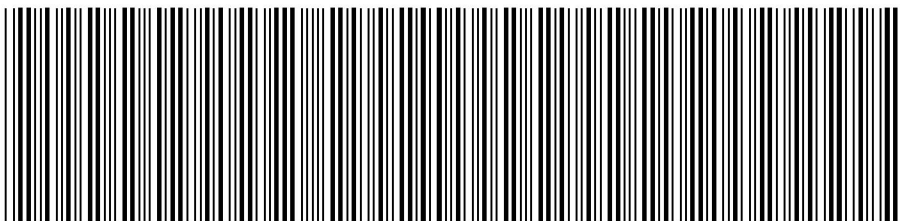


**NYC DEPARTMENT OF FINANCE  
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2004121301051001001E11B8

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 40**

**Document ID: 2004121301051001**

Document Date: 12-01-2004

Preparation Date: 12-13-2004

Document Type: DECLARATION

Document Page Count: 38

**PRESENTER:**

PRECISE/CERES ABSTRACT CORP. PCPC21830  
AS AGENT FOR COMMONWEALTH LAND  
TITLE INSURANCE  
1055 SAW MILL RIVER ROAD  
ARDSLEY, NY 10502  
914-693-7200

**RETURN TO:**

CAMARDELLA & BROWN, LLC  
98 CUTTER MILL ROAD  
SUITE 462  
GREAT NECK, NY, NY 11021

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BRONX	2958	78	Entire Lot	1830 WATERLOO PLACE
<b>Property Type: DWELLING ONLY - 2 FAMILY</b>				

Borough	Block	Lot	Unit	Address
BRONX	2958	80	Entire Lot	890 EAST 176 STREET
<b>Property Type: DWELLING ONLY - 2 FAMILY</b>				

x Additional Properties on Continuation Page

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**PARTY 1:**

TRAFALGAR-WATERLOO, LLC  
3152 ALBANY CRESCENT  
BRONX, NY 10463

**FEES AND TAXES**

<b>Mortgage</b>			Recording Fee: \$	260.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	0.00
<b>TAXES: County (Basic):</b>	\$	0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$	0.00	\$	0.00
Spec (Additional):	\$	0.00		
TASF:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
Additional MRT:	\$	0.00		
<b>TOTAL:</b>	\$	0.00		

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**

Recorded/Filed 12-27-2004 10:35

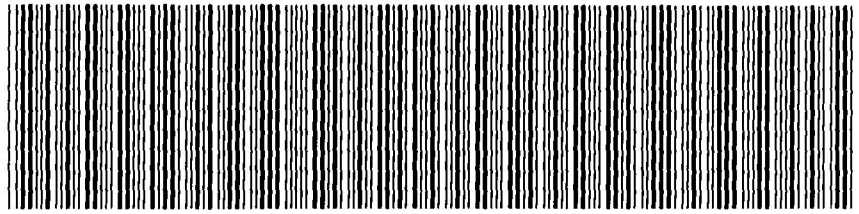
City Register File No.(CRFN):

**2004000786705**



*Annette McMill*

*City Register Official Signature*



2004121301051001001C1338

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 40**

Document ID: 2004121301051001

Document Date: 12-01-2004

Preparation Date: 12-13-2004

Document Type: DECLARATION

**PROPERTY DATA**

<b>Borough</b>	<b>Block</b>	<b>Lot</b>	<b>Unit</b>	<b>Address</b>
BRONX	2958	81	Entire Lot	892 EAST 176 STREET
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	82	Entire Lot	896 EAST 176 STREET
	<b>Property Type: DWELLING ONLY - 1 FAMILY</b>			
BRONX	2958	83	Entire Lot	898 EAST 176 STREET
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	84	Entire Lot	902 EAST 176 STREET
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	85	Entire Lot	1829 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	97	Entire Lot	1808 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	101	Entire Lot	1818 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	102	Entire Lot	1820 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	103	Entire Lot	1822 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			
BRONX	2958	104	Entire Lot	1824 TRAFALGAR PLACE
	<b>Property Type: DWELLING ONLY - 2 FAMILY</b>			

**DECLARATION OF COVENANTS, RESTRICTIONS  
EASEMENTS, CHARGES & LIENS**

Establishing a Homeowners Association for property located at East 176<sup>th</sup> Street, Waterloo Place, East 175<sup>th</sup> Street and Trafalgar Place, Borough and County of the Bronx, City and State of New York.

**NAME: TRAFALGAR/176 HOMEOWNERS ASSOCIATION, INC.**

**DECLARANT: TRAFALGAR-WATERLOO, LLC (Developer)**  
3152 Albany Crescent  
Bronx, New York 10463

**DATE OF DECLARATION:** December 1, 2004

To be known as  
new  
Lots

The Land affected by the within instrument lies in Block 2958, Lots 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 79, 178, 179, 180, 181, 182, 183, and 184 on the Tax Map of the Borough and County of the Bronx, City and State of New York.

Block: 2958  
Lots: 78, 80, 81, 82, 83, 84, 85, 97, 101, 102, 103, 104

**Prepared by:**

Camardella & Brown, LLC  
Attorneys for the Developer  
98 Cutter Mill Road; Suite 462  
Great Neck, New York 11021  
(516) 482-4567

**Record and Return to:**

Camardella & Brown, LLC  
Attorneys for the Developer  
98 Cutter Mill Road; Suite 462  
Great Neck, New York 11021

PC21830  
RECORDED AT REQUEST OF  
PRECISE/CERES ABSTRACT CORP.  
1055 SAW MILL RIVER ROAD  
ARDSLEY, NY 10502

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**DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS**

Declaration made as of this 1<sup>st</sup> day of December, 2004, by Trafalgar-Waterloo, LLC, a limited liability company organized and existing under the laws of the State of New York, whose principal office is situated at 3152 Albany Crescent, Bronx, NY 10463 (hereinafter referred to as the "Declarant").

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of the real property described in Article II of this Declaration which the Declarant desires to develop as a residential community (the "Development") with sewer lines and storm drain lines that connect the individual sewer lines and storm drain lines that serve each Home (hereinafter defined) with the New York City sewer and storm drain connections in East 175<sup>th</sup> Street and East 176<sup>th</sup> Street (the "Association Lines") for the benefit of the eighteen (18) Homes (hereinafter defined) in the Development and retaining walls affecting certain Homes in the Development (the "Retaining Walls"); and

**WHEREAS**, Declarant desires to provide for the preservation of the values and amenities in the Development and for the maintenance of the Association Lines and Retaining Walls; and to this end, desires to subject the Development to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and of the Homeowners of the Homes to be built thereon; and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said Development to create an agency to which should be delegated and assigned the powers of maintaining and administering the Association Lines and the Retaining Walls and their improvements and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer has incorporated Trafalgar/176 Homeowners Association, Inc., under the not-for-profit corporation laws of the State of New York for the purpose of exercising the aforesaid functions;

**NOW THEREFORE**, the Declarant, for itself, its successors and assigns, declares that the real property described in Article II hereof and more particularly described in Exhibit A annexed to and made a part of this Declaration, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth and the same shall be binding on all parties having any right, title, or interest in the Development or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I. DEFINITIONS**

The following words when used in this Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to Trafalgar/176 Homeowners Association, Inc., a New York Not-for-Profit corporation.

