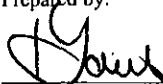


Record and Return:  
Kenneth R. Sauter, Esq.  
Hersh, Ramsey & Berman, P.C.  
P.O. Box 2249  
Morristown, NJ 07962-2249

Prepared by:  
  
Kenneth R. Sauter, Esq.

**AMENDMENT TO BY-LAWS OF  
BLACK CREEK SANCTUARY CONDOMINIUM ASSOCIATION, INC.  
REGARDING NOTICE TO MEMBERS**

**PREAMBLE**

1. The Master Deed for Black Creek Sanctuary, a Condominium ("Master Deed"), dated January 23, 2002, was recorded on February 14, 2002 in Deed Book 2607 at Page 001, et. seq. in the Office of the Sussex County Register. The First Amendment to Master Deed dated March 28, 2002 was recorded on April 15, 2002 in Deed Book 2625 at page 129, et. seq. in the Office of the Sussex County Register.

2. The By-Laws of Black Creek Sanctuary Condominium Association, Inc. ("By-Laws") were recorded as an exhibit to the Master Deed.

3. The Association and the Unit Owners have determined that this Amendment is in the best interest of the Unit Owners.

4. The Unit Owners wish to amend Article III, Section 4 of the By-Laws (captioned "Notices") to provide for alternative means of notice.

**NOW, THEREFORE**, at the annual meeting of the Black Creek Sanctuary Condominium Association, Inc. ("Association") held on June 7, 2003, the consent of at least 67% of the total number of votes for all Units approved the following amendment to the By-Laws:

**AMENDMENT**

1. Article III, Section 4 (captioned "Notices") of the By-Laws of Black Creek Sanctuary Condominium Association, Inc. shall be supplemented to reflect that notices may also be sent by overnight courier, electronic mail ("email"), or other similar means of transmission which is likely to have the same or higher success in reaching the Unit Owners when compared to regular mail correspondence. (If any additional method of notice may be utilized, other than overnight courier or email, the Unit Owners shall be advised, in advance, of such other notice method.)

2. This Amendment shall be effective as of the later of July 1, 2003 or the recording of this Amendment in the office of the Sussex County Clerk.

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3. All other provisions contained in the By-Laws, except to the extent they are modified herein, shall remain in full force and effect.

4. The Association's managing agent, secretary or other officer is authorized and directed to distribute a copy of this Amendment to all the Unit Owners within the Association.

5. The Association's legal counsel is authorized and directed to promptly record this Amendment with the Office of the Sussex County Clerk. The Sussex County Clerk is also requested and directed to note, in the margin of the Master Deed and/or the By-Laws, the recording of this Amendment.

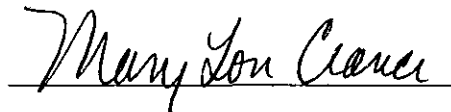
**BLACK CREEK SANTUARY  
CONDOMINIUM ASSOCIATION, INC.**

  
Denise Vontobel, President

State of New Jersey  
County of Sussex SS.:

I certify that on Oct. 14, 2003, Denise Vontobel personally came before me and acknowledged under oath, to my satisfaction, that:

- a. this person signed and delivered the attached document as the President of Black Creek Sanctuary Condominium Association, Inc., a corporation of the State of New Jersey, named in this document; and
- b. this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.



MARY LOU CIANCI  
Notary Public of New Jersey  
My Commission Expires June 12, 2008

140686 (BLKCRK 001)

REC'D & RECORDED  
12/08/2003 03:19:19PM  
ERMA GORMLEY  
SUSSEX COUNTY CLERK  
NEWTON, NJ

**BY-LAWS**  
**OF**  
**BLACK CREEK SANCTUARY CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I**

**Purpose, Definitions, Principal Office**

SECTION 1. Purpose. These By-Laws are intended to govern the administration of the Black Creek Sanctuary Condominium Association, Inc., a not-for-profit corporation organized under Title 15A of the New Jersey Statutes (the "Association"), and provide for the management, administration, utilization and maintenance of the Common Elements described in the Master Deed for Black Creek Sanctuary, a Condominium.

SECTION 2. Definitions. Unless the context clearly indicates otherwise, all definitions set forth in the Master Deed for Black Creek Sanctuary, a Condominium (the "Master Deed"), or in N.J.S.A 46:8B-3 are incorporated herein by reference.

SECTION 3. Principal Office. The principal office of the corporation shall initially be located at 200 Route 94, Vernon, New Jersey 07462, but thereafter may be located at such other suitable and convenient place as shall be designated by the Board of Trustees (the "Board").

**ARTICLE II**

**Membership and Voting Rights**

SECTION 1. Membership Interest. Every person, firm, association, corporation or other legal entity, including Mountain Creek Resort, Inc. (the "Developer"), who is a record owner or co-owner of the fee title to any Unit shall be a member ("Member") of the Association; provided, however, that any person, firm, association, corporation, or other legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to mortgagees or trustees under deeds of trust) shall not be a Member of the

Association. Despite anything to the contrary in the preceding, the Developer has one membership in the Association for each Unit that has not been conveyed to an individual purchaser.

