding brought to collect such common charges, or to foreclose a lien for non-payment thereof.

Section 5-05. Foreclosure of Liens for Unpaid Common Charges.

The Board of Directors have the right and duty to attempt to recover unpaid common charges, together with interest

thereon, and expenses of the proceeding, including reasonable attorney's fees, (1) in an action to recover a money judgment brought against any lot owner in default on his obligation to pay the common charges, or (2) by foreclosure of the lien, on any lot in respect to which such default has occurred. The suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien, securing the same, and foreclosure shall be maintainable notwithstanding the pendency of a suit to recover a money judgment. In any such foreclosure, the lot owner shall be required to pay reasonable rental for the lot for any period prior to sale, and the Board of Directors, as Plaintiff in such a foreclosure, shall be entitled to the appointment of a receiver to collect the same.

Section 5-06. Surpluses.

The Association shall not be obligated in any calendar year to spend all sums collected in such year by way of maintenance assessments or otherwise and may carry forward as surplus any balance remaining. The Association shall not be obligated to apply any such surpluses towards the reduction of the amount of the maintenance assessment in the succeeding year but may carry forward from year to year such surpluses as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and effectuation of the purposes of the Association.

Section 5-07. Maintenance and Repair.

All maintenance and repairs and the responsibility therefor shall be in accordance with the provisions of Articles Nine and Ten of the Declaration, which provisions shall become a part of these By-laws as if fully set forth herein.

Section 5-08. Uses of Lots.

In order to provide for a more congenial occupancy of the Property and for the protection of the values of the lots, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

A. Lots shall be used for residential purposes only.

B. Common areas may be used only for the furnishing of the services, the facilities and the other uses for which they are reasonably suited.

C. No nuisance shall be allowed on the Property, nor shall any use or practice be allowed which is a source of annoyance to owners or occupants of the townhouses or which interferes with the peaceful possession or proper use of the Property by its owners or occupants.

D. No immoral, improper, offensive or unlawful use shall be made of the Property or any portion thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the Property, shall be complied with at the full expense of the respective lot owners or the Board of

Directors, whoever shall have the obligation to maintain or repair such part of the Property.

E. Lot owners shall not allow anything to be done or kept in their lot which would increase the rate of fire insurance thereon or on the Association as a whole.

F. No townhouse may be rented without the prior written consent of the Board of Directors.

Section 5-09. Modifications by Lot Owners.

No lot owner shall make any structural addition or alteration in or to his lot or townhouse without the prior written consent of the Architectural Committee pursuant to Article Ten of the Declaration. On request by any lot owner for approval of a proposed addition or alteration, the Architectural Committee shall answer the same within sixty (60) days after receipt thereof, and failure to do so within the stipulated time shall constitute a consent. Any application to any governmental authority for a permit to make any addition or alteration in or to any lot or townhouse shall be executed by the Architectural Committee only. The Association, the Board of Directors and the Architectural Committee shall not, however, be liable to any contractor, sub-contractor, or material man, or to any person claiming injury to person or property as a result of such addition or alteration. The provisions of this section shall not apply to lots owned by sponsor until such lots shall have been initially sold by sponsor and paid for.

Except as provided herein, no lot owner shall construct any additions to the exterior of his townhouse, make structural changes to any of the common areas, or excavate or otherwise alter common areas, whether such common areas be located in, under, or adjacent to the building.

Section 5-10. Right of Entry.

Each lot owner shall grant a right of access to his townhouse to the manager and/or managing agent and/or any other person authorized by the Board of Directors, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his townhouse and threatening another townhouse or a common area, or for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other common facilities in his townhouse or elsewhere in the building, or to correct any condition which violated the provision of any mortgage covering another lot, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the lot owner. In case of an emergency, such right of entry shall be immediate, whether the lot owner is present at the time or not.

Section 5-11. Modifications by Board of Directors.

Any additions or alterations in or to the common elements costing THREE THOUSAND DOLLARS (\$3,000.00) or less may be made by the Board of Directors without the approval of members

or lot mortgagees, and the cost thereof shall be treated as common expenses. Whenever, in the judgment of the Board of Directors, the common elements require additions or alterations costing in excess of THREE THOUSAND DOLLARS (\$3,000.00) the making of such additions or alterations shall require approval by a majority of voting members, and by those mortgagees holding first mortgages on fifty-one percent (51%) of the lots. After such approval has been obtained, the Board of Directors shall proceed with the additions or alterations, and the cost thereof shall be treated as common expenses.

Section 5-12. Repair or Reconstruction.

Except as regarding Eligible Mortgagees as provided in Section 13.08 of the Declaration, if seventy-five percent (75%) or more of the Property is destroyed or substantially damaged and seventy-five percent (75%) or more of the voting lot owners do not duly and promptly resolve to proceed with repair or restoration, then the Property, or so much thereof shall remain, shall be subject to an action for partition at the suit of any lot owner or lienors as if owned in common. In such event, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered as one fund and shall be divided among all lot owners proportionately; provided however, that no payment shall be made to a lot owner until there has been paid out of his share of such funds all liens on his lot.

In all other cases, in the event of damage to or destruction of the Property, the Board of Directors shall arrange for the prompt repair and restoration of the property, including individual lots therein, but not including furniture, furnishings, decorations, fixtures, equipment, or other personal property installed in the townhouses by lot owners. The Board of Directors shall disburse the proceeds of all insurance policies, in appropriate progress payments, to the contractors engaged in repair and restoration work. Costs of repair and restoration in excess of insurance proceeds shall be treated as common expenses.

Section 5-13. Fire and Extended Coverage Insurance.

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against loss by fire and other casualties normally covered under broad form fire and extended coverage insurance as written in New York, covering all Association property, all structural portions of the Association property, and all townhouse lots, but not including furniture, fixtures, decorations, equipment, or other personal property placed therein by lot owners, in at least an amount satisfactory to mortgagees holding first mortgages on the individual lots and in accordance with Article Twelve of the Declaration. The premiums for such insurance shall be a common expense to be paid by monthly assessments levied by the Board of Directors.

Section 5-14. Liability Insurance.

The Board of Directors, managing agent, or manager, as the case may be, shall obtain and continue in effect, insurance against liability for personal injury and death and for damage to property arising from accidents occurring within the Property in amounts satisfactory to mortgagees holding first mortgages on the individual lots. Such amounts shall be determined by the governing board and the premiums for such insurance shall be a common expense.

Section 5-15. Right of Owners to Insure Lots.

Any insurance obtained or maintained by the Board of Directors, managing agent, or manager, as the case may be, shall be without prejudice to the rights of lot owners to obtain and maintain such lot insurance as they see fit, except that any such policies must contain a waiver of subrogation provision.

Section 5-16. Use of Common Elements and Facilities.

A lot owner shall not place or cause to be placed in the common facilities or areas, other than an area to which such lot owner has sole access, and other than the areas designed as storage areas, any furniture, packages, merchandise or object of any kind.

Section 5-17. Rules of Conduct.

Rules and regulations concerning the use of the common areas and of individual lots may be promulgated and amended from time to time by the Board of Directors with the approval of

a majority of lot owners. Copies of all such rules and regulations shall be furnished by the Board of Directors to each lot owner prior to their effective date. Initial rules and regulations, shall be effective until amended by the Board of Directors with the approval of a majority of voting lot owners, are annexed hereto and made a part hereof as "Schedule A".

Section 5-18. Abatement of Violations.

Violation of any provision of the Declaration, of these By-laws, or any rule or regulation adopted pursuant hereto, shall give the Board of Directors, acting on behalf of all lot owners, the right, in addition to any other rights set forth herein:

A. To enter any lot or townhouse in or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting lot or townhouse owner, any thing or condition constituting such violation or breach, and the Board of Directors shall not be deemed guilty of trespass in so doing; or,

B. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

ARTICLE SIX

MORTGAGES

Section 6-01. Notice to Board of Directors.

The lot owner who mortgages his lot shall, within

fifteen (15) days after such mortgage has been executed, notify the Board of Directors of the name and address of his mortgagee. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Lots".

Section 6-02. Payment of Assessments.

No lot owner shall be permitted to convey, mortgage, pledge, sell, or lease his lot unless and until he has paid in full to the Board of Directors all unpaid charges theretofore assessed his lot, and until he has satisfied all unpaid liens against his lot other than mortgage liens.