(b) "Board of Directors" or "Board" shall mean and refer to the body of persons charged with managing the operations and affairs of the Association pursuant to the provisions of the Association's Certificate of Incorporation By-Laws and the By-Laws annexed hereto.

(c) "Developer" shall mean and refer to Declarant.

(d) "Development" shall mean the eighteen three (3) story - two (2) family attached Homes each on an individual lot including the Association Lines and Retaining Walls.

(e) "Home" refers to each residential three (3) story - two (2) family attached building situated upon the Properties.

(f) "Homeowner" shall mean and refer to the record owner of fee simple title to any Home, together with fee simple title to the Lot upon which the Home is constructed, including the Declarant with respect to any unsold Home and/or Lot. Every Homeowner shall be treated for all purposes as a single owner for each Home held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, the one vote attributable to such Home shall be exercised as such persons mutually determine to cast any vote to which such Homeowners are entitled and not more than one vote may be cast with respect to any such Home.

(g) "Lot(s)" shall mean and refer to any plot and parcel of land intended for residential use shown on the site plan created by Developer for the improvement of the Properties.

(h) "Member" shall mean and refer to each Homeowner who shall be a holder of a membership interest in the Association, as such interest is set forth in Article III.

(i) "Properties" shall mean and refer to the real property and all improvements thereon which are and shall be subject to this Declaration and which are described in Exhibit A.

## **ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. The Properties.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land, including all improvements thereon situate, lying and being in the County of the Bronx and State and City of New York, being more particularly bounded and described in Exhibit "A" annexed hereto.

**Section 2. Mergers.** Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration with respect to the Properties, except as hereinafter provided.

## **ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** The Association shall have one class of membership interest only. The Homeowners shall be Members.

**Section 2. Voting Rights.** Each Member is entitled to one vote. When more than one person or entity holds such interest in any Home, the one vote attributable to such Home shall be exercised as such persons mutually determine and not more than one vote may be cast with respect to any such Home as described in the definition of a Homeowner herein.

**Section 3. Transfer of Membership.** Membership in the Association shall be appurtenant to, and may not be transferred, except in conjunction with the lawful sale or conveyance of a Home and the Lot upon which it is constructed. No Homeowner shall be permitted to sell or convey his or her Home (which must be conveyed with the Lot upon which it is constructed) and the Lot upon which it is constructed unless and until he or she shall have paid in full to the Board all unpaid assessments and other amounts required by the Board to be paid pursuant to the Declaration and the By-Laws annexed. Upon such sale or conveyance, the seller of such Home and the Lot upon which it is constructed shall relinquish his or her membership in the Association and the purchaser of such Home and the Lot upon which it is constructed shall automatically become a Member, subject to this Declaration, the By-Laws and the Rules and Regulations, if any.

## **ARTICLE IV. PROPERTY RIGHTS**

**Section 1. Members' Easement of Enjoyment.** Subject to the provisions of Section 2, every Homeowner of a Home shall have a right and easement of enjoyment in and to the Association Lines and Retaining Walls subject to the use and other restrictions contained in the Declaration and/or in the By-Laws and such easement shall be appurtenant to and shall pass with the title to the Homes and the Lots upon which they are constructed.

**Section 2. Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to:

(a) a right-of-way and easement to the Association in, through, under, over and across the Properties for the maintenance, cleaning, repair, replacement, inspection and any future installation required for the Association Lines and Retaining Walls.

(b) the right of the Declarant and of the Association to grant and reserve easements and rights-of-way, in, through, under, over and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, gas, drainage, retaining walls, cable television and other utilities, and the right of the Declarant to grant and reserve easements and rights-of-way, in, through, under, over, upon and across the Properties for the completion of the Developer's work under Section 1 of Article V.

## **ARTICLE V. DEVELOPMENT OF HOMES**

**Section 1. Homes.** Developer intends to build eighteen (18) three (3) story - two (2) family attached Homes (i) each on an individual Lot with an individual sewer line that connects to the Association Lines that run across the rear of all of the Lots and which Association Lines connect to the public sewers owned by the City of New York in East 176<sup>th</sup> Street or East 175<sup>th</sup> Street and (ii) with certain Homes having the Retaining Walls. The Association Lines are shown in the diagram annexed as Exhibit "B", and the Retaining Walls are shown in the diagram annexed as Exhibit "C".

**Section 2. Easement.** Developer does hereby establish and create for the benefit of the Association and for all Homeowners from time to time of Homes subject to this Declaration and its permitted lessees and occupants of Homes and does hereby give, grant and convey to each of the aforementioned from time to time the following easements, licensees, rights and privileges: the right, subject to the easements described in Section 2 of Article IV and Section 3 – Section 8 of this Article V, to connect with, maintain and make use of utility lines, wires, pipes, conduits, cable television/internet lines, water, drainage lines which may from time to time be in or along the streets and roads or other areas of the Properties and in the event the owners of the land upon which sections of the water or drainage lines or pipes are located fails to adequately maintain any sections of water and drainage lines or pipes, the right to maintain and repair the same.

**Section 3. Additional Easements.** Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Properties, for the

purpose of completing its work under Section 1 above and towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television/internet, gas and other utilities and for any other materials or services necessary for the completion of the work. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television/internet, sewers and drainage lines which may from time to time be in or along the streets and roads of other areas of the Properties. Finally, Developer and any Selling Agent retained by Developer reserves the right to continue to use the Properties and any sales offices, model Homes, unsold Homes, signs, and parking spaces located on the Properties in its efforts to market Homes constructed on the Properties. This Paragraph may not be amended without the written consent of Developer.

**Section 4. Easement for Repair.** The Board, Managing Agent, if any, manager or employee of the Association and any other person authorized by any of the foregoing, shall have, and the Properties shall be subject to, an easement in, to and through the Properties or any portion thereof in favor of the foregoing persons or entities, (a) to operate, maintain, clean, repair, alter, rebuild, restore and replace any of the Association Lines and Retaining Walls and (b) to perform any of their respective duties in accordance with the By-Laws.

**Section 5. Easement for Storm Water.** Each Homeowner shall have an easement in common with the other Homeowners to allow storm water running overland and storm water running underground on and under his/her Lot to run across the Lots of every other Homeowner.

**Section 6. Easement for Completion.** Each Member hereby grants a right of access upon and into his Home and Lot to Developer or its designee, and any contractors, subcontractors, agents, and employees of the foregoing for the purposes of the repair and completion of any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change including, without limitation, the correction of any construction defects or warranty work being performed or to be performed by or on behalf of Developer with respect to the Properties.