SECTION 2. Succession. The membership of each Unit Owner shall automatically terminate when the Member ceases to be a Unit Owner and upon the conveyance, transfer or other disposition of a Unit Owner's ownership interest in the Unit, said Unit Owner's membership in the Association shall automatically be transferred to the new Unit Owner succeeding to the ownership interest. Any person acquiring ownership of a Unit shall furnish notice thereof, within ten (10) days after acquisition, to the Board Secretary and Managing Agent, if any, together with a copy of any mortgage creating an encumbrance on the Unit as required by Section 10.04 of the Master Deed.

SECTION 3. Member in Good Standing. A Member shall be deemed to be in good standing and entitled to vote in person or by proxy at any meeting of the Association or in any ballot by mail, if thirty (30) days prior to the date fixed for such event, the Member has fully paid all installments due for Assessments made or levied against him and his Unit by the Board as hereinafter provided, together with all interest, and costs chargeable to him and to his Unit (the "Member in Good Standing").

SECTION 4. Rights of Membership. Every person who is entitled to membership in the Association, pursuant to the provisions of the Articles of Incorporation and these By-Laws, shall be privileged to use and enjoy the General Common Elements subject, however, to the right of the Association to (a) promulgate Rules and Regulations governing such use and enjoyment; and (b) suspend the use and enjoyment of the General Common Elements as provided in Section 5 of this Article II.

SECTION 5. Suspension of Rights. The membership rights of any Member may be

suspended by the Board for any period during which any Assessment against the Unit to which the membership is appurtenant remains unpaid; but upon payment of such assessment and any interest which may accrue thereon, together with costs and attorneys' fees, if any, the Member's membership rights shall be immediately and automatically restored. Further, if any Unit Owner or his Guest fails to comply with any Rules and Regulations governing the use of the Common Elements or the conduct of such persons are not in accordance with such Rules and Regulations as may be adopted, then the membership rights of such Unit Owner may be suspended by the Board for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature, such rights may be suspended indefinitely until such time as the violation is abated. No such action shall be taken by the Board until the Unit Owner is afforded an opportunity for a hearing consistent with the principles of due process of law.

**SECTION 6. Votes.** Each Unit shall be entitled to one vote, regardless of the number of Owners of the Units. Fractional voting shall not be allowed. If the Owners of a Unit cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the Unit, unless objection thereto is made by an Owner of the Unit to the Person presiding over the meeting at the time the vote is cast. If more than one vote is cast for any particular Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

In any election of Trustees to the Board of Trustees, every Unit shall have the number of votes equal to the number of Trustees to be elected. Cumulative voting shall not be allowed in the election of Trustees or for any other purpose.

**SECTION 7. Contribution to Capital.** Upon acquisition of title to a Unit, each Purchaser

shall pay to the Association a non-refundable and non-transferable contribution to the working capital of the Association in an amount equal to ¼ of the annual General Assessment assessed to the Unit for the fiscal year in which the sale of the Unit occurs. Such sum may be used for operating expenses and any other lawful purpose and need not be replenished if it is so utilized. Payment of such contribution shall be a condition precedent to the exercise of rights of membership in the Association upon the initial sale from the Declarant or subsequent transfer of title to a Unit. Any unpaid capital contribution shall be deemed a lien on the Unit in the same manner as any unpaid Assessment attributable to the Unit.

### ARTICLE III

#### Meetings of Unit Owners

SECTION 1. Annual Meetings. An annual meeting of the Unit Owners of the Association shall be held on the day and month of the year to be established by the Board with the purpose to elect Trustees of the Board and conduct such other business which may come before them.

SECTION 2. Special Meetings. Special Meetings of the Unit Owners of the Association may be called by the President whenever the President deems such a meeting to be advisable, or shall be called by the Secretary upon the order of the Board, or upon the written request of Members representing not less than twenty-five (25%) percent of all the votes entitled to be cast at such meeting. Such request shall state the purpose of such meeting and the matter proposed to be acted upon. Unless Unit Owners representing at least fifty (50%) percent of all votes entitled to be cast request such a meeting, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Unit Owners held during the preceding twelve (12) months, which determination shall be made in the sole and absolute discretion of the Board.

SECTION 3. Location of Meeting. All meetings of the Unit Owners of the Association shall be held at the Condominium or at such other place convenient to the Members as may be designated by the Board.

*Owners*  
*M. J. [unclear]*

SECTION 4. Notices. Except as otherwise provided by N.J.S.A. 46:8B-12.1(b), notice of all meetings, whether annual or special, shall be given to the Unit Owners in writing. Said notice shall state the time, place, and purpose of the meeting. The notice may be delivered by hand to the Unit Owner or mailed to the Unit Owner postage prepaid at his last know address. Said notice shall be given not less than ten (10) days nor more than ninety (90) days before the date of such meeting. Attendance by a Unit Owner at a meeting which has not been properly noticed, and who does not protest prior to the conclusion of the meeting, shall constitute a waiver of the notice of meeting to such Unit Owner.