Section 6-03. Notice of Unpaid Common Charges.

The Board of Directors, whenever so requested in writing by a mortgagee of a lot, shall promptly report any unpaid common charges or any default by the owner of the mortgaged lot.

Section 6-04. Notice of Default.

Upon giving notice to a lot owner of a default, whether in payment of common charges or otherwise, the Board of Directors whenever so requested in writing by a mortgagee of a lot, shall send a copy of such notice to each holder of a mortgage secured by such lot whose name and address appears in the book entitled "Mortgagees of Lots".

Section 6-05. Notice of Action.

Upon written request to the Association any Eligible Mortgagee shall be entitled to timely written notice of:

working capital, and common charges in the hands of the Board of Directors. The Board of Directors is also authorized to borrow money to finance the acquisition of such lots; provided however, that no lien or encumbrance on any property, other than the lot to be acquired, may be suffered to secure such financing.

Section 7-03. Leasing of Lots.

No lot or townhouse owner may lease any part less than his entire lot or townhouse or lease his lot or townhouse for a period of less than thirty (30) days, except with the written consent of the Board of Directors and in accordance with the following provisions:

A. Any lease must be consistent with the Declaration, By-laws and rules and regulations of the Association, as the same may be amended from time to time and must provide that the lessee must comply therewith. Said lease must further provide that if the lessee fails to comply with the aforementioned provisions, the Board of Directors shall have the power to terminate such lease and/or bring a summary proceeding to evict the lessee in the name of the landlord.

B. Said lease must further provide that it may not be modified, amended, extended or assigned, without prior written consent of the Board of Directors and that the lessee shall not sublet the demised premises or any part thereof without prior written consent of the Board of Directors.

C. Said lease must further provide that if the landlord

A. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held by such Eligible Mortgagee;

B. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

C. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Article Eleven of these By-laws.

Section 6-06. Inspection of Books.

Lot owners and lot mortgagees shall be permitted to inspect the books of accounts of the Association at reasonable times during business hours, but not more often than once per month.

ARTICLE SEVEN

SALES AND LEASES OF LOTS

Section 7-01. Compliance with Article.

No lot owner may sell or lease his lot or any interest therein except by complying with the provisions of this Article.

Section 7-02. Financing Acquisition of Lots by Board of Directors.

Acquisition of lots by the Board of Directors may be financed from special assessments pursuant to the Declaration,

fails to pay common charges or special assessments assessed against the lot owner, the Board of Directors can evict the lessee on not less than thirty (30) days prior written notice of foreclosure of the lien of such lot.

D. Except as otherwise provided herein, such lease shall be an approved form of Association lease, whose such modifications shall be approved in writing by the Board of Directors.

E. A copy of said lease shall be delivered to the Board of Directors, to be kept in the permanent records of the Association.

F. Leases made in violation of these provisions shall be voidable by the direction of the Board of Directors. If the Board of Directors so elects, the landlord shall be deemed to have authorized the Board of Directors to institute legal proceedings to evict the lessee in the name of the owner, as landlord, and the landlord shall reimburse the Board of Directors for all costs incurred in connection therewith, including, but not limited to, reasonable attorney's fees.

Section 7-04. Payment of Assessment.

No lot owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his lot unless and until he shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against his lot and until he shall have satisfied all unpaid liens against such lot, other than permitted mortgages.

ARTICLE EIGHT

CONDEMNATION

Section 8-01. Condemnation of Association Property.

Except as regarding Eligible Mortgagees as provided in Section 13.08 of the Declaration, in the event of a taking in condemnation or eminent domain of part or all of the Association property, the award made for such taking shall be payable to the Board of Directors. If seventy-five percent (75%) or more in number of voting lot owners duly and promptly approve the repair and restoration of the common areas, the Board of Directors shall contract for such repair and restoration, and shall disburse the proceeds of the award in appropriate progress payments to contractors engaged in such repair and restoration. If the proceeds of the award are insufficient to defray the entire expense of repair and restoration, the excess of such expense over such proceeds shall be treated as a common expense. In the event that seventy-five percent (75%) or more of the voting lot owners do not duly and promptly approve the repair and restoration of the Association property, the net proceeds shall be divided by the Board of Directors among all lot owners proportionately, paying out of the share of each lot owner the amount of any unpaid liens on his lot, in the order of priority of such liens.

ARTICLE NINE

RECORDS

Section 9.01. Records; Certification by Certified Public Accountants.

The manager, managing agent, and/or Board of Directors shall keep detailed records of all actions of such manager, managing agent and Board of Directors, as well as minutes of the meetings of the Board of Directors, minutes of the meetings of members, and financial records and books of accounts for the Association, including a chronological record of all receipts and disbursements. A separate account shall also be kept for each lot containing, among other things, the amount of each assessment against such lot, the date when due, amounts paid thereon, and the balance remaining due. The Board of Directors shall also prepare a quarterly written report summarizing receipts and disbursements of the Association, copies of which shall be made available to all lot owners. Additionally, an annual report of receipts and disbursements of the Association certified by an independant certified public account, shall be rendered by the Board of Directors to all lot owners and mortgagees requesting the same, promptly after the end of each fiscal year.

Section 9.02. Fiscal Year.

The fiscal year of the Association shall commence on January 1st of each year and end on December 31st.

ARTICLE TEN
MISCELLANEOUS

Section 10-01. Notices.

All notices required or permitted to be sent to the Board of Directors shall be personally delivered or sent by registered or certified mail in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Board of Directors at Patera Avenue, Perinton, New York, or to such other address as the Board of Directors may designate. All notices required or permitted to be sent to any lot owner, shall be sent by registered or certified mail to the Association or to such other address as such owner may have designated in writing to the Board of Directors. All notices to lot mortgagees shall be sent by registered or certified mail to their respective addresses, as maintained in the book entitled "Mortgagees of Lots". 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.

Section 10-02. Invalidity.

If any provision or provisions of these By-laws is or are declared invalid, such invalidity shall in no way impair or effect in any manner the validity, enforceability, or affect of the remaining provisions of these By-laws.

Section 10-03. 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 10-04. Waiver.

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 and failures to enforce that may occur.

Section 10-05. Gender; Singular/Plural.

The use of the masculine gender in these By-laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 10-06. Reference to the Sponsor.

Whenever a reference is made to the sponsor, such reference shall be deemed to include any corporation, subsidiary or other entity wholly controlled by the sponsor and designated by it to act in its place and stead concerning any matter pertaining to ownership, leasing or mortgaging of lots, operation of the Association property, or both.

ARTICLE ELEVEN
AMENDMENTS TO BY-LAWS

Section 11-01. Amendments.

These By-laws may be modified or amended by the vote of two-thirds (2/3) of all voting members at a meeting of members duly called for such purposes.

However, the approval of Eligible Mortgagees holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to Eligible Mortgagee mortgages, shall be required to add or amend any material provisions of the By-laws which establish, provide for, govern or regulate any of the following:

- A. Voting;
- B. Assessments, assessment liens or subordination of such liens;
- C. Reserves for maintenance, repair and replacement of the common areas (or lots if applicable);
- D. Insurance or Fidelity Bonds;
- E. Rights to use of the common areas;
- F. Responsibility for maintenance and repair of the several portions of the project;
- G. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project, other than Phases I through II of Thomas Creek Townhouses;

- H. Boundaries of any lot;
- I. The interests in the general common areas;
- J. Convertibility of lots into common areas or of common areas into lots;
- K. Leasing of lots;
- L. Imposition of any rights of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot;
- M. Any provisions which are for the express benefit of Eligible Mortgagees.

Section 11-02. Amendments Affecting Sponsor.

Notwithstanding any provision contained herein to the contrary, no amendment to these By-laws shall be effective in any way against the Sponsor, until five (5) years shall have elapsed from the date of conveyance of the first townhouse lot or until 120 days after seventy-five percent (75%) of the townhouse lots have been sold by Sponsor and paid for, whichever shall first occur.

ARTICLE TWELVE

CONFLICTS

Section 12.01. Conflicts.

In the case of any conflict between the Certificate of Incorporation and these By-laws, the Certificate of Incorporation shall prevail.

poration shall control; and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.

ARTICLE THIRTEEN

DEFINITIONS

Section 13-01. Definitions.