**Section 7. Encroachments on Lots.** In the event that any portion of any roadway, walkway, parking area, driveway, water detention basin, drainage line, Association Lines or the Retaining walls, water line, sewer line, utility line, sprinkler system, building or any other structure as originally constructed by the Developer encroaches on any Lot, the Association Lines or the Retaining walls, it shall be deemed that the Homeowner of such Lot or the Association has granted a perpetual easement to the Homeowner of the adjoining Lot(s) or the Association as the case may be for continuing maintenance and use of such encroaching roadway, walkway, driveway, parking area, drainage line, water line, sewer line, water detention basin, utility line, sprinkler system, building or structure, Association Lines and Retaining Walls. The foregoing shall also apply to any replacements of any such roadway, walkway, driveway, parking area, water line, drainage line, sewer line, water detention basin, utility line, sprinkler system, building or structure, Association Lines and Retaining Walls if same are constructed in substantial conformance to the original. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

**Section 8. Easements in the Future.** Declarant hereby retains the right, so long as there are any Homes owned by Declarant or its successor to place any easements in, to or under the Properties which Declarant shall deem necessary for the development of the Properties and/or for the benefit of the Association and/or its Members.

## **ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligations.** The Declarant, for each Home owned by it within the Properties, hereby covenants and each Homeowner of a Home by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association such assessments as are fixed by the Association's Board of Directors and assessed to the Members as hereinafter provided. All sums assessed to the Association but unpaid, together with such interest thereon as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Home and Lot owned by such Member against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, as hereinafter provided shall also be a personal obligation of the person(s) who was the owner of such Home and Lot at the time when the assessment fell due.

**Section 2. Purpose of the Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of maintenance and repair of the Association Lines and Retaining Walls, including, without limiting the foregoing, the payment of taxes (if any), insurance, maintenance, cleanout and repair, replacement and additions thereto, and the cost of labor, equipment, materials, services, legal, accounting, management and supervision thereof.

**Section 3. Amount and Payment of Assessments.** The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Member prior to assessing the Members thereon. The Board shall determine the total amount required, including the operational items such as insurance, snow removal, electrical, taxes, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual requirements and any supplemental requirements shall be allocated between, assessed to, and paid by the Members as follows:

Each Member shall pay a portion of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Homes subject to this Declaration being eighteen (18). The Developer's obligation for such assessments on unsold Homes (whether built or unbuilt) subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including reserves and the assessments, based on full occupancy of the Development, levied on Homeowners who have closed title on their Homes. In no event, however, will the Declarant be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying full

assessments on unsold Homes. The sum due the Association from each individual Homeowner shall constitute an assessment of the Board of Directors, and unpaid assessments shall constitute liens on the individual Homes, subject to foreclosure as hereinafter provided.

**Section 4. Due Dates; Duties of the Board of Directors.** All Assessments shall be payable annually in advance as ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Home/Lot and shall prepare a roster of the Homes/Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid charges due from such Member.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 3 of this Article, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, unexpected repair, cleanout or replacement of the Association Lines and Retaining Walls which the Association is responsible for maintaining, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The due date of any specified assessment shall be fixed in the resolution authorizing such assessment.

**Section 6. Effect of Non-Payment of Assessment.** The Personal Obligation of the Member; The Lien, Remedies of the Association. If an assessment is not paid on the date when due, as fixed by the Board of Directors, then such assessment shall become delinquent (the "Delinquency Date") and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Member's Home and Lot which shall bind such property in the hands of the Homeowner or Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Home/Lot by the taxing subdivision of any governmental authority, including but not limited to State, County, City and School District taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering the Home/Lot. The personal obligation of the Member who was the Owner of the Home/Lot when the assessment fell due to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within fifteen (15) days of the Delinquency Date, the assessment shall bear interest from the Delinquency Date at the maximum permissible rate in the State of New York and the Association may bring an action at law against the Member or former Member personally obligated to pay the same and/or may foreclose the lien against the Home and Lot. There shall be added to the amount of such assessment the costs of preparing and filing the notice of lien and the cost of such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court together with the cost of the action. In addition, the Homeowners whose assessment remains unpaid after the Delinquency Date shall indemnify and hold harmless

the Association from any and all costs including attorneys fees incurred by the Association in any efforts to enforce its rights hereunder relative to unpaid assessments and/or to collect the assessments, said interest and expenses.

## **ARTICLE VII. INSURANCE**

The Board of Directors shall maintain public liability insurance, to the extent obtainable, covering the Association and each association Member (only as a Member and not as a Homeowner), lessee and occupant and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Properties. All insurance premiums for such coverage shall be paid for by the Association.

## **ARTICLE VIII. USE OF PROPERTY**

The Association Lines and Retaining Walls may be used by the Homeowners of the Homes only for their intended use and design, by the Homeowners of the Homes and their tenants.

No other party may use the Association Lines and Retaining Walls and same may not be used for any other purpose.

## **ARTICLE IX. GENERAL PROVISIONS**

**Section 1. Beneficiaries of Easements, Rights and Privileges.** The easements, licenses, rights or privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Association and the Homeowners; and any Homeowner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits.

**Section 2. Duration and Amendment.** The covenants and restrictions of this Declaration shall run with, and bind the land, and shall inure to the benefit of, and be enforceable by the Association, any Member, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until December 31, 2050, unless otherwise expressly limited herein, after which time, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty six and two thirds (66 2/3%) of the Homeowners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Members holding not less than sixty six and two thirds (66 2/3%) of the votes of the membership. Any amendment must be properly recorded against the Properties to be effective.

Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition or deletion of, to or from this Declaration, the By-Laws or any rules and

regulations shall be effective in any way against Declarant or its designee or any unsold Home, as long as the Declarant owns an unsold Home on the Properties, unless Declarant has given its prior written consent thereto.

Declarant hereby reserves the right to amend, modify, add to or delete from this Declaration at any time without the requirement of obtaining the approval, consent or signature of the Board or any Members for the purpose of making any technical corrections or additions to or any other changes that do not materially and adversely affect the Homeowners and their respective mortgagees. Such amendment, modification, addition, or deletion of, to or from this Declaration, duly executed, in form for recording, shall be recorded by Declarant against the Properties and theretofore subject to this Declaration.

**Section 3. Disposition of Assets Upon Dissolution of Association.** Upon dissolution of the Association, its real and personal assets, if any, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants, deeds or other documents applicable to the Properties, except as may be otherwise provided in this Declaration or said covenants, deeds or other documents, as the case may be, nor shall any other party under any such deeds, covenants or other documents be deprived of any rights thereunder on account of such disposition.

**Section 4. Notice.** Any notice required to be sent to any Member or Homeowner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Homeowner on the records of the Association at the time of such mailing.

**Section 5. Administration.** The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Exhibit "D".

**Section 6. Severability.** Invalidation of any of the covenants, limitations or provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions hereof and the same shall continue in full force and effect.