*Wrong*  
*Handwritten*

SECTION 5. Quorum and Adjourned Meetings. Except as may be otherwise provided in these By-Laws, persons holding twenty (20%) percent of the authorized votes (including any held by the Developer) present in person or by proxy, or by mail ballot, shall constitute a quorum for the transaction of business at any meeting of the membership, except where otherwise provided by law. In the absence of a quorum, the persons holding votes present in person or by proxy and entitled to vote may, by a majority vote, adjourn the meeting for at least 48 hours from the time the original meeting was scheduled.. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting originally called.

SECTION 6. Voting. Except as otherwise provided in these By-Laws, the Master Deed or the Planned Real Estate Full Disclosure of Condominium Acts, the passage of all decisions shall require the affirmative vote of at least a majority of Unit Owners in good standing and entitled to vote in attendance, in person or by proxy, at a meeting.

SECTION 7. Rules of the Meeting. The Board may adopt reasonable rules for the conduct of all meetings of the Board and the Unit Owners.

SECTION 8. Ballot by Mail. The Board, in lieu of calling a membership meeting, may submit any question or election (other than the elections as provided for in Sections 1(a), (b) and (c) of Article IV), to a vote of the membership using a ballot by mail. No ballot by mail shall be valid or tabulated unless the signature of the Unit Owner(s) submitting the ballot has been verified on the ballot in accordance with procedures established by the Board. Only Members in Good Standing shall be entitled to vote. In order to conduct a ballot by mail for a question submitted to a vote of the membership, the Board shall serve a notice upon all members which shall (i) state with specificity in terms of motion(s) the question(s) upon which the vote is to be taken; (ii) state the date by which ballots must be received in order to be counted; (iii) provide an official ballot for the purposes of the vote; and (iv) state the date upon which the action contemplated by the motion(s) shall be effective, which date shall not be less than ten (10) days after the date ballots must be received.

SECTION 9. Proxies. Voting by proxy shall be permitted with respect to all elections of Trustees, and all amendments to the Articles of Incorporation, the Master Deed or these By-Laws, or any other matter which is to come before a meeting of the membership of the Association. All proxies shall be in writing, signed by all individual Unit Owners (or in the case of joint owners, by any one of them), or by his or their duly authorized representative and delivered to the Secretary of the Association, or such other person as the President may designate, prior to the opening of the polls at the meeting at which the ballots are to be cast. Proxies may be revoked at any time prior to the opening of the polls, and no proxy shall be valid after eleven (11) months from its date, unless said proxy provides for a longer period, not to exceed three (3) years from the date of execution. All proxies shall be substantially in the form



prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board.

#### ARTICLE IV

##### Board of Trustees

SECTION 1. Number, Election and Term of Office. The Board shall consist of five (5) members ("Trustees"). Trustees ordinarily shall be elected at the regular annual meeting of Association Members by the vote of Unit Owners, except that the Trustees listed in the Articles of Incorporation of the Association (hereinafter called "Members of the First Board") shall be appointed by the Developer and shall serve at the pleasure of the Developer without need for reelection until at least 25% of the Units in the Condominium have been sold and title conveyed by the Developer. Thereafter, control of the Association shall be surrendered to the Unit Owners in the following manner:

(a) Within sixty (60) days of the initial conveyance of 25% of the Units to parties other than the Developer, not less than 25% of the members of the Board of Trustees shall be elected by the Unit Owners at a special meeting called by the President of the Association; and

(b) Within sixty (60) days of the initial conveyance of 75% of the Units to parties other than the Developer, the Developer's control of the Board of Trustees shall terminate and at such time the Unit Owners shall elect the entire Board of Trustees at a special meeting called by the President of the Association, except that so long as any Units remain unsold, in the regular course of business, the Developer may appoint one member of the Board of Trustees.

Despite the foregoing, the Developer may voluntarily surrender control of the Board of Trustees of the Association prior to the time specified in this Section, provided the Unit Owners agree by a majority vote to assume control.

Calculation of the above percentages is based upon the entire number of Units entitled

to membership in the Association upon completion of the Condominium.

Notice of all special meetings called pursuant to this Section for the purpose of electing Trustees other than the Developer's Trustees shall be given not less than twenty (20) nor more than thirty (30) days prior to the date of the meeting.

While the Developer maintains control of the Association, the Developer shall take no action which adversely affects a homeowner's rights under N.J.A.C. 5:25-5.5. Additionally, claims relative to defects in Common Elements shall be processed in accordance with N.J.A.C. 5:25-5.5.

After the Unit Owners assume control of the Association, the Association may not take any action which would be detrimental to the Developer's sale of Units. Until the Developer has sold all Units held for sale, the following shall apply and shall not be amended:

(w) Neither the Association nor its Board shall take any action that will impair or adversely affect the rights of the Developer or cause the Developer to suffer any financial, legal or other detriment including, but not limited to, any direct or indirect interference with the sale of Units, or the assessment of the Developer for capital improvements;

(i) The Association and its Board shall continue the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Association and the Board by Unit Owners other than the Developer;

(ii) In furtherance of the foregoing provision, the Developer shall have the right to veto any and all action of the Association or the Board which may have any direct or indirect detrimental impact upon the Developer as may be determined in the sole reasonable discretion of the Developer; and

(iii) The Developer shall exercise its veto right in its sole and absolute discretion, within ten (10) days after its receipt of notice that a resolution or other action is proposed or has

been taken by the Association or its Board. In such event, the Developer shall notify the Secretary of the Association of the exercise of its veto right and any such proposal or action shall be deemed null and void ab initio and of no further force or effect.