The words, phrases or terms used in these By-laws shall have the same meanings as those words, phrases or terms set forth and defined in Article One of the Declaration.

SCHEDULE "A" OF THE BY-LAWS

RULES AND REGULATIONS OF
THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

1. Each townhouse owner shall keep his townhouse in a good state of preservation and cleanliness. He shall not allow anything to fall from the windows or doors of the premises, nor shall he sweep or throw from the premises any dirt or other substance upon the grounds. Refuse shall be placed in containers in such manner and at such times and places as the Board of Directors or its agent may direct.

2. The sidewalk and entrances must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the townhouses.

3. Employees of the owners may not gather or lounge in the common areas of the grounds.

4. Supplies, goods and packages of every kind are to be delivered in such manner as the Board of Directors or its agent may prescribe and the Board of Directors is not responsible for the loss or damage of any such property, notwithstanding such loss or damage that may occur through the negligence of employees of the Board of Directors or managing agent.

5. Townhouse owners shall not cause or permit any disturbing noises or objectionable odors to be produced upon or to emanate from their townhouses.

6. Townhouse owners shall not permit or keep upon their

lots any inflammable, combustible or explosive material, chemicals or other dangerous substances.

7. Water closets and other water apparatus in each townhouse shall not be used for any purpose other than those for which they were designed, nor shall any sweepings, rubbish, rags or other articles be thrown into same. Any damage resulting from misuse of any water closets or other apparatus in a townhouse shall be repaired and paid for by the owner of such townhouse.

8. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any townhouse owner on any part of the outside of any townhouse or building, hung from windows or placed in windowsills, without the prior written consent of the Board of Directors.

9. No awnings, aerials, machines or other projections shall be attached to the outside walls of the building, and no blinds, shades or screens shall be attached to, hung or used on the exterior of any window or door of the demised premises, without the prior written consent of the Board of Directors.

10. No owner or licensee shall install wiring for electrical, television antennas or radio antennas without the prior written consent of the Board of Directors.

11. Townhouse owners, their employees, customers and visitors shall not at any time or for any reason whatsoever enter upon the roof of any townhouse or building, without the prior written consent of the Board of Directors.

12. The Board of Directors or its designee shall have the right of access to any townhouse for the purpose of making inspections, repairs, replacements or improvements, or to remedy certain conditions which would result in damage to other portions of the townhouse cluster. In the event that vermin, insects or other pests are discovered, the Board of Directors or its designee may take such measures as it deems necessary to control or exterminate same.

13. Owners shall not permit or suffer anything to be done or kept in their townhouses which would increase the rate of fire insurance thereon or on the Association as a whole.

14. No noxious or offensive activity shall be carried on in any unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants.

15. No "FOR SALE" signs or other window displays or advertising are permitted on any part of the property, except with the written approval of the Board of Directors. The right is reserved by the Sponsor and the Board of Directors to place "FOR SALE" signs on any unsold or any unoccupied townhouses.

16. No townhouse owner shall alter, impair or otherwise affect the common elements without the prior written consent of the Board of Directors.

17. The storage of boats and trailers upon the common area is prohibited without the prior written consent of the

Board of Directors.

18. Complaints regarding service or operation of the management shall be made in writing to the Board of Directors or to the managing agent.

19. Hanging, cleaning or beating garments, rugs or the like from or on the windows, porches or facades of the townhomes, or other areas of a similar nature is prohibited.

20. Throwing garbage or trash outside disposal installations provided for such purposes is prohibited.

21. All damage to common elements caused by the moving or carrying of articles therein shall be the responsibility of, and shall be paid for by, the owner or person in charge of such articles.

22. Townhouses shall be occupied and used by their respective owners only as private dwellings for such owners, their families, tenants and social guests, and for no other purpose whatsoever.

23. No townhouse or portion of a townhouse may be rented for a period of less than 30 days without the written consent of the Board of Directors, or used for commercial purposes.

24. Water shall not be kept running for an unreasonable and unnecessary length of time.

25. Each townhouse owner shall provide the manager or managing agent with such key or keys as are necessary to gain access to his townhouse, and any owner altering a lock or installing a new lock on any door providing access to his town-

house shall provide a key or keys to such new altered lock to the manager or managing agent.

26. Townhouse owners, their families, guests, tenants and employees will abide by the following parking and traffic regulations:

A. Horns are to be used only when necessary for the safe operation of vehicles.

B. Owners shall not park, nor shall they permit their families, guests or tenants to park in the parking spaces of other owners, or in such manner as to prevent ready access to the parking spaces of other owners. Improperly parked vehicles are subject to removal at their owners' expense.

C. Owners, their families, guests, tenants and employees shall abide by such traffic and parking regulations as may be posted in the parking area(s).

27. Townhouse owners shall be permitted to keep two (2) dogs or two (2) cats, or one (1) dog and one (1) cat only if such animals do not disturb or annoy other residents. Owners keeping domestic animals shall abide by municipal sanitary regulations and shall be responsible for any inconvenience or damage caused by such animals. Dogs must be kept on a leash at all times.

28. Any consent or approval given under these rules and regulations may be added to, amended or repealed at any time by resolution of the Board of Directors.

29. A townhouse owner may apply to the Board of Directors for a temporary waiver of one or more of the foregoing rules. Such temporary waiver may be granted by a majority of the Board of Directors, for good cause shown, if in the Board's judgment, such temporary waiver will not interfere with the purposes for which the Association was formed.

30. These regulations shall be posted at all times at the office of the Board of Directors, and a copy thereof shall be furnished to each townhouse owner.

THE BOARD OF DIRECTORS RESERVES THE RIGHT, SUBJECT TO APPROVAL BY A MAJORITY OF TOWNHOME OWNERS, TO AMEND, REPEAL OR ADD TO THESE RULES AND REGULATIONS FROM TIME TO TIME AS MAY BE DEEMED NECESSARY FOR THE SAFE AND EFFICIENT MAINTENANCE OF THOMAS CREEK TOWNHOUSE DEVELOPMENT AND FOR THE COMFORT AND CONVENIENCE OF THE OCCUPANTS THEREOF.

EXHIBIT 4

MANAGEMENT AGREEMENT



MANAGEMENT AGREEMENT

AGREEMENT commencing the first day of June 1987 by and between THOMAS CREEK HOMEOWNERS ASSOCIATION, INC., a New York Not-For-Profit Corporation, hereinafter called the "ASSOCIATION," and ROCKHURST MANAGEMENT CORPORATION, a New York Corporation, hereinafter called "ROCKHURST."

W I T N E S S E T H:

In consideration of the terms, conditions, and covenants hereinafter set forth, the parties hereto mutually agree as follows:

1. The ASSOCIATION hereby appoints ROCKHURST, and ROCKHURST hereby accepts appointment pursuant to the terms and conditions herein provided, as exclusive managing agent of the Townhouse Project known as Thomas Creek in the Town of Perinton, County of Monroe, State of New York, consisting of or to consist of eighty-five (85) townhouses.
2. The authority and duties conferred upon ROCKHURST herein are confined to:
 - a. the Common Area as defined in the recorded Declaration of Covenants, Conditions, and Restrictions (hereinafter called the "DECLARATION") and the recorded Plat thereof; and
 - b. the exterior surfaces for which the ASSOCIATION has maintenance responsibilities as defined in the DECLARATION.

Such authority and duties do not and shall not include supervision or management of individual townhouses except as stated above.

3. The ASSOCIATION shall furnish ROCKHURST with a complete set of the plans and specifications of the Townhouse Project; with the aid of these documents ROCKHURST will inform itself with respect to the layout, construction, locations, character, plan, and operation of the common areas and the roofs and exterior walls of the townhouse units. Copies of any and all guarantees and warranties pertinent to the common area, roofs, and exterior walls of the Townhouse Project and in force at the time of the execution of this Agreement shall be furnished to ROCKHURST by the ASSOCIATION. ROCKHURST shall have no responsibility for any replacement, repairs, or maintenance of the interiors of the Townhouse units except insofar as the ASSOCIATION has an interest in a casualty loss.
4. ROCKHURST shall render services and perform duties as follows:
 - a. Maintain businesslike relations with members, whose service requests shall be received, considered, and recorded in systematic fashion in order to show the action taken with respect to each.