**Section 7. Special Rights of Developer.** Notwithstanding anything to the contrary contained herein so long as there are any unsold Homes or Lots, Developer and any designee of Developer shall have the right, without requiring the consent of either the Association or any other Member(s), and without charge or limitation, to:

(a) have its employees, contractors, subcontractors and sales agents present on the Properties and on the unsold Homes or Lots;

(b) erect and maintain signs and other promotional materials (including, without limitation, "For Sale", and "For Rent" signs), in connection with the promotion, sale, leasing, management or operation of the unsold Homes or Lots;

(c) use any one or more Homes or unsold Homes or Lots as:

(i) model Homes,

(ii) offices for the promotion, sale, rental, management and/or operation of the unsold Homes or Lots,

(iii) offices in connection with any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be performed, by, or on behalf of, Developer with respect to the Homes or unsold Homes or Lots; and/or

(iv) for any other purpose; and

(d) do and cause to be done all of the things that are necessary, desirable or appropriate (including, without limitation, the use of the Association Lines and Retaining Walls and the unsold Homes or Lots) for the purpose of:

(i) the promotion, sale, rental, management and/or operation of the unsold Homes or Lots;

(ii) the performance and completion of installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement or change being performed, or to be performed, by, or on behalf of, Developer with respect to the Association Lines and Retaining Walls and/or the unsold Homes; and/or

(iii) the exercise, performance and discharge of Developer's other rights and obligations under this Declaration, the By-Laws or the rules and regulations. In no event, however, shall developer or such designee be entitled to use any portion of the Association Lines and Retaining Walls in such a manner as will unreasonably interfere with the use of the same or of any Home for its permitted purposes.

The provisions of this Section 7 may not be amended without the written consent of the Developer or its successors or assigns.

**Section 8. Enforcement.** The Association or any Homeowner shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain a violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association, or any Homeowner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do



EXHIBIT A

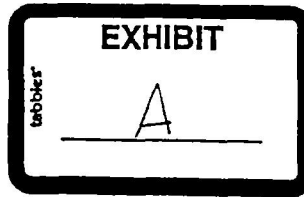
## Property Description

All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, designated on the Tax Map of the City of New York as said Tax Map was on June 28, 2001:

<u>Block(s)</u>	<u>Lot(s)</u>
2958	78, 80, 81, 82, 83, 84, 85, 97, 102, 103, 104

County: BRONX

Section : 11  
Block : 2958  
Lots : 97, 101, 102, 103 & 104



ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York and more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of East 175<sup>th</sup> Street and the easterly side of Trafalgar Place;

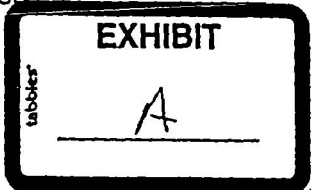
RUNNING THENCE northerly along the easterly side of Trafalgar Place, 226.09 feet;

THENCE easterly and parallel with the Cross Bronx Expressway, 78.00 feet;

THENCE southerly and parallel with the easterly side of Trafalgar Place, 210.55 feet to the northerly side of East 175<sup>th</sup> Street;

THENCE westerly along the <sup>northerly</sup>~~southerly~~ side of East 175<sup>th</sup> Street, 79.53 feet to the aforesaid corner, the point or place of BEGINNING.

Section : 11  
Block : 2958  
Lots : 78, 80, 81, 82, 83, 84 & 85



ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York and more particularly bounded and described as follows:

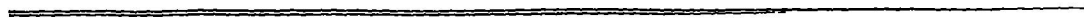
BEGINNING at the corner formed by the intersection of the <sup>easterly</sup>~~westerly~~ side of Waterloo Place and the southerly side of Cross Bronx Expressway;

RUNNING THENCE easterly along the southerly side of Cross Bronx Expressway, 130.00 to the corner formed by the intersection of the southerly side of Cross Bronx Expressway and the westerly side of Trafalgar Place;

THENCE along the westerly side of Trafalgar Place, 99.00 feet;

THENCE westerly and parallel with the southerly side of the Cross Bronx Expressway, 130.00 feet to the easterly side of Waterloo Place;

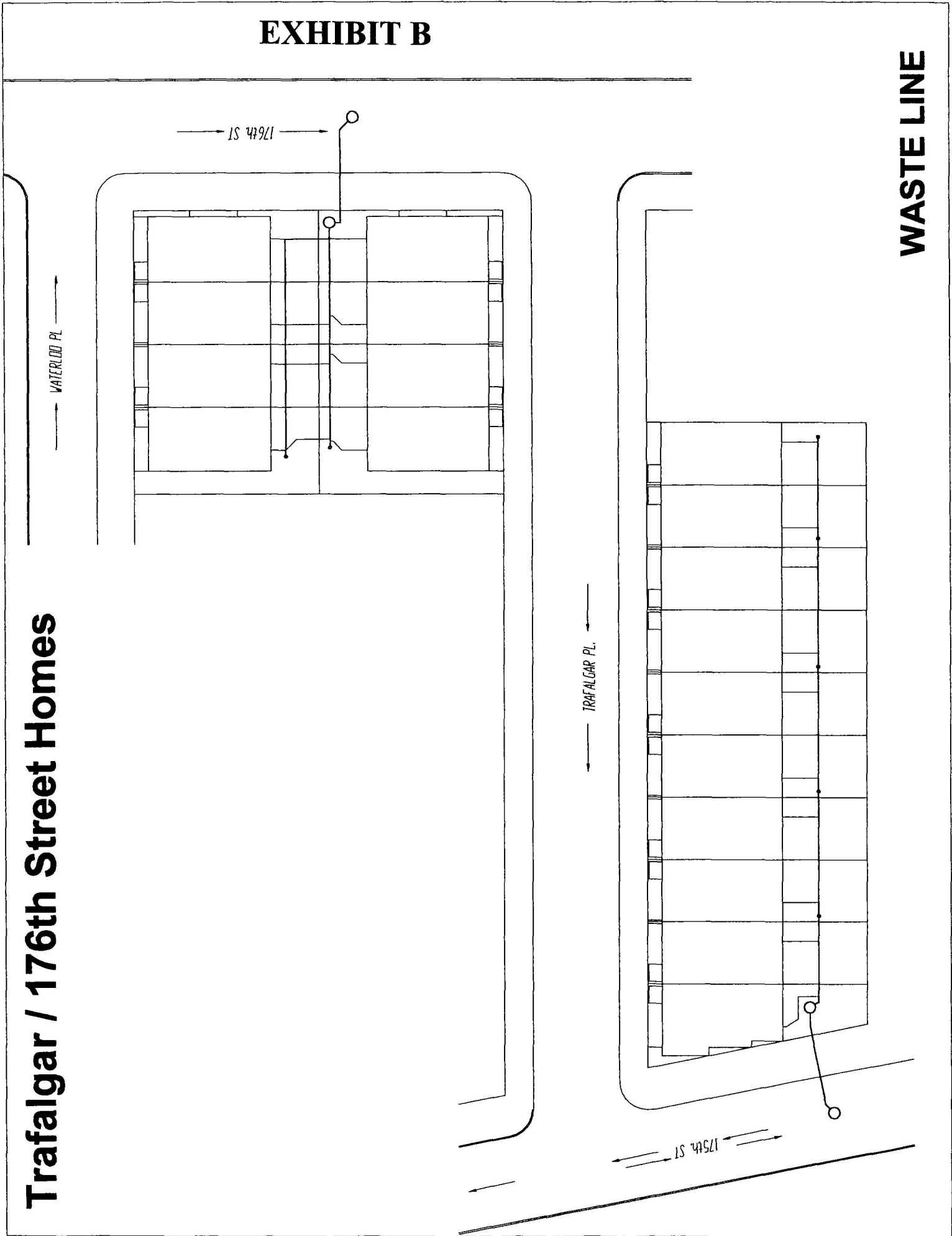
THENCE northerly along the easterly side of Waterloo Place, 99.00 feet to the point or place of BEGINNING.