SECTION 2. Terms of Office. Every Trustee shall hold office for the term of one (1) years, expiring at the annual meeting of the Members, and may succeed himself in office.

SECTION 3. Qualification. Except for Members of the First Board and their appointed successors in office, if any, each Trustee shall be (a) an individual Unit Owner, or (b) a partner, trustee, officer, director, member, member representative, employee or twenty-five percent (25%) equity owners of an organizational Unit Owner. Any Trustee whose membership in the Association is not in good standing for thirty (30) consecutive days shall automatically be disqualified as a Trustee upon expiration of said thirty (30) day period and a replacement shall be appointed by the Board within thirty (30) days thereafter to serve the remainder of the term as contemplated by Section 2 hereof. Despite the foregoing, any Trustee who conveys title to his Unit and no longer holder title to any other Unit is automatically disqualified as a Trustee effective on the date of said conveyance.

SECTION 4. Annual Meeting. The annual meeting of each newly elected Board shall be held immediately following the adjournment of the annual meeting of the Unit Owners, or within ten (10) days thereafter, at such time and place fixed by the Board.

SECTION 5. Regular Meetings. Regular meetings of the Board of Trustees may be held at such time and place as shall be determined by a majority of the members of the Board, but in no event shall less than 2 such meetings be held in each calendar year. Notice of regular meetings of the Board shall be given to each Trustee personally, by telegram, telephone or mail, at least five (5) days before the meeting date. The notice shall state the date, time and place of such meeting and the purpose.

SECTION 6. Special Meetings. Upon three (3) days notice to each Trustee, the President of the Board may call a special meeting. Special meetings may also be called upon the written request of any two Trustees.

SECTION 7. Waiver of Notice. Any Trustee of the Board may at any time waive notice of any meeting of the Board in writing and such waiver shall be deemed the equivalent of giving notice. Attendance by a Trustee at any meeting of the Board shall constitute a waiver of notice. If all the Trustees are present at any meeting of the Board, no notice shall be required and any business may be transacted without further notice.

SECTION 8. Consent in Lieu of Meeting and Vote. Despite anything to the contrary in these By-Laws, the Articles of Incorporation or the Master Deed, and subject to N.J.S.A. 46:8B-13(a), the entire Board shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote, if the entire Board shall consent in writing to such action.

SECTION 9. Quorum. At all duly convened meetings of the Board, a majority of the Trustees shall constitute a quorum for the transaction of business, except as otherwise provided in the Master Deed, these By-Laws or by law, and the votes of a majority of the Trustees present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board there shall be less than a quorum present, the majority of those present shall adjourn the meeting to a new date. At any such adjourned meeting in which a quorum is present, any business which may have been transacted at the original meeting may be transacted without further notice. The vote of a majority of those present at a Board meeting at which a quorum is present shall be necessary for valid action by the Board on any matter.

SECTION 10. Vacancies. A vote of the remaining Trustees at a special meeting duly

called may fill the office of any Trustee that has become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise. The person so elected shall serve for the unexpired term in respect to which the vacancy occurred. Despite the foregoing, any Trustee appointed by the Developer whose position becomes vacant may be filled by a person appointed by the Developer. When the position of a Trustee who has been elected by the Unit Owners becomes vacant, that vacancy shall be filled by a Unit Owner other than the Developer.

SECTION 11. Removal. One or more members of the Board may be removed, with or without cause, by the affirmative vote of two-thirds of the Association Members at any annual or special meeting duly called for such purpose. This provision shall not apply, however, to Developer-appointed Trustees who may be removed only by the Developer, at any time, with or without cause.

SECTION 12. Meetings Open to Unit Owners

(a) **Open Matters:** All meetings of the Board, except conference or working sessions at which no building votes are to be taken, shall be open to attendance by all Unit Owners.

(b) **Restrictions on Open Meetings:** Despite (a) above, the Board may exclude or restrict attendance at those meetings or portions of meetings dealing with the following:

- (i) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- (ii) Any pending or anticipated litigation or contract negotiations;
- (iii) Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or
- (iv) Any matter involving the employment, promotion, discipline, or dismissal

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of a specific employee of the association.

(c) Minutes at Open Meetings: At each meeting required to be open to all Unit Owners, minutes of the proceedings shall be taken, and copies of those minutes shall be made available to all Unit Owners before the next open meeting.

(i) The Association shall keep reasonably comprehensive minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by the By-Laws. Such minutes shall be made available to the public in the association office within 30 days.

(ii) At each open meeting, the participation of Unit Owners in the proceedings or the provision of a public comment session shall be at the discretion of the Board.

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**SECTION 13. Notice Requirements for Open Meetings.**

(a) Notice: Adequate notice of any open meeting shall be given to all Unit Owners.

(b) Adequate Notice: Adequate notice means written advance notice of at least 48 hours, giving the date, time, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting. Such notice shall accurately state whether formal action may or may not be taken. This notice shall be:

(i) Prominently posted in at least one place within the condominium property reserved for such or similar announcements.