Complaints of a serious nature shall, after investigation, be reported to the ASSOCIATION's Board of Directors with appropriate recommendations. As part of a continuing program, ROCKHURST will assist the ASSOCIATION in seeking full performance by members of all items of maintenance for which they are responsible. Members' service requests shall be responded to within fourteen (14) days. If it is not possible to effect the requested repair within fourteen (14) days, the member shall receive a response explaining the reason for the delay.

- b. Cause the buildings, appurtenances, and grounds of the Townhouse Project to be maintained according to standards acceptable to the ASSOCIATION's Board of Directors.
- c. As may be requested or required by the Board, take such action as the Board deems necessary to comply with any and all orders or requirements affecting the premises or improvements placed thereon by any Federal, State, County, or Town authority having jurisdiction thereover, and the Board of Fire Underwriters or other similar bodies. ROCKHURST shall promptly, and in no event later than seventy two (72) hours from the time of their receipt, notify the President of the ASSOCIATION in writing of all such orders and notices of requirements.
- d. Negotiate all contracts as Agent for the ASSOCIATION for lawn mowing, snow removal, and other necessary services as the Board of Directors may deem advisable. All such contracts shall be made in the name of the ASSOCIATION, may be reviewed by the ASSOCIATION's attorney at the ASSOCIATION's expense, and shall be signed by an officer of the ASSOCIATION.
- e. ROCKHURST shall place orders for such equipment, tools, materials, and supplies as are necessary to properly maintain the Townhouse Project. Expenses incurred for such purchases shall not exceed \$500.00 per occurrence unless specifically authorized by the ASSOCIATION's Board of Directors.
- f. Insurance:
 - i. Investigate and seek out bids or quotes from licensed insurers for all necessary forms of insurance as in the opinion of the Board may be required by the Declaration or otherwise be appropriate, including but not limited to public liability insurance and fire and extended coverage insurance on all dwellings. All the various types of insurance coverage required shall be placed with such companies, in such amounts, and with such beneficial interests appearing therein as shall be acceptable to the ASSOCIATION's Board of Directors.
 - ii. Investigate and maintain reports of all accidents or claims for damage as reported to it relating to the management, operation, and maintenance of the Townhouse Project, including any damage or destruction thereof and the estimated cost of repair, and shall cooperate and make any and all reports

required by any insurance company in connection therewith.

- g. Maintain the ASSOCIATION's records, books, and accounts. As a standard practice, ROCKHURST shall render to the ASSOCIATION a statement of revenue and expense, and a balance sheet, as of the end of every quarter. Annually, such records, books, and accounts shall be audited and appropriate tax returns prepared by a Certified Public Accountant, acceptable to the ASSOCIATION's Board of Directors, whose report shall be submitted to the ASSOCIATION's Board of Directors.
 - h. Collect and, as necessary, receipt for all monthly assessments and other charges due the ASSOCIATION. The only responsibility that ROCKHURST has for the collection of delinquent assessments is as follows: i.) send a delinquency notice during the first delinquent month; ii.) prepare and file a lien if no response or payment is received by the 10th day of the following month; the ASSOCIATION hereby authorizes ROCKHURST to file such liens.
 - i. Designate one of its employees as property manager for the ASSOCIATION; such employee shall attend quarterly meetings of the Board of Directors and the Annual Meeting of the Members of the ASSOCIATION. For additional meetings of the Board with the property manager or with other ROCKHURST management personnel, ROCKHURST shall charge the ASSOCIATION at an hourly rate not to exceed \$70.00 per hour, which rate may be lessened or waived depending on the employee, the frequency, location, and/or the time of the day and day of the week of such meeting(s).
5. Everything done by ROCKHURST Corporation under the provisions of Article four (4) shall be done as Managing Agent contracted by the ASSOCIATION, and all obligations or expenses incurred thereunder shall be for the account, on behalf, and at the expense of the ASSOCIATION including but not limited to attorneys fees and/or fees to Certified Public Accountants. ROCKHURST shall not be obligated to make any advance to or for the ASSOCIATION or to pay any sum, except of funds held or provided as aforesaid, nor shall ROCKHURST be obligated to incur any liability or obligation for the account of the ASSOCIATION without assurance that the necessary funds for the discharge thereof will be provided. ROCKHURST shall not reimburse itself for any portion of its overhead expenses, administrative expenses, managerial, or reasonable secretarial and bookkeeping expenses. However, materials for repairs, postage, long distance telephone calls, and supply expenses are ASSOCIATION expenses and ROCKHURST is authorized to reimburse itself for such expenses. Charges for copies shall be \$0.10 per page for letter and legal size and \$0.15 per page for ledger size. Other services which are not included in the management fee may be available from ROCKHURST at fees mutually agreeable to both parties. Examples of such services are preparation of newsletters, annual insurance billing, negotiations with Developers or governmental officials, and revision of control documents. Charges by Rockhurst for preparation of closing packages are billed to the requesting party (usually the purchaser).

12. a. The compensation which ROCKHURST shall be entitled to receive for services performed under this agreement shall be a fee payable monthly, in advance, in the following amounts:

First year: \$10.25/townhouse unit/month;

These fees increase by 2% per year in the second and third years of the Agreement.

These fees become effective on the first of the month following the original closing of each townhouse.

- b. The ASSOCIATION shall give 60 (sixty) days' notice of its intention to enter into a new contract with ROCKHURST at the end of the term.

13. The ASSOCIATION and ROCKHURST agree that all repairs to the common area and the exteriors of the townhouses which do not require a specialized contractor shall be performed by ROCKHURST at the expense of the ASSOCIATION on a time and materials basis. The maximum hourly rate which ROCKHURST may charge to the ASSOCIATION for repair service personnel shall be initially \$27.00 per hour (plus applicable tax). Such hourly rate may only be increased during the term of this Agreement on the first day of September of each year and such increases shall not exceed 4% in each instance. The parties hereto further agree that the ASSOCIATION shall pay ROCKHURST for the time of its Service personnel in inspecting repair and replacement work performed by outside contractors.

14. Termination:

- a. This Agreement shall be effective as of the date first above written and unless terminated as provided below shall continue in effect for a period of three (3) years.

b. Early termination:

- (i) This Agreement may be terminated by mutual consent in writing of the parties hereto as of the end of any calendar month.
- (ii) This Agreement may be terminated by either party upon sixty (60) days' notice which notice may only be given within the first thirty (30) days following the transition from developer to lot owner control of the Board of Directors.
- (iii) In the event a petition of bankruptcy is filed by or against ROCKHURST or the ASSOCIATION or in the event that either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party may terminate this Agreement without notice to other. In the event this Agreement is terminated pursuant to this subparagraph, the ASSOCIATION shall immediately and automatically

have a lien upon all funds held by ROCKHURST for the benefit of the ASSOCIATION in accordance with the terms of the Agreement. The ASSOCIATION's Board of Directors shall have the right and power to do all things necessary for the enforcement and foreclosure of said lien;

- (iv) In the event of a material breach of this Agreement by ROCKHURST or the ASSOCIATION, the party believing the Agreement to have been breached shall give written notice thereof to the other party and if such breach is not cured within a period of thirty (30) days following the receipt of such notice then the aggrieved party may cancel this Agreement. Notwithstanding the foregoing, a party shall not be deemed in breach hereof so long as it has attempted to commence the cure thereof in good faith but is prevented from doing so by acts of God, acts of government, or, without limitation by reason of the foregoing enumeration, other circumstances beyond its control. The delay caused by such events shall be added to the thirty (30) day period.

15. Indemnifications:

- a. ROCKHURST agrees to indemnify and hold harmless the ASSOCIATION from any claim or loss arising from personal injury, bodily injury, or property damage caused by the negligence of ROCKHURST, its agents, or employees in the performance of its operations. ROCKHURST agrees to defend promptly and diligently, at its sole cost and expense, any such claim, action, or proceeding brought against the ASSOCIATION even if such claim is asserted after the term of this Agreement.
- b. The ASSOCIATION agrees to indemnify and hold harmless ROCKHURST from any claim or loss arising from personal injury, bodily injury, or property damage by reason of cause other than ROCKHURST's negligence either on or about the ASSOCIATION's premises or elsewhere. The ASSOCIATION agrees to defend promptly and diligently, at its sole cost and expense, any such claim, action, or proceeding brought against ROCKHURST even if such claim is asserted after the term of this Agreement.