# EXHIBIT B

## Trafalgar / 176th Street Homes

## WASTE LINE

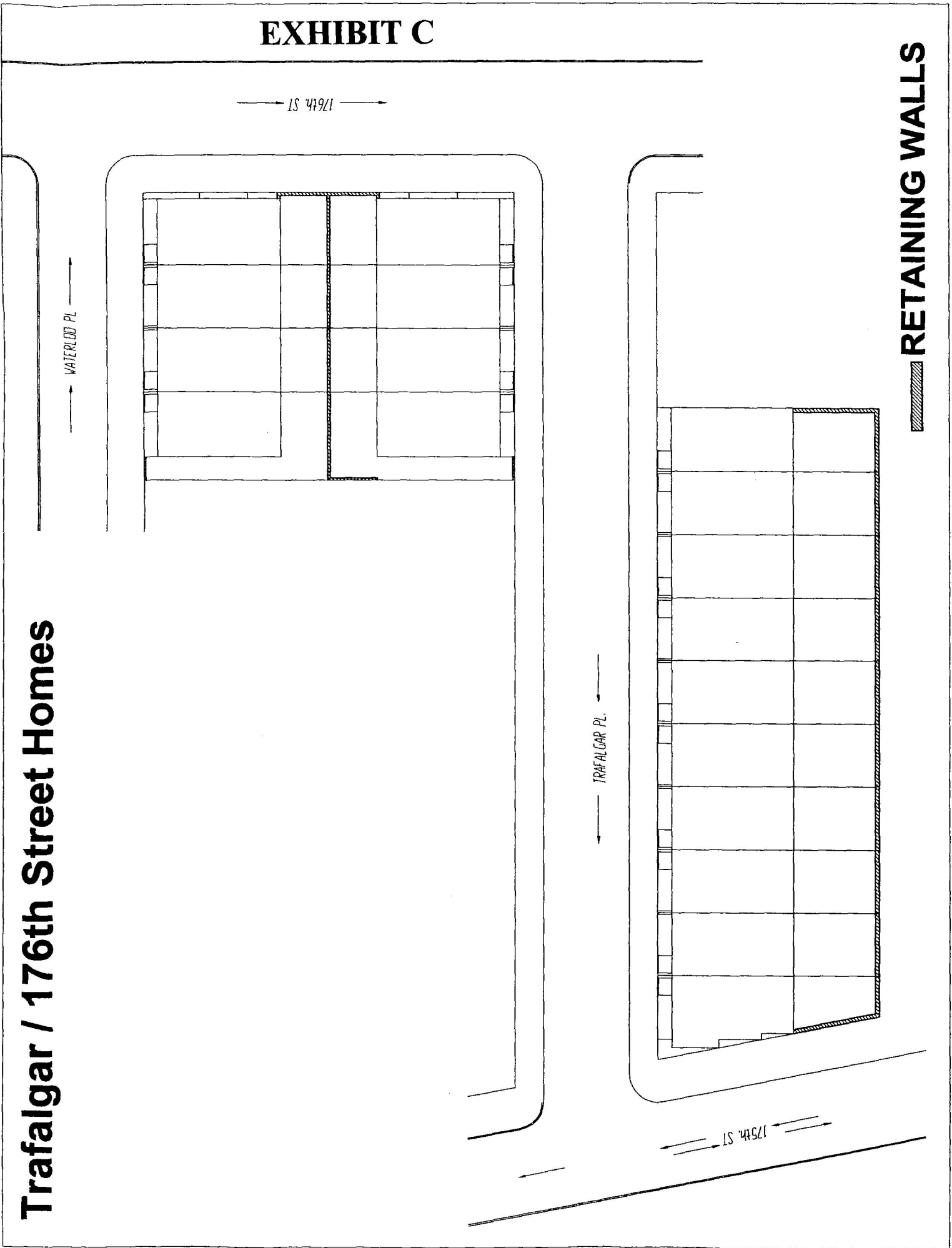




# Trafalgar / 176th Street Homes

## EXHIBIT C

RETAINING WALLS



**EXHIBIT D**

**BY-LAWS**

**BY-LAWS**  
**OF**  
**TRAFALGAR/176 HOMEOWNERS ASSOCIATION, INC.**

Prepared By

**CAMARDELLA & BROWN, LLC**  
**Attorneys for the Developer**  
**98 Cutter Mill Road; Suite 462 South**  
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**(516) 482-4567**

**BY-LAWS  
OF  
TRAFALGAR/176 HOMEOWNERS ASSOCIATION, INC.**

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## **BY-LAWS**

### **OF**

## **TRAFALGAR/176 HOMEOWNERS ASSOCIATION, INC.**

A New York Not-for-Profit Corporation

### **ARTICLE I. NAME, LOCATION AND PRINCIPAL OFFICE**

These are the By-laws of Trafalgar/176 Homeowners Association, Inc. hereinafter referred to as the "Association. The principal office of the Association shall be located in the Borough and County of the Bronx and City and State of New York located at the Properties.

### **ARTICLE II. DEFINITIONS**

The following words when used in these By-laws, shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Association" shall mean and refer to Trafalgar/176 Homeowners Association, Inc., a New York Not-for-Profit corporation.

(b) "Board of Directors" shall mean and refer to the body of persons charged with managing the operations and affairs of the Association pursuant to the provisions of the Association's Certificate of Incorporation and By-Laws.

(c) "Developer" or "Declarant" shall mean and refer to Trafalgar-Waterloo, LLC, a New York limited liability company and its successors and assigns, if such successors and assigns should acquire undeveloped or developed but unsold portion of the Properties from the Declarant for the purpose of development.

(d) "Development" shall mean the eighteen (18) three (3) story - two (2) family attached homes (the "Homes") each on an individual lot being constructed on the Properties.

(e) "Home" refers to each residential three (3) story - two (2) family attached building situated upon the Properties.

(f) "Homeowner" shall mean and refer to the record owner of fee simple title to any Home, together with fee simple title to the Lot upon which the Home is constructed, including the Developer with respect to any unsold Home. Every Homeowner shall be treated for all purposes as a single owner for each Home held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, a majority vote of such owners shall be necessary to cast any vote to which such owners are entitled and not more than one vote may be cast with respect to any such Home.

(g) "Lot" shall mean and refer to any plot and parcel of land upon which a Home is or will be constructed by Declarant on the Properties.

(h) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article VI.

(i) "Owner" shall mean Declarant.

(j) the "Properties" shall mean and refer to all such existing properties as are subject to the Declaration of covenants, restrictions, easements, charges and liens annexed (the "Declaration"), and which is described in Schedule A thereto.

### ARTICLE III. PURPOSE

The purpose of the By-Laws is to provide for the management of the Association. The Association is formed to operate and maintain the Association Lines and Retaining Walls as defined in the Declaration for the benefit of the Members of the Association.