(ii) Filed with the Association secretary or administrative officer responsible for administering the Association business office.

(c) Annual Posting of Open Matters: At least once each year within seven (7) days

following the annual meeting of the Association, the governing body shall post and maintain posted throughout the year, notice of meeting in those locations set forth above.

SECTION 14. Emergency Meetings. In the event that a Board meeting is required to deal with such matters of urgency and importance that delay, for the purpose of providing 48 hours advance notice, would result in substantial harm to the interests of the Association, the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

## ARTICLE V

### Powers and Duties of Board of Trustees

SECTION 1. General Powers and Privileges. The property, affairs and business of the Association shall be managed by the Board of Trustees of the Association, which shall have all those powers granted to it by the Articles of Incorporation, the Master Deed, these By-Laws, and by law. Without limiting the forgoing, the Board shall also have the power to:

- (a) Elect and remove the officers of the Association as herein provided;
- (b) Administer the affairs of the Association and the Property;
- (c) Employ all managerial personnel necessary, or enter into a managerial contract, for the efficient discharge of the duties of the Board hereunder; provided, however, that the First Board, appointed as provided herein, may ratify and approve a management agreement between the Developer, on behalf of the Association, and a management company, which may be a corporation related to the Developer, to act as Managing Agent for the Property for a term not to exceed one year;
- (d) To provide for the operation, care, upkeep, maintenance, repair, replacement and improvement of the Common Elements;
- (e) To contract for or to employ, pay, supervise and discharge the personnel necessary

for the operation, care, upkeep, maintenance, repair, replacement and improvement of the Property, including the Common Elements, and to provide such personnel with the equipment and materials necessary in order to properly maintain and operate the Property. The compensation of such personnel shall be determined by the Board and shall be considered an operating expense of the Association;

(f) To employ professionals and obtain advice from persons, firms or corporations such as, but not limited to engineers, architects, planners, lawyers and accountants;

(g) To adopt, amend and publish Rules and Regulations, with written notice thereof to all Unit Owners, governing the details of the administration, management, operation and use of the Condominium Property and the Common Elements;

(h) To appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(i) To manage the fiscal affairs of the Association as herein provided;

(j) To change the fiscal year of the Association from time to time as the Board deems advisable;

(k) To estimate the amount of, prepare, adopt and distribute the annual budget and to provide the manner of assessing, levying on and collecting from the Unit Owners their respective shares of the Common Expenses, as hereinafter provided;

(l) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Condominium Property;

(m) To borrow and repay monies, give notes, mortgages or other security upon such terms as it deems necessary; exercise rights, invest and reinvest monies; sue and be sued; collect interest, dividends, capital gains and pay taxes;

(n) To act in a representative capacity in relation to matters involving the Common



Elements or more than one Unit, on behalf of the Unit Owners, as their interest may appear, as well as in matters relating to the Community Association;

(o) To enforce obligations of the Unit Owners, to do anything and everything necessary and proper for the sound management of the Condominium including the right to send notice to the offending party demanding certain acts to be undertaken, restoring the Condominium's property to its original condition and/or charging the breaching party with the entire cost or any part thereof, and levying fines against Unit Owners for violations of any of the Rules and Regulations or any covenants or restrictions contained in the Master Deed;

(p) To bring such lawsuits to enforce the terms, conditions and restrictions contained in the Master Deed, the By-Laws, and the Rules and Regulations governing the Condominium and its Members;

(q) To cause to be kept a complete record of all of its acts and corporate affairs and to present a report thereof to the Members at the annual meeting;

(r) To allocate common surplus or make repairs, additions and improvements to restoration of the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(s) To maintain adequate fidelity bonds for all officers and employees of the Association handling or responsible for funds of the Association and to pay the premiums therefor from the Association as a Common Expense;

(t) To open bank accounts on behalf of the Association and designate such signatories as may be required;

(u) To enter or cause to be entered any Unit when deemed necessary for or in connection with the operation, maintenance, repair, renewal, or protection of any Common Elements of any Units or in emergencies, provided that such entry and work shall be done with

as little inconvenience as possible to the owners and occupants of such Units. Each Unit Owner shall be deemed to have expressed the grant of such right of entry by accepting and recording the deed to his Unit. Prior notice of entry shall be given during reasonable hours, except in the case of an emergency;

(v) To maintain such property and liability insurance as may, in the discretion of the Board, be deemed adequate and sufficient and to pay the premiums therefor from the Association as a Common Expense;

(w) To have the power to do all things incidental and necessary to the accomplishment of the above.

## ARTICLE VI

### Officers

SECTION 1. Designation. The officers of the Association shall consist of a President, Vice-President, Secretary and Treasurer, all of whom shall be members of the Board. The trustees may elect assistant treasurers or assistant secretaries, and such other officers as in their judgment may be necessary. Such additional officers need not be trustees.

SECTION 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board of Trustees at the annual meeting of the Board and shall hold office until their successors shall have been duly elected or appointed by the Board and qualify. Any officer may succeed himself.