16. As used in this Agreement:

- a. The term "assessments" shall mean those monthly rates, or one-time charges, established by the ASSOCIATION's Board of Directors which the members are bound to pay as their share of common expenses under the Declaration.
- b. The term "ASSOCIATION" means, as used herein, a corporation existing of all of the owners of townhouses in the Townhouse Project, organized and existing under the laws of the State of New York.

17. a. This Agreement shall inure to the benefit of and constitute a binding obligation upon the contracting parties, their respective successors and assigns.
- b. This Agreement shall constitute the entire Agreement between the contracting parties, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement, and shall be construed according to New York State Law.
- c. For the convenience of the parties, the Agreement has been executed in several counterparts, which are in all respects similar and each of which is deemed to be complete in itself so that any one may be introduced in evidence for any other purpose without the production of the other counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

THOMAS CREEK HOMEOWNERS ASSOCIATION, INC.

Date: _____

By: _____
David Christa, President

ROCKHURST MANAGEMENT CORPORATION

Date: _____

By: _____
William G. Tomlinson, President

EXHIBIT 5

SITE PLAN

CENTER

ROAD 191 N 21-1

1011

THOMAS, CHINA 151A155, 400H SECT

1931

THE ORIGINAL OF THIS MAP WAS
FILED IN THE MCGO ON 2/27/87
IN LIBER 242 OF MAPS, PG 84

2-11-87

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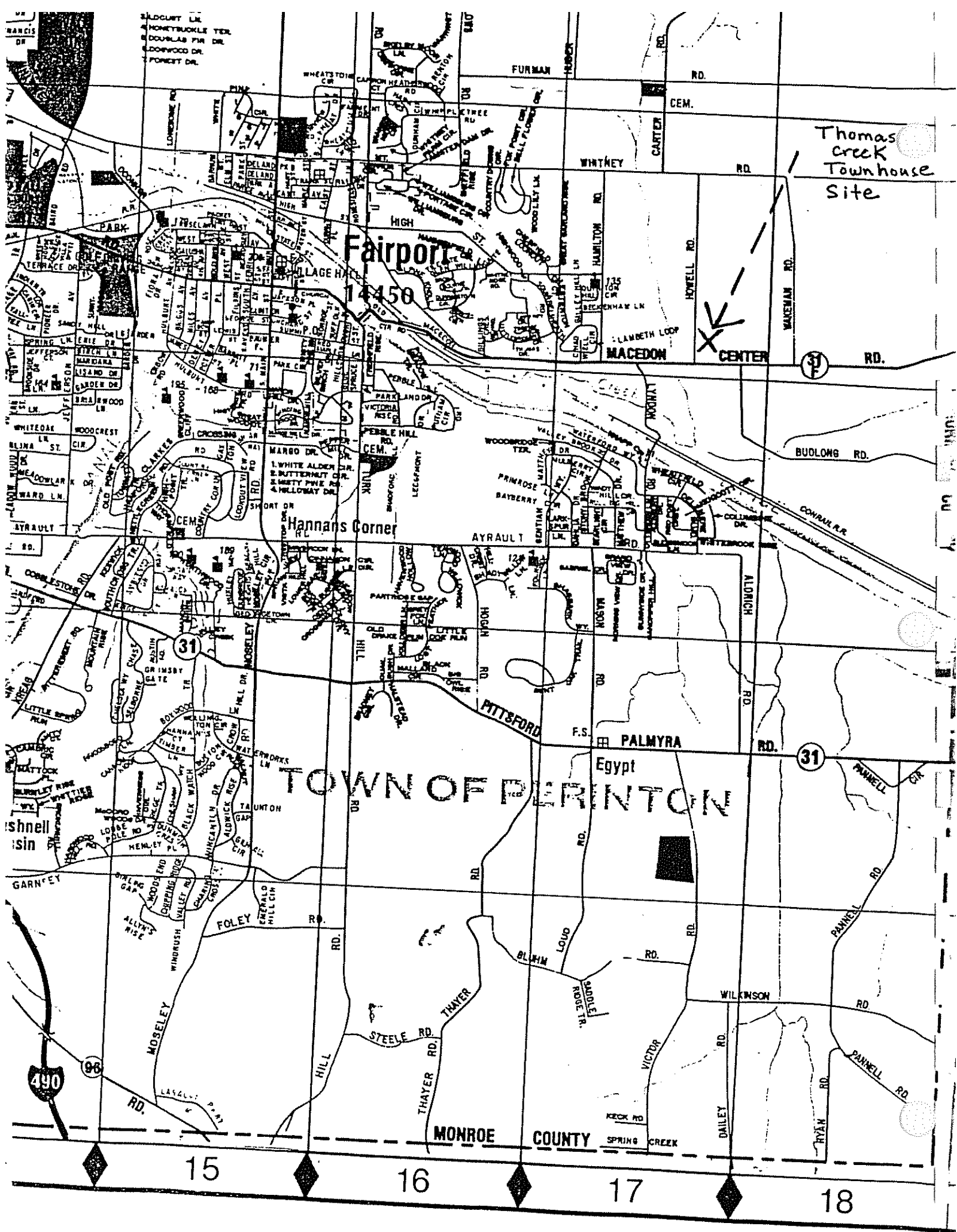
● 1997年 12月 10日

EXHIBIT 6

PLOT PLAN

EXHIBIT 7

LOCATION MAP



Thomas
Creek
Townhouse
Site

Fairport
14450

Hannans Corner

Palmyra

Egypt

TOWN OF PERINTON

MONROE COUNTY

15

16

17

18

EXHIBIT 8
PURCHASE AGREEMENT

PURCHASE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 198 , by and between Colonial Heights Development, Inc., having an office at 5692 Pittsford-Palmyra Road, Pittsford, New York (Seller), and _____, residing at _____ (Purchaser).

WITNESSETH

In consideration of the mutual promises herein made, Seller agrees to sell and Purchaser agrees to purchase the premises described below for the price and upon the terms and conditions set forth below.

1. Premises.

Those certain premises located in the Town of Perinton, County of Monroe and State of New York, known and designated as Lot No. ____ of the Thomas Creek Townhouses, on a map filed in the Monroe County Clerk's office.

The premises are sold together with all rights of Seller in and to any and all streets, roads, highways, alleys, driveways, easements and rights-of-way appurtenant thereto.

The premises are sold subject to restrictive covenants of record provided they have not been violated, unless enforcement of the covenants has been barred by Section 2001 of the Real Property Actions and Proceedings Law; utility easements of record, easements common to the tract subdivision, easements

and rights-of-way shown on the subdivision map, and easements and party wall agreements recorded in the Monroe County Clerk's office, and also subject to the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, and the By-Laws for the Thomas Creek Homeowners Association, Inc. both of which are included in the Offering Plan for the Thomas Creek Homeowners Association, Inc. Purchaser acknowledges receipt of the Offering Plan at least three (3) business days prior to the date of this Agreement and the Offering Plan is incorporated in this Agreement by reference and made a part of this Agreement with the same force and effect as if set forth in full. Purchaser agrees to be bound by the Declaration, By-Laws and any Rules and Regulations of the Association as they may be amended from time to time. Purchaser acknowledges that he is purchasing an interest in the Association, and that except as stated in this Agreement (and as set forth in the Offering Plan), Purchaser has not relied upon any representation or other statements of any kind or nature made by Seller or otherwise.

2. Price.

Purchaser shall pay to Seller for the premises the sum of \$_____ payable as follows:

Upon signing this Agreement: \$_____

Upon Purchaser's receipt of a mortgage commitment: \$_____

Upon _____ : \$_____

Upon delivery of the deed: \$_____

TOTAL \$_____

3. Dwelling.

Seller agrees to sell and Purchaser agrees to purchase the townhouse dwelling now on the premises or to be constructed on the premises in accordance with plans and specifications on file in the office of Colonial Heights Development, Inc., 5692 Pittsford-Palmyra Road, Pittsford, New York, including the Extras requested by the Purchaser, in accordance with Exhibit "A" attached. Seller reserves the right to make such changes and/or substitutions in the construction of the dwelling as may be required, authorized and/or appointed by the lending institution granting Purchaser's mortgage loan or by any governmental agency having jurisdiction, provided any such changes are of comparable value. Seller shall also have the right to determine the grading, elevation and design (including reversal of the building layout) of the lot and the dwelling to fit into the general pattern of the development. Purchaser understands that he may make changes and alterations in the plans provided only that such changes are made prior to the start of construction and are listed on a change authorization form signed by Purchaser and Seller. The cost of the changes and alterations shall be paid for at the time the Purchaser executes and submits to the Seller the change authorization form.