### ARTICLE IV. APPLICABILITY

All present and future Members, owners, mortgagees, lessees, and occupants of Homes shall be subject to these By-Laws, the Declaration and to the rules and regulations issued by the Association to govern the conduct of its Members. The mere acquisition or rental of any Home or the mere act of occupying and/or use of the Home will signify that these By-Laws, the Declaration and the Rules are accepted, ratified and will be coupled with in all respects. Being a Homeowner is a requirement to be a Member of the Association and same is automatic upon acquiring fee title to a Home.

### ARTICLE V. USE OF FACILITIES

Each Member owning one of the Homes shall have a right and easement of enjoyment in and to the Association Lines and Retaining Walls and such easement shall be appurtenant to and shall pass with the title to the Homes.

### ARTICLE VI. MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** The Association shall have one class of membership interest as follows:

The Owner of each Home on the Properties shall be a Member of the Association whether such ownership is joint, in common or tenancy by the entirety. Each Member is entitled to one vote. When more than one person or entity holds such interest in any Home, the one vote

attributable to such Member shall be exercised as such persons mutually determine but not more than one vote maybe cast with respect to any such Home. No Member shall split or divide its votes on any motion, resolution or ballot.

## **ARTICLE VII. QUORUM, PROXIES AND WAIVERS**

**Section 1. Quorum.** So many Members as shall represent at least fifty-one (51%) percent of the total authorized voters of all Members present in person or represented by written proxy shall be requisite to and shall constitute a quorum at all meetings of the Association for the transaction of business, except as otherwise provided by Statute, by the Declaration, the Certificate of Incorporation of the Association or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting. At least five (5) days' written notice of such adjourned meeting shall be given to all Members. At such adjourned meeting, any business may be transacted which might have been transacted at the meeting originally called. At such adjourned meeting, so many Members as shall represent at least thirty three and one-third (33 1/3%) of the total authorized votes of all Members shall constitute a quorum.

**Section 2. Vote Required to Transact Business.** When a quorum is present at any meeting, or the necessary number of Members at any adjourned meeting, the vote of a majority of the Members present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be binding upon all Members, unless the question is one upon which by express provision of Statute, the Declaration, Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

**Section 3. Right to Vote.** Members shall be entitled to vote either in person or by proxy at any meeting of the Association. Any such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

**Section 4. Proxies.** All proxies shall be in writing signed by the Homeowner and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

**Section 5. Waiver of Notices.** The notice provided for in the two foregoing sections is not indispensable, and any Homeowners meeting shall be valid if all the Members of the Association are represented thereat, in person or by proxy, or if a quorum is present, as provided in the preceding sections, and waiver of notice of the time, place and objects of such meeting shall be duly executed in writing, either before or after said meeting, by such Homeowners as are not so represented and were not given notice.

**Section 6. Place of Meeting.** Meetings shall be held at any suitable place convenient to the Members as may be designated by the Board of Directors and designated in the notices of such meetings.

**Section 7. Annual Meetings.** There shall be a meeting commenced within Ninety (90) days after the closing of the first Home to be sold to elect a Board of Directors (the “First Meeting”). The Annual Meeting of the Homeowners for the election of the Board of Directors (sometimes referred to as the “Board”) and for such other business as may properly come before such meeting, shall be held in the borough of the Bronx, City of New York, at such time and place, each year, as may be designated by the Board. The notice of the meeting shall be in writing. Such notice shall state the time when, and the place where, the meeting is to be held, and the Secretary shall cause a copy thereof to be delivered personally or mailed to each Homeowner of record, not less than Ten (10) nor more than Forty (40) days before the meeting. If mailed, it shall be directed to each such Homeowner at his or her address as it appears in the records of the Association, unless he or she shall have filed with the Secretary of the Association a written request that notices, intended for him or her, be mailed to some other address, in which case it shall be mailed to the address designated in such request.

**Section 8. Special Meetings.** Special meetings of Homeowners, other than such meetings, the calling of which is regulated by statute, may be called at any time by the President or Secretary or by a majority of the Board. It shall also be the duty of the Secretary to call such meetings whenever requested in writing by Homeowners owning at least Twenty-Five (25%) percent in number of the Homes. The Secretary shall cause a notice of such Special Meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 7 of this Article. No business other than that stated in such notice shall be transacted at such special Meeting, unless all of the Homeowners be present thereat, in person or by proxy.

**Section 9. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member at least ten but not more than forty (40) days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**Section 10. Order of Business.** So far as consistent with the purpose of the meeting, the order of business of each meeting of Homeowners shall be as follows:

- (1) call to order;
- (2) presentation of proofs of due calling of the meeting;
- (3) roll call and presentation and examination of proxies;
- (4) reading of minutes of previous meeting or meetings, unless waived;
- (5) reports of officers and committees;
- (6) appointment or election of inspectors of election, if requested;
- (7) if the Annual Meeting, or Special Meeting called for that purpose, the election of members of the Board of Managers;
- (8) unfinished business;
- (9) new business;
- (10) adjournment.

## **ARTICLE VIII. BOARD OF DIRECTORS**

**Section 1. Number and Term.** The number of Directors which shall constitute the whole Board shall be three (3). An initial Board consisting of three (3) Directors shall be designated by the Developer to serve until the first annual meeting of the Association. At the first annual meeting and at all subsequent annual meetings the Members shall vote for and elect three (3) Directors to serve for one (1) year terms and until their successors have been duly elected and qualified. All directors, other than those the Developer shall have the right to designate, must be either Members of the Association or immediate family members residing in a Home. As required by law, each Director shall be at least nineteen (19) years of age.

**Section 2. Voting and right of Developer to Designate Certain Board Members.** In an election of Directors, each Member shall be entitled to one (1) vote.

Notwithstanding the foregoing, the Developer shall have the right to designate two (2) or a majority of the Directors, whichever is greater, until all of the Homes in the Development have closed title. When the Developer no longer holds any membership interests, it may not designate any Directors. Developer may not cast its votes to elect any Directors in addition to the designated Directors set forth above. The provisions of this Article VIII, Section 2 may not be amended without the written consent of the Developer.

**Section 3. Vacancy and Replacement.** Vacancies on the Board resulting from death, resignation or otherwise may be filled, without notice to any of the Homeowners, by a vote of a majority of the remaining Directors present at the meeting, at which such election is held for that purpose, promptly after the occurrence of any such vacancy even though no quorum is present. Each person so elected shall be a member of the Board until a successor shall be elected at the next annual meeting of Homeowners to serve the remaining term. In the event of the failure to hold any election of Directors at the time designated for the annual election of Director or in the event that the Board shall not have filled any such vacancy, a Special Meeting of Homeowners shall be called to elect a new Board. Any vacancy created by amendment of these By-Laws shall be filled in the manner provided in the resolution adopting such amendment. In case of a reduction of the authorized number of Directors by amendment of these By-Laws, the Directors, if any, whose term of office shall cease, shall be determined in the manner provided in the resolution adopting such amendment. In the event a Director appointed by Developer resigns, the Developer shall have the right to appoint another Director in his place.

**Section 4. Removal.** Any Director may resign at any time by written notice delivered in person or sent by certified mail to the President or Secretary of the Association. Such resignation shall take effect at the time specified therein, and unless specifically requested acceptance of such resignation shall not be necessary to make it effective.