SECTION 3. Powers. The respective officers shall have the general powers usually vested in such officers as follows:

(a) The President shall be the chief executive officer of the Association. The President shall preside over the meetings of the Board and of the Association and shall have all of the general power and duties which are usually vested in the office of President of an Association.

The President of the Association is designated as the officer with the power to prepare, execute, certify and record amendments to the Master Deed on behalf of the Association.

(b) 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 shall appoint some other Trustee to so do 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.

(c) The Secretary shall keep the minutes of all meetings of the Board and of the Association; shall have charge of such books and papers as the Board may direct; shall see that all notices are duly given in accordance with the provisions of these By-Laws, the Master Deed and as required by law; shall see that a record containing the names and addresses of all Unit Owners, the designation of the Unit owned by the Unit Owner, and, if such Unit is mortgage, the name and address of each mortgagee is kept at the Association's principal office; and shall, in general, perform all the duties incident to the office of the Secretary.

(d) The Treasurer shall be the principal financial officer of the Association and shall have the responsibility for the care and custody of Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be authorized by the Board. The Treasurer shall perform all other duties incident to the office of the Treasurer and, upon request of the board, shall make such reports to it as may be required at any time.

The Board may further delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

SECTION 4. Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the Trustees thereof at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer being succeeded.

SECTION 5. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, after an opportunity for a hearing, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

## ARTICLE VII

### Assessments

SECTION 1. Annual Common Expense Budget. The Board shall cause to be prepared and shall adopt and distribute to all Unit Owners, a detailed Common Expense budget for each fiscal year of the Association. Such budget shall set forth with particularity (i) the Board's estimates of Common Expenses for the next fiscal year; (ii) the amount of funds for such Common Expenses that the board proposes to raise through General Assessments; (iii) the amount of funds for such Common Expenses that the Board proposes to raise through Limited Common Element Assessments; and (iv) the amount of funds for such Common Expenses that the Board proposes to raise through Special Assessments. Such budget shall also set forth each Unit Owner's Annual General Assessment and Limited Common Element Assessment for that year. To the extent that the aggregate Assessments and other cash income collected from the Unit Owners during the preceding year are more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account in the budget and may be used by the Association for any lawful purpose. The annual budget shall also provide for a reserve for contingencies and a reserve for replacements, in reasonable

amounts as determined by the Board.

the Board shall give written notice to each Unit Owners of the amount estimated by the Board for the forthcoming budget year. This notice shall be directed to the Unit Owner at his last known address by ordinary mail or hand delivery.

**SECTION 2. Annual Common Expense Assessments.** The Board shall have the duty to collect from each Unit Owner, his heirs, administrators, successor and assigns, those Assessments assessed against such Unit as provided in the Master Deed, the Articles of Incorporation, these By-Laws, and in accordance with applicable law.

**SECTION 3. Acceleration of Annual Common Expense Assessment Installment Upon Default.** If a Unit Owner shall be in default in the payment of an installment upon any type of Assessment more than a specified number of days to be determined by the Board, the Board shall notify the delinquent Unit Owner that the remaining installment of the Assessment shall be accelerated if the delinquent installment has not been paid by a date stated in the notice, which date shall not be less than five (5) days after delivery of the notice to the Unit Owner, less than ten (10) days after the mailing of such notice to him by registered or certified mail. If default continues following the time for payment prescribed in the notice, then the Board shall be required to accelerate the remaining installment of the Assessment and notify the delinquent Unit Owner that a lien for the accelerated amount shall be filed on a dated certain stated in the notice if the accelerated balance has not then been paid. The lien for such accelerated Assessment as permitted by law shall then be filed if the delinquent Assessment has not been paid and the Board may also notify any holder of a First Mortgage encumbering such Unit affected by such default and/or publish appropriate notice of such delinquency to the membership of the Association. The Board shall have the option to foreclose the foregoing lien pursuant to law and/or commence an independent suit against the appropriate parties to collect

the Assessment.

SECTION 4. Interest and Counsel Fees. The Board, at its option, shall have the right in connection with the collection of any type of Assessment, or other charge, to impose a late charge of any reasonable amount and/or interest at rate of 18 percent per annum, if such payment is made after a date certain stated in such notice. In the event the Board shall effectuate collection of said Assessment or charges by resort to legal counsel, and/or the filing of a lien, the Board may add to the aforesaid Assessments or charges a sum or sums of twenty (20%) percent of the gross amount due as counsel fees, plus the reasonable costs for preparation, filing and discharge of the lien, in addition to such other costs as may be allowable by law.

SECTION 5. Annual Audit. The Board, in its discretion, may submit the books and records of the Association to an annual audit by an independent certified public accountant who shall audit the same and render a report in writing to the Board and in summary form to the Unit Owners and other persons, firms or corporations as may be entitled to same. The audit shall cover the operating budget and reserve accounts. Despite the foregoing, while the Developer maintains control of the Association, the Developer shall cause an annual audit of Association funds to be prepared by an independent certified public accountant, a copy of which shall be delivered to each Unit Owner within ninety (90) days of the expiration of the fiscal year of the Association. The audit shall cover the operating budget and reserve accounts.