4. Deposits.

Purchaser is advised that to assure the return of his payments ("deposits") before delivery of the deed in the event this Agreement is terminated for reasons other than

Purchaser's default:

Escrow deposits shall not be withdrawn prior to closing and in the event a pre-closing withdrawal of funds is desired, an amendment to this Offering Plan shall be submitted to the Attorney General for approval.

Escrow deposits will be held in escrow at Columbia Banking Federal Savings and Loan Association, 31 East Main Street, Rochester, New York in the Thomas Creek Townhouse escrow account until closing and released upon the signature of Robert L. Teamerson, Esq., or any other designated attorney in the law firm of Sutton, DeLeeuw, Clark & Darcy, attorneys at law.

In the event this agreement is terminated for reasons other than Purchaser's default, deposits, with interest if any, will be returned to Purchaser within fifteen (15) days of such termination. The funds will be handled in accordance with Section 352-h and 352-e(2)(b) of the New York General Business Law.

YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT, IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.

5. Building Permit.

This Agreement is subject to Seller being able to obtain a building permit.

6. Risk of Loss.

Risk of loss or damage to the premises until transfer of title shall be assumed by the Seller. If any damage to the premises occurs prior to transfer of title and Seller determines that it cannot repair or restore such loss or damage, this Agreement shall terminate without any further liability of one party to the other, and Purchaser shall have his deposits returned in accordance with paragraph 4 of this Agreement.

7. Survey.

Seller shall furnish at Purchaser's expense an instrument survey made by a land surveyor duly licensed by the State of New York, showing the premises above described and the location of all buildings, improvements, easements and other structures affecting the premises.

8. Deed.

At closing, Seller shall deliver to Purchaser a warranty deed with lien covenant conveying good and marketable title in fee simple, free and clear of all liens and encumbrances except as provided in this Agreement.

9. Searches.

Seller agrees to provide guaranteed tax and title searches and a United States District Court Search to the time of transfer, showing good and marketable title. The searches

will be provided to Purchaser's attorney at least five (5) days prior to transfer.

10. Certificate of Occupancy.

Seller agrees to deliver to Purchaser, at time of closing, a Certificate of Occupancy.

11. Inspection.

Prior to closing, Purchaser shall have the right to inspect the premises upon reasonable notice to the Seller.

12. Possession.

Purchaser shall have possession and occupancy of the premises from and after the date of delivery of the deed.

13. Mortgage Loan for Purchaser.

This Agreement is contingent upon Purchaser obtaining within 30 days from the date of this Agreement a commitment for a _____ first mortgage loan in the amount of \$_____ from a lending institution. If Purchaser is unable to obtain a commitment within thirty (30) days thereafter, then Seller may cancel this Agreement by giving written notice to the Buyer. In that event, this Agreement shall be null and void and both parties released from any and all liabilities. Deposits, with interest if any, shall be returned to the Purchaser less the full cost of all Extras described in Exhibit "A" attached which were commenced, at the written request of Purchaser, prior to receipt by Seller of advice of the disapproval of the mortgage. In the event the cost of the Extras commenced by Seller exceeds the amount of the

deposits, Purchaser shall promptly remit to Seller the difference.

14. Adjustments at Closing.

There shall be prorated and adjusted as of the date of transfer of title; water charges, pure water charges, current taxes computed on a fiscal year basis, rents and Association assessments. Purchaser will accept title subject to and will pay all assessments and installments of assessments for local improvements which are not payable as of date of delivery of deed which, if any, appear on the current tax rolls.

15. Costs.

Purchaser shall pay for any fees incurred in recording of the Deed and Mortgage and for the New York State Mortgage Tax. Purchaser shall pay the costs of the required Real Estate Transfer Tax Stamps to be affixed to the deed. Purchaser shall pay for the mortgage title insurance policy, if a policy is required by the Purchaser's lender. Purchaser shall also, at closing, reimburse to the Seller the TWO HUNDRED AND FIFTY DOLLARS (\$250.00) initial contribution to the working capital fund to the Thomas Creek Homeowners Association, Inc. which Seller advanced. Purchaser agrees, at closing, to reimburse Seller for a Recreation Fee of \$400.00, a Sewer Connection Fee of \$100.00, a Pure Waters Fee of \$250.00 and a Water Meter Fee of \$75.00.

16. Closing.

This Agreement shall be closed at the Monroe

County Clerk's Office 120 days after the removal of the contingencies set forth in paragraph 13 or within fifteen (15) days following completion of the dwelling, whichever date shall occur sooner, except that if the dwelling is not ready for occupancy on such date, the closing may be postponed by Seller to a date to be set by Seller upon written notice mailed to Purchaser at his address set forth above. In the event this Agreement shall become null and void, both parties shall be released from any liability, except that Seller shall refund to Purchaser his deposits, with interest if any. Seller shall not be responsible for any delay in completing the dwelling if such delay is caused by the unavailability of materials, labor or transportation or by other causes beyond the control of Seller. The refund to Purchaser of the deposits or portion thereof in accordance with this Agreement shall discharge and release Seller from any liability arising out of or resulting from such delay. The closing shall not be delayed due to any unfinished exterior work which cannot be completed on account of weather conditions.

If the dwelling is substantially completed and ready for transfer and Purchaser declines to complete transfer of title for whatever reason, then the Purchaser may elect to extend the closing date for a period not to exceed 30 days, provided, however, the cost of postponing the closing, including but not limited to construction interest, taxes, utilities, and all other carrying costs shall be paid by the Purchaser to the Seller at the time of closing.

17. Failure to Deliver or Rejection of Title.

Should Seller be unable to or fail to deliver title to the premises in accordance with the provisions of this Agreement, or in the event that Purchaser raises objection to Seller's title or to any improvements, which, if valid, would render the title unmarketable, or render the present or intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction) Seller shall have the right to cancel this Agreement. Seller shall cancel by giving written notice of cancellation to Purchaser and it is agreed that Seller's liability shall be limited to the return of Purchaser's deposits, with interest if any, and upon their return, this Agreement shall become null and void; provided, however, if Seller shall be able within a reasonable length of time to cure the objection or if either party secures a commitment for title insurance at standard rates to insure against the objection raised or title insurance acceptable to Purchaser, Purchaser shall pay the cost of the title insurance and this Agreement shall continue in full force and effect.

18. Purchaser's Failure to Take Title.

Upon the Purchaser's failure to take title or the Purchaser's failure to make prompt and proper application for his mortgage, this Agreement shall become null and void and the deposits, with interest if any (up to a maximum of 10% of the purchase price excluding Extras), shall belong to the Seller, in addition to which the Purchaser shall pay Seller the full cost

of all Extras in Exhibit "A" which were commenced prior to the date of the closing, and reasonable attorney's fees and court costs, if incurred to enforce Seller's remedies, all of which shall be liquidated damages.

19. This Agreement Subject to Building Loan Mortgage.

Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage on the premises made before or after this Agreement and any advances, payments or expenses already made or incurred or which may be made or incurred, after this Agreement under a building loan mortgage without the execution of any further legal documents by the Purchaser. This subordination applies whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or are accelerated payments by virtue of the lender's right to make advances before they become due in accordance with the schedule of payments. The Seller shall satisfy all such mortgages or obtain a release of the premises from the lien of such mortgages at or prior to closing.

20. Escrow for Completion.

In the event that the dwelling or its environs shall not be fully completed at the time set by the Seller for the closing of title, the incompleteness will not constitute an objection to closing provided that the lending institution granting Purchaser's mortgage issues an inspection report and an escrow fund is deposited by the Seller with the lending insti-

tution if required under its report, and further provided that Purchaser shall have the right to delay the closing of title until a Certificate of Occupancy has been issued. The escrow fund shall be paid by the lending institution directly to the Seller when the lending institution, in its sole discretion, deems the items for which the escrow is held to be completed. Purchaser shall receive credit at closing, for any funds so held in escrow.

21. Representations.

This Agreement constitutes the entire agreement between Seller and Purchasers and supersedes all prior or other agreements and representations in connection with the sale and purchase. This Agreement cannot be modified except in writing signed by both parties. All the terms, covenants, provisions, conditions and agreements set forth or provided for shall be binding upon and inure to the benefit of the parties and their assigns.