Any Director may be removed from office at any time, with or without cause, upon the affirmative vote of the Homeowners whose aggregate vote is at least 51% of the votes of the Association, at a Homeowners' meeting duly called for the purpose; provided, however, that the Director(s) elected by the owners of unsold Homes can be removed only for cause by

vote of a majority of the votes of the Homeowners or without cause by the owners of unsold Homes.

**Section 5. 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 Declaration, Certificate of Incorporation or by these By-Laws may not be delegated to the Board of Directors), which shall include, but shall not be limited to, the following:

(a) Contracting for the necessary services for operation, care, repair, upkeep and maintenance of the Association Lines and/or Retaining Walls.

(b) Determination and levying of the assessments required for the affairs of the Association including, without limitation, the operation and maintenance of the Association Lines and/or Retaining Walls, as well as the determining and levying of special assessments. The Board of Directors may increase the monthly assessments or vote a special assessment in excess of that amount, if required to meet any additional necessary expense, but said increases can only be assessed among the Members pro-rata.

(c) Collection of the Assessment and Special Assessment from the Members.

(d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Association Lines and/or Retaining Walls.

(e) Adoption and amendment of rules and regulations covering the details of the operation and use of the Association Lines and/or Retaining Walls subject to a right of the Members to overrule the Board.

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Acquiring in the name of the Association, or its designee, corporate or otherwise, on behalf of all Members, rights and interests in real and personal property for use in connection with the ownership and operation of the Properties as described in the Declaration and these By-Laws.

(h) Obtaining and reviewing of insurance for the Association Lines and/or Retaining Walls and/or as set forth in the Declaration.

(i) Making of repairs, additions and improvements to or alterations of the Association Lines and/or Retaining Walls and repairs to and restoration of the Association Lines and/or Retaining Walls, in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

(j) Negotiation and settlement of all claims and actions relating to the Association.

(k) Borrowing money on behalf of the Association when required in connection with the operation, repair, care, upkeep and maintenance of the Association Lines and/or Retaining Walls, provided, however, that (i) the consent of a majority of the votes of all Members shall be required for the borrowing of any sum in excess of \$1,000 and (ii) no lien to secure repayment of any sum borrowed may be created on the Association Lines and/or Retaining Walls without the prior written consent of the Members.

(l) Levying fines against Members for violations hereof or of the Rules and Regulations governing the operation and use of the Properties.

(m) With written ratification of Members, the board may undertake to commence proceedings to reduce real estate taxes on the Association Lines and/or Retaining Walls.

(n) To enter into and upon the Association Lines and/or Retaining Walls when necessary and act with as little inconvenience to the Members as possible in connection with the repair, maintenance, cleanout, care and preservation of the Association Lines and/or Retaining Walls.

(o) To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the rules or rules and regulations herein referred to.

(p) To make reasonable rules and regulations and to amend the same from time to time. Such rules and regulations and amendments thereto shall be binding upon the Members when the board has approved them in writing and delivered a copy of such rules and all amendments to each Member.

(q) To employ workmen, contractors and supervisory personnel and to purchase supplies and equipment, to enter into contracts to provide maintenance and other services and generally to have the power of the Board of Directors in connection with the matters hereinabove set forth.

(r) To bring and defend actions by or against one or more Members pertinent to the operation of the Association and to assess special assessments to pay the cost of such litigation.

(s) To hire a Managing Agent to perform and exercise the powers of the Board of Directors in the management of the Development.

Notwithstanding anything to the contrary contained in these By-Laws, so long as the Developer or its designee shall continue to own one (1) or more Homes in the Development, the Board of Directors may not, without the Developer's prior written consent (i) make any additions, alteration or improvement to the Association Lines and/or Retaining Walls, or (ii) assess any Association charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund or, (iii) charge any special assessment for a non-budgeted item unless required by law, emergency, municipal agency or for the health and safety of the

Association and its Members, (iv) hire any additional employees or enter into any service or maintenance contract for work not covered by contracts in existence on the date of the closing of the first Home or, (v) borrow money or otherwise create a security interest on behalf of the Association or on any portion of the Properties, or (vi) increase or decrease the services or maintenance of the Association as set forth in the proposed first year budget of the Association, the Declaration of Covenants and Restrictions or the By-Laws or otherwise provide services in excess of those contemplated by the proposed first year budget or, (vii) purchase any materials, equipment or other goods costing in excess of \$500 or, (viii) increase the Association expenses of the Association more than ten (10%) percent from the prior year's budget, unless required by law, emergency, municipal agency, the health and safety of the Association and its Members or if documentation is provided to the Developer in the nature of a financial statement, bids from contractors or verified increases in utility rates evidencing the need for an increase greater than ten (10%) percent or, (ix) utilize Association funds or assess the Developer to commence a lawsuit against the Developer or any of its principals. In addition, so long as there are any unsold Homes in the Development the Board and the Homeowners shall not take any action that will interfere, impair or adversely affect the rights of the Developer to sell and construct any unsold Homes. Developer shall not use its veto power or control of the Board of Directors to reduce the level of services described herein or prevent expenditures required to comply with applicable laws or regulations. This paragraph may not be amended without the written consent of the Developer.

**Section 6. Nomination and Election.** The Directors shall be elected at the Annual Meeting of Homeowners or at a Special Meeting called for that purpose as provided by law, by a plurality of votes cast at such meeting. Nomination shall be in accordance with Robert's Rules of Order. Their term of office shall be until their respective successors are elected and qualify, but in any event the terms of the Directors shall expire annually.

**Section 7. Quorum.** A majority of the Directors then authorized by these By-Laws shall constitute a quorum.

**Section 8. Compensation.** No Directors, officers or Members shall receive any compensation from the Association or Homeowners for acting as such.

**Section 9. Meetings.**

(a) The first meeting of each Board newly elected by the Members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the annual meeting of Association Members and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set.

(b) Regularly scheduled meetings of the Board may be held without special notice.

(c) Special meetings of the Board may be called by the President on two (2) days' notice to each Director either personally or by mail or telegram. Special meetings shall be called

by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

(d) At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by Statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

(e) Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 10. Annual Statement.** The Board of Directors shall furnish to all Members and shall present annually (at the annual meeting) and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business conditions and affairs of the Association, including a balance sheet and profit and loss statement compiled by an independent certified public accountant and a statement regarding any taxable income attributable to the Members and a notice of the holding of the annual meeting of Association Members.

**Section 11. Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association (except Developer or Developer's representative) handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be an expense of the Association.

## ARTICLE IX. OFFICERS

**Section 1. Elective Officers.** The officers of the Association shall be chosen by the Board of Directors and shall consist of a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Assistant Secretaries and Assistant Treasurers. All officers must be either Members of the Board of Directors or Members of the Association. Other than the President, two (2) or more offices may be held by the same person.

**Section 2. Election.** The Board of Directors, at its first meeting after each annual meeting of Association Members, shall elect a President, a Vice President, a Secretary and a Treasurer.