SECTION 6. Examination of Books. Each Unit Owner shall be permitted to examine the books of account of the Board by appointment in the office of the Association or such other place as may be designated therefor by the Board at a reasonable time on business days; provided, however, that the Treasurer of the Association has been given at least ten (10) days prior written notice of the Unit Owner's desire to make such an examination.

SECTION 7. Fidelity Bonds. Fidelity bonds shall be required by the Board from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board in its sole discretion. The premium on such bonds shall be paid by the Association.

While the Developer maintains a majority of representation on the Board, it shall post a fidelity bond or other guarantee acceptable to the Department of Community Affairs, in an amount equal to the annual budget. For the second and succeeding years, the bond or other guarantee shall include accumulated reserves.

SECTION 8. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein in such bank or banks as shall be designated from time to time by the Board. Money shall be withdrawn therefrom only upon a check or order signed by those signatories so designated by the Board.

SECTION 9. Fiscal Year. The fiscal year of the Association shall be determined by the Board.

## ARTICLE VIII

### Compensation, Indemnification and Exculpation

SECTION 1. Compensation. No compensation shall be paid to the President or the Vice-President or any Trustee, or committee member for acting as such officer or Trustee. The Secretary and/or Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall prevent any officer, Trustee or committee member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association provided, however, that any such expenses incurred or services rendered shall have been authorized in advance by the Board.

SECTION 2. General. The Association shall indemnify and hold harmless each of its Trustees, officers and each member of any committee appointed pursuant to the By-Laws of the Association, against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a part by reason of his being or having been a Trustee, officer, or committee member of the Association, except as to matters for which he shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matter covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

SECTION 3. Exculpation. Unless acting in bad faith, neither the Board as a body nor any Trustee, officer or committee member shall be personally liable to any Unit Owner in respect of any action or lack of action arising out of the execution of his office. Each Unit Owner shall be bound by the good faith actions of the Board, officers and committee members of the Association in the execution of their duties as said Trustees, officers and committee members. Nothing contained herein shall be construed so as to exculpate members of the Board appointed by the Developer from discharging their fiduciary responsibilities.

## ARTICLE IX

### Insurance

The Board shall be obligated to procure and maintain policies of insurance including, but not limited to, the following:

SECTION 1. Physical Damage Insurance. To the extent available in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage,



including vandalism and malicious mischief, insuring all Common Elements, together with all service machinery appurtenant thereto, as well as any common personalty belonging to the Association, and covering the interest of the Association, the Board, the Developer, and all Unit Owners, and any First Mortgagee who has requested the Association in writing to be named as loss payee, as their respective interests may appear, in an amount equal to the full replacement value of the Common Elements (exclusive of foundations and footings), without deduction for depreciation.

SECTION 2. Public Liability Insurance. To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring within the Common Elements (and any other areas which the Board may deem advisable), and the defense of any actions brought by injury or death of a person or damage to property, occurring within the Common Elements, and not arising by reason of any act or negligence of any individual Unit Owner. Said insurance shall be in such limits as the Board may, from time to time, determine. The Board shall review such limits once a year.

SECTION 3. Trustees' and Officers Liability Insurance. To the extent obtainable in the normal commercial marketplace, liability insurance indemnifying the Trustees and officers of the Association against liability for errors and omissions occurring in connection with the performance of their duties in an amount to be determined by the Board, with any deductible amount to be in the sole discretion of the Board.

SECTION 4. Workers' Compensation Insurance. Workers' compensation and New Jersey disability benefits insurance as required by law.

SECTION 5. Flood Insurance. Flood hazard insurance in the event any of the insurable Common Elements are located within a federally designated zone of greater than minimal flood hazard.

SECTION 6. Water Damage. Water damage legal liability insurance.

SECTION 7. Other Insurance. Such other insurance as the Board may determine to be appropriate.

The Board may determine, in its sole discretion, the amount of any deductible and the responsibility for payment of same as to any policy of insurance maintained under this subsection. In spite of any other provisions of this Article IX, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal commercial marketplace.

The premiums for any and all insurance coverage maintained by the Association shall be a common expense of the Association.

Unit Owners shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation; and further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owners.

## ARTICLE X

### Enforcement

SECTION 1. Enforcement. The Board shall have the power, at its sole option, to enforce the terms of this instrument or any Rule or Regulation promulgated pursuant thereto.

SECTION 2. Fines. To the extent now or hereafter permitted by the laws of the State of New Jersey, the Board shall also have the power to levy fines against any Unit Owner(s) for violations(s) of any Rule or Regulation of the Association, or for any covenants or restrictions contained in the Master Deed or By-Laws, except that no fine may be levied for more than \$100.00 for any one violation; provided, however, that for each day a violation continues after notice it shall be considered a separate violation. Collection of the fines may be enforced

against any Unit Owner(s) involved as if the fine were a Common Expense owed by the particular Unit Owner(s). Despite the foregoing, before any fine is imposed by the Board, the Unit Owner involved shall be given prior written notice and afforded an opportunity to be heard, with or without counsel, with respect to the violation(s) asserted.

SECTION 3. Waiver. No restriction, condition, obligation or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of the failure to enforce same irrespective of the number of violations of breaches thereof which may occur.