22. Merger.

Delivery and acceptance of a deed by Purchaser shall be full compliance by the Seller with all the terms of this Agreement and a release by the Purchaser of any and all rights, obligations, claims or causes of action against the Seller. The dwelling shall be regarded as completed in accordance with plans and specifications except for the specific items which Seller agrees, prior to closing, will be completed or repaired.

Assignment.

This Agreement may be assigned by Seller, but may not be assigned by Purchaser without Seller's written consent.

24. Service.

For a period of one (1) year after closing, Seller shall continue to service all defects caused directly by defective materials or workmanship. Seller's obligation to service defects caused directly by defective materials or workmanship shall be limited to the specific replacement or repair of the defective materials or the repair of defective workmanship, as the case may be. Seller shall not be responsible for any glass breakage, wind or storm damage, or any conditions caused by Purchaser's negligence after this transfer. Seller does not guarantee the health nor continued life of any grass, tree or shrubs on the premises.

25. Addenda to this Contract.

Attached to and made a part of this Agreement are the following:

Exhibit A - Extras, Changes, Additions or Deletions
to Seller's Model or to Plans and
Specifications.

Exhibit B -

Exhibit C -

26. Commission.

Purchaser represents that no broker other than Thomas Properties has been contracted or engaged in connection with the procurement of this Agreement. Should this representation be contrary to fact, Purchaser shall pay any commission due and hold the Seller harmless from any claim or liability therefor. This representation shall survive the closing and delivery of the deed to Purchaser.

Seller shall not be obligated for the broker's commission of _____ if this transaction shall fail to close for any reason whatsoever. In order to confirm its agreement with respect to the terms of this Agreement relative to the broker's commission, Thomas Properties executes this Agreement.

27. Life of Offer.

This offer is good until the ____ day of _____, 19__ at _____ at which time it shall be null and void.

IN WITNESS WHEREOF, the Purchaser has caused this instrument to be duly executed the day and year first above written.

Purchaser

Witness

Purchaser

BROKER'S ACKNOWLEDGEMENT

The undersigned broker hereby executes this Agreement to acknowledge its consent

Dated THOMAS PROPERTIES

By: _____

Witness

ACCEPTANCE

We hereby accept this offer and agree to sell on the terms and conditions set forth.

Dated COLONIAL HEIGHTS DEVELOPMENT, INC.

By: _____

Witness

PURCHASE AGREEMENT

Property: Lot _____, Thomas Creek Townhouses, Phase _____,
Perinton, New York. Date: _____, 198____.

Purchaser: _____ Seller: Colonial Heights
Development, Inc.
Address: _____ Address: 5692 Pittsford-Palmyra Road
Pittsford, NY 14534

Phone: _____ Phone: (716) 385-6127
Attorney: _____ Attorney: Robert L. Teamerson, Esq.
Sutton, Deleeuw, Clark & Da.

Address: _____ Address: 31 East Main
Rochester, New York 14614

Phone: _____ Phone: (716) 546-8990

Buying Listing/Selling
Realtor: _____ Realtor: Sandra Thomas Properties

Address: _____ Address: 5692 Pittsford Palmyra Road
Pittsford, NY 14534

Phone: _____ Phone: (716) 223-8732

Addendum to Purchase Offer

Buyer and Seller agree to the following:

Witness

EXHIBIT A
CERTIFICATIONS

EXHIBIT A-1

CERTIFICATION BY SPONSOR AND PRINCIPALS

F. not contain any representation or statement which is false, where I/we: (i) knew the truth; (ii) with reasonable effort could have known the truth; (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representation or statement made.

4. 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.

COLONIAL HEIGHTS DEVELOPMENT, INC.

By: David Christa, President

David Christa

Sworn to before me this 10th
day of March, 1987.

Donald E. Snyder, Jr.
Notary Public

DONALD E. SNYDER, JR.
Notary Public in the State of New York
- MONROE COUNTY, N. Y.
Commission Expires March 30, 1987

EXHIBIT A-2

CERTIFICATION BY ENGINEER AND ENGINEER'S REPORT

Thomas Creek Estates Sub.
Section 1-Townhouse Project
Phase I
Town of Perinton, County of Monroe
New York

EXHIBIT A-2
CERTIFICATION BY ENGINEER

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

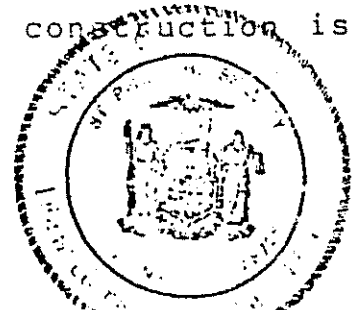
The undersigned, being duly sworn, depose(s) and say(s):

1. The sponsor of the captioned offering plan for a homeowners association retained me to prepare a report describing the property when constructed (the "Report"). The plans and specifications for the association facilities within the association property were prepared by N. Dennis Means, P.E. #43389 and Donald H. Fry, L.S. #43743. I prepared the report dated February 10, 1987, a copy of which is intended to be incorporated into the Offering Plan so that prospective purchasers may rely on the report.

2. I understand that I am responsible for complying with Article 23A of the General Business Law and the regulations promulgated by the Attorney General in Part 22 insofar as they are applicable to this report.

3. I have read the entire report and investigated the facts underlying it with due diligence in order to form a basis for this certification. I certify the report does:

A. Set forth in narrative form the significant elements of the entire townhouse area as it will exist upon completion of construction, provided that construction is



in accordance with the plans and specifications that I examined, and the amended plans which are part of the project and this certification;

B. In my opinion, afford potential investors, purchasers and participants on an adequate basis upon which to found their judgment concerning the physical condition of the property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined, and the amended plans which are part of the project and this certification;

C. Not omit any material fact;

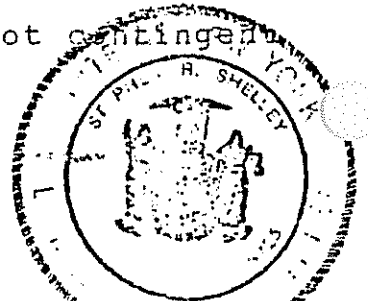
D. Not contain any untrue statement of a material fact;

E. Not contain any fraud, deception, concealment or suppression;


F. Not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

G. Not contain any representation or statement which is false, where I: (i) knew the truth; (ii) with reasonable effort could have known the truth; (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representation of statement made.


4. I further certify that I am not owned or controlled by and have no beneficial interest in the sponsor and that my compensation for preparing this report is not contingent



on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.


Stephen R. Shepley, P.E. #48725

Sworn to before me this 10th
day of March, 1987.


Notary Public

BARBARA K. REGER
NOTARY PUBLIC
STATE OF NEW YORK
COMM. EXPIRES 12/31/91

Thomas Creek Estates Sub.
Section 1-Townhouse Project
Phase I
Town of Perinton, County of Monroe
New York

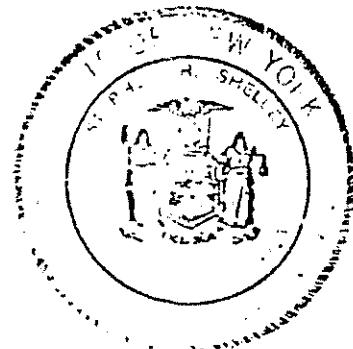
EXHIBIT A-2
ENGINEER'S REPORT

DATE: February 10, 1987

The property of which this Association is identified is the Thomas Creek Estates Sub., Section 1, Townhouse Project shown on a map of the section approved by the Town of Perinton Planning Board on September 4, 1985 and filed in the Monroe County Clerk's Office in Liber 239 of Maps, page 52; and an resubdivision map of the Townhouse Project, Phase 1 & 2, approved by the Town of Perinton and filed in the Monroe County Clerk's Office in Liber 242 of Maps, page 82 and a development map of the Townhouse Project filed in the Monroe County Clerk's Office in Liber 242 of Maps, page 85.

Location

The total site of the subdivision of Thomas Creek Estates is situated in the Town of Perinton, County of Monroe, State of New York, fronting along the east and west sides of Howell Road and fronting along the northern boundary line of Macedon Center Road (N.Y.S. Rt. #31-F). The total site comprises 165 acres of land which will be developed residentially in a number of sections.