**Section 3. Appointive Officers.** The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

**Section 4. Term.** the officers shall hold office for a period of one year or until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed with or without cause, at any time, by the affirmative vote of a majority of the Board of Directors, provided prior notice was given to all Board Members that this item was on the agenda for such meeting. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

**Section 5. The President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Association Members and the Board of Directors, shall be an ex-officio Member of all standing committees, shall have general and active management of the business of the Association, shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 6. The 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 and shall have such other powers and duties as are usually vested in the office of Vice President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

**Section 7. The Secretary.** The Secretary and/or Assistant Secretary shall attend all sessions of the Board and all meetings of Association Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of Association Members and special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he shall be.

**Section 8. The Treasurer.** The Treasurer shall have the custody of the Association's funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Association including the vouchers for such disbursements and shall deposit all monies, and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. These duties may also be exercised by the Managing Agent, if any. However, such Managing Agent shall not replace the Treasurer.

He shall disburse the funds of the Association as he may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Directors, at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer, and of the financial condition of the Association.

He shall keep detailed financial records and books of account of the Association, including a separate account for each Member, which among other things, shall contain the amount of each assessment, the date when due, the amount paid thereon and the balance remaining unpaid.

**Section 9. Agreements, etc.** All agreements and other instruments shall be executed by the President or such other person as may be designated by the Board of Directors.

## ARTICLE X. NOTICES

**Section 1. Definitions.** Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Directors or to any Director or Member, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in a post office or letter box in a post-paid sealed wrapper, addressed to the Board of Directors, such Director, or Member, at such address as appears on the books of the Association.

**Section 2. Service of Notice Waiver.** Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE XI. ASSESSMENTS AND FINANCES

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The creation of the lien and personal obligation of assessments is governed by the Declaration.

**Section 2. Purpose of Assessments.** The purpose of assessments is as specified in the Declaration.

**Section 3. Basis of Assessments.** The basis of the assessments is as specified in the Declaration.

**Section 4. Date of Commencement of Assessments; Due Dates.** The date of commencement and the due dates of assessments are as specified in the Declaration.

**Section 5. Effect of Non-Payment of Assessment; Remedies of the Association.** The effect of non-payment of assessments and the remedies of the Association shall be as specified in the Declaration.

**Section 6. Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinated pursuant to the provisions of the Declaration.

**Section 7. Checks.** All checks or demands for money and notes of the Association shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board of Directors may from time to time designate.

**Section 8. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating

portion of all monthly and special assessments as fixed and determined for all Members. Disbursements from said account shall be for the general needs of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the community.

**Section 9. Other Accounts.** The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

## **ARTICLE XII. AMENDMENTS**

These By-Laws may be altered, amended or added to at any duly-called meeting of Members provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment and (2) that the amendment shall be approved by vote of at least sixty-six and two-thirds (66 2/3) of the Members. No amendment, however, shall affect or impair the validity or priority of the Members' interests and the interests of holders of a mortgage encumbering a Home. Nor shall any amendment have the effect of infringing upon the Developer's right to build and make membership in or use of the Association available to purchasers or lessees on the Properties.

## **ARTICLE XIII. SELLING, LEASING AND GIFTS OF HOMES**

**Section 1. Selling and Leasing Homes.** Any Home/Lot may be conveyed or leased by a Member except that no Member shall convey, mortgage, pledge, hypothecate, sell or lease his Home/Lot unless and until all unpaid Association expenses assessed against the Home/Lot shall have been paid as directed by the Board of Directors. Such unpaid Association expenses, however, may be paid out of the proceeds from the sale of a Home/Lot or by the Grantee. Any sale or lease of a Home/Lot in violation of this section shall be voidable at the election of the Board of Directors. Upon the written request of a Member or his mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this section shall not apply to the acquisition of a Home/Lot by a mortgagee who shall acquire title to such Home/Lot by foreclosure or by deed in lieu of foreclosure. In such event the unpaid assessments against the Home/Lot which were assessed and became due prior to the acquisition of title to such Home/Lot by such mortgagee shall not be deemed a lien on the Home/Lot and shall be charged to all other Members of the Association as an Association expense. Such provisions shall, however, not relieve the Homeowner from personal liability for such assessments and shall apply to any assessments which are assessed and become due after the acquisition of title to such Home by the mortgagee and to any purchaser from such mortgagee. Whenever the term "Home" is referred to in this Section, it shall include the Home and Lot upon which such Home is constructed, the Member's interest in the Association and the Member's interest in any Homes acquired by the Association.

**Section 2. Gifts, etc.** Any Member may convey or transfer his Home by gift during his lifetime or devise his Home/Lot by will or pass the same by intestacy without restriction. Notwithstanding that any such conveyance shall be without resolution, it shall be subject to any unpaid assessments.

#### ARTICLE XIV. INDEMNIFICATION

**Section 1. Indemnification to Officers and Directors.** To the fullest extent allowed by law, the Association shall indemnify any person, made a party to an action by or in the right of the Association to procure a judgment in its favor by reason of the fact that he, his testator or, intestate, is or was or has agreed to become a Director or Officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, or in connection with an appeal therein, except in relation to matters as to which such Director or Officer is adjudged to have breached his duty to the Association, as such duty is defined in Section 717 of the Not-for-Profit Corporation Law. To the extent allowed by law, the Association shall also indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the Association to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation, domestic or foreign, which he served in any capacity at the request of the Association by reason of the fact that his testator or intestate was a Director or Officer of the Association or served it in any capacity against judgment, fines, amounts paid in settlement and reasonable attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such Director or Officer acted in good faith for a purpose which he reasonably believed to be in the best interests of the Association and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

**Section 2. Indemnification to Employees and Agents.** The Association may, to the extent authorized from time to time by the Board or by a committee comprised of Members of the Board, provide indemnification to employees or agents of the Association who are not Officers or Directors of the Association with such scope and effect as determined by the Board or such committee.

**Section 3. Indemnification to Others.** The Association may indemnify any person to whom the Association is permitted by applicable law to provide indemnification or the advancement of expenses, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (i) a resolution of the Members, (ii) a resolution of Directors, or (iii) an agreement providing for such indemnification, it being expressly intended that these By-Laws authorize the creation of other rights in any such manner.

**Section 4. Other Rights.** The right to be indemnified and to the reimbursement or advancement of expenses incurred in defending a proceeding in advance of its final disposition authorized by this Article XIV shall not be exclusive of nor limit any other right which any

person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-Laws, agreement, vote of Members or disinterested Directors or otherwise.

Nothing contained in this provision shall limit any right to indemnification to which any Director or any Officer may be entitled to contract or under any law now or hereinafter enacted.

## ARTICLE XV. GENERAL PROVISIONS

**Section 1. Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

**Section 2. Seal.** The Association seal shall have inscribed thereon the name of the Association and the year of its incorporation under the laws of the State of New York. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

**Section 3. Examination of Books and Records.** Each Member, or their respective representatives and first mortgagees, shall be entitled to a reasonable examination of the books and records of the Association at any time upon reasonable notice to its Board of Directors. The Declaration, Certification of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or first mortgagee at the principal office of the Association.

**Section 4. Construction.** Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires.

In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**Section 5. Severability.** Should any of the covenants, terms or provisions herein imposed be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

**THIS IS THE END OF THIS DOCUMENT**