Project

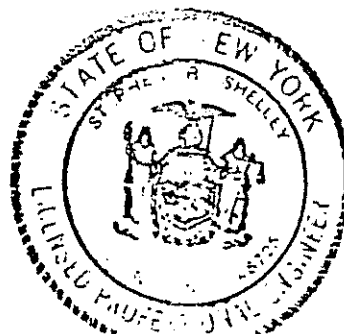
This section, #1, exists at the northeasterly corner of the above-stated roads and involves 35.94 acres of land which will be developed into 33 single-family residential lots on 21.77 acres of land; and 85 townhouses to be constructed on 14.17 acres of land in accordance with Chapter 148-65 of the Zoning Code of the Town of Perinton.

The Townhouse Project will be divided into two phases, (1 & 2); the first phase will total 46 units, the second will have 39 units. The units will be grouped from a minimum of three to a maximum of six, and each unit will be titled on an individual lot as shown on the resubdivision map or on a subsequent resubdivision map to affect lot lines positioned on or within common walls.

Sub-Soil Conditions

The soils on the property are Palmyra Gravelly Loam and Gravelly Fine Sandy Loam as classified by the Monroe County Soil Survey (1973) and more specifically having 2" to 8" of Topsoil, 36" Sandy Loam and 52" of Sandy Gravel as observed in open trench excavation for construction of sanitary sewers.

Earth moving on the site has been completed to affect the intended road grades, final grading will occur following the construction of townhouse groups.



Water

Ductile iron watermains (8") have been constructed within the project area "Looped" off of the existing transmission mains of the Monroe County Water Authority on Macedon Center Road (12") and Howell Road (16").

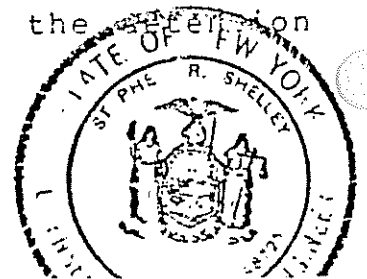
The system, with all of its appurtenant items of hydrants, valves, laterals, blow-offs, etc., was constructed under the inspection of the Monroe County Water Authority and is currently under a one-year maintenance bond provision after which the system will be owned and operated by the Authority.

Road (Dedicated)

The Townhouse Project area has a "looped" access to Patera Avenue, a street that is complete with the exception of a top course of macadam paving which is projected to be completed in 1987. Following completion the road will be accepted in dedication by the Town with maintenance bond provided.

Road (Private)

The roads within the project area shall be private, owned by the Homeowners' Association and maintained by it. The roads shall be 20 feet wide and consist of 9 inches of crushed stone placed upon a prepared sub-base, 2 inches of macadam hot-mix binder and 1" of macadam hot-mix topping. No curbs or gutters are to be provided. Surface run-off shall be directed to storm manhole openings for conveyance to the retention pond.



Parking Areas

Areas for common use shall be provided where shown on the plan and to the dimensions shown. A foundation course of crushed stone (7") shall be provided over which a 2" course of hot mix "binder" and 1" course of hot mix topping macadam will be placed.

Driveways

Each townhouse will have a prepared drive from the roadway to the townhouse unit. It will consist of seven (7) inches of crushed stone base and a two (2) inch compacted thickness of hot-mix topping macadam paving.

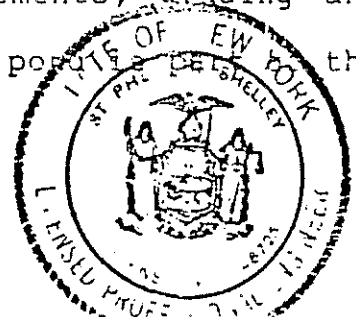
Electric, Telephone & Cable T.V.

Each of these services will be provided in a common trench by the sponsor; service to each of the units will be maintained by the Fairport Municipal Commission (electric); Rochester Telephone Company (telephone) and Greater Rochester Cablevision (T.V.).

Unlike electric and telephone, cable T.V. service is predicated upon proposed number of users. For this project, the Company is proposing to activate the service in April, 1987; therefore, will be available for use to the owners of the units.

Detention Pond

This facility is shown on the exhibit maps and has been substantially constructed. Finish elements, grading and seeding will be completed in this year. The portion of the



storm sewer system; therefore, a permanent provision dedicated to the Town of Perinton for maintenance and operation. The town's concern for the pond is related to its use only, the aesthetic appearance (grass and landscaping maintenance) will become the Association's responsibility.

Sign Monuments

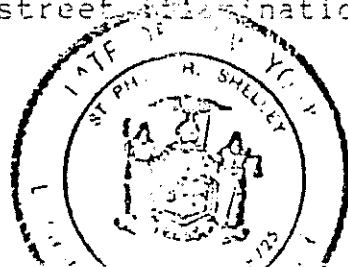
Two sign monuments are to be constructed on the premises, one on each side of Sunburst Circle at Patera Avenue fronting Lots 6 & 7. The monuments will be constructed on Association Common Lands by the Sponsor complete with lighting, landscaping and lawn sprinklers. An exhibit plan of the monuments is on file with the Sponsor for review by prospective purchasers.

Common Area

A strip of land, 20 feet in width, is being provided for the common use of the residents of the project. It encircles the townhouse area, will be graded and seeded by the Sponsor, then maintained by the Association. Three additional common areas are provided in Phase 1 and four additional common areas are provided in Phase 2 as shown on the resubdivision plot map and made part of this certification.

Lighting

Street lighting is not a provision of the project; however, each of the units will have an exterior entrance fixture, sensor operated so that partial street illumination is achieved.



Common Building

No common or appurtenant buildings are proposed in the project.

Recreational Facilities

There will be no swimming pools, tennis courts or other recreational facilities included as part of the common areas.

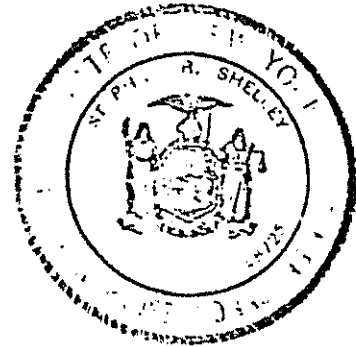


EXHIBIT A-3
EXPERT'S CERTIFICATION

ROCKHURST CORPORATION

500 Helendale Road □ Rochester, New York 14609-3109 □ 716-288-9540

CERTIFICATION ON ADEQUACY OF BUDGET

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

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

The sponsor of the homeowners association offering plan for Thomas Creek Homeowner's Association, Inc. retained me to review the projections of receipts and expense for the first year of operation as a homeowners association (Schedule A). My firm is currently managing agent for seventeen community associations. These organizations range in size from thirteen to two hundred twelve units. I have been in the property management business for ten years.

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 Schedule A.

I have reviewed Schedule A and investigated facts set forth in Schedule A 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 Schedule A appear reasonable and adequate under existing circumstances, and the projected income will be sufficient to meet the anticipated operating expenses for the projected first year of operation as a homeowners association.

I certify that the Schedule:

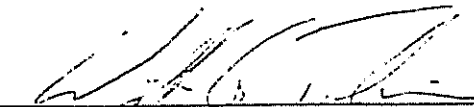
- 1) sets forth in detail the terms of the transaction as it relates to the Schedule and is complete, current, and accurate;
- 2) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the first year of operation as a homeowners association;
- 3) does not omit any material fact;
- 4) does not contain any untrue statement of a material fact;
- 5) does not contain any fraud, deception, concealment, or suppression;
- 6) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- 7) 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 representation or statement made.

I further certify that my firm is not owned or controlled by the sponsor. I understand that it is intended that a copy of this certification will be incorporated into the offering plan.

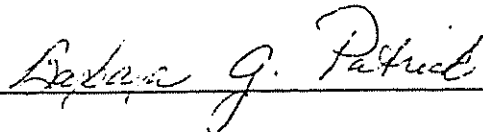
This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Dated: 17 March 1987



William G. Tomlinson, President
ROCKHURST MANAGEMENT CORPORATION

Sworn to before me this
17th day of March 1987



BARBARA G. PATRICK
NOTARY PUBLIC, State of N.Y., Monroe Co.
My Commission Expires March 30, 1987