## ARTICLE XI

### Amendments

These By-Laws may be amended, altered or repealed, from time to time, at any meeting of the Association upon which previous notice to amend, alter or repeal has been given to Unit Owners. These By-Laws may only be amended by an affirmative vote in person or by proxy of at least 67 percent of Unit Owners in good standing, except that (i) the first annual meeting may not be advanced, (ii) the Member of the First Board (including replacements in case of vacancies) may not be enlarged or removed, (iii) the obligation of the proportionate responsibility for the payment of Common Expenses with respect to Units or the Common Elements may not be changed by reason of any such new By-Law, amendment, modification or rescission, or (iv) no such new By-Law, amendment, modification or rescission shall in any way affect the Developer, including any successor of the Developer, unless the Developer, or its successor, has given its prior written consent thereto. No such amendment, modification or rescission shall be valid and effective unless and until the recording thereof in the Office of the Clerk of Sussex County, New Jersey. Any such recorded amendment, modification or rescission shall be maintained in the corporate records of the Association.

## ARTICLE XII

### Miscellaneous Provisions

**SECTION 1. Conflict.** In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control. In the case of any conflict between any provisions of the Master Deed and these By-Laws, the provisions of the Master Deed shall control.

**SECTION 2. Invalidity.** The invalidity of any part of these By-Laws shall not impair or affect in any manner the enforceability or affect the validity of the remaining provisions of the By-Laws.

**SECTION 3. Notice.** Unless otherwise provided, any notice required to be sent to any Unit Owner under the provision of the Master Deed or Articles of Incorporation or these By-Laws shall be deemed to have been properly sent and notice thereby given, when mailed, by regular post with postage prepaid, addressed to the Unit Owner at the Unit Owner's registered mailing address as set forth in Section 20.09 of the Master Deed. Valid notice may also be given to Unit Owners by (i) personal delivery to any occupant of a Unit over 14 years of age, or (ii) by affixing said notice to or sliding same under the front door of any Unit.

**SECTION 4. Additional Powers.** In addition to, and in furtherance of, the powers referred to in these By-Laws, the Association shall have the following powers and duties:

(a) Subject to the Master Deed, Mountain Creek Association Documents or other instruments of creation, the Association may do all that it is legally entitled to do under the laws applicable to its form of organization;

(b) The Association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the Condominium; and

(c) The Association shall provide a fair and efficient procedure for the resolution of

disputes between individual Unit Owners and the Association, and between different Unit Owners, that shall be readily available as an alternative to litigation.

SECTION 5. Limitation on Developer's Rights to Vote. The Developer shall not be permitted to cast any votes held by the Developer for unsold lots, parcels, units or interests for the purpose of amending the Master Deed, By-Laws or any other document with the purpose of changing the permitted use of the lot, parcel, unit or interest, or for the purpose of reducing the common elements or facilities.

SECTION 6. Corporate Seal. The Association shall have a seal in circular form having within its circumference the words "Black Creek Sanctuary Condominium Association, Inc."

SECTION 7. Permit Parking on Maple Crescent and Pine Crescent.

(a) In the Vernon Township Planning Board Resolution of Memorialization for Black Creek Sanctuary Condominium Project Preliminary and Final Site Plan Approval, which Resolution was decided May 11, 2000 and memorialized by the Vernon Township Planning Board on June 14, 2000, the Developer is obligated to devise a means to control the use of the parking adjacent to the buildings in Black Creek Sanctuary Condominium (the "Condominium"). The purpose of this Section 7 is to satisfy said condition contained in the Planning Board Resolution.

(b) On-street parking is allowed for Unit Owners on both Maple Crescent and Pine Crescent, the two cul-de-sacs located in the Condominium in accordance with rules and regulations adopted by the Association. In order to control the use of the parking on said Maple Crescent and Pine Crescent so that at least one space is allocated for each Unit in the Condominium, the Association shall issue one parking permit for each Unit in the Condominium. Said parking permit shall entitle a Unit Owner to park one car on Maple Crescent or Pine Crescent. Any other car or cars which a Unit Owner may have shall be

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parked in the parking lot along the entrance way into the Condominium.

(c) In the event a Unit Owner allows a guest or guests to use the Unit, the guest or guests shall have the same rights as the Unit Owner with respect to permit parking on Maple Crescent and Pine Crescent.

(d) Enforcement of this permit parking regulation shall be effected by the Association directly or through its agents, servants, employees or designees. The Association shall have the power, directly or through its agents, servants, employees or designees to issue warning notice(s) and/or to have the offending car(s) towed at the Unit Owner's sole cost and expense to a location determined by it. For any violation of this Section 7, the Association shall also have the power to levy fines against any Unit Owner for any such violation(s) of this Section 7 as set forth in Article 10, Section 2 above.

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*Document #: 439451/AEA*

**EXHIBIT F**

**PERCENTAGE OF INTEREST SCHEDULE**

<u>Building Number</u>	<u>Unit Number</u>	<u>Interest in Common Elements</u>
1	1	.7519 %
1	2	.7519 %
1	3	.7519 %
1	4	.7519 %
1	5	.7519 %
1	6	.7519 %
1	7	.7519 %
2	1	.7519 %
2	2	.7519 %
2	3	.7519 %
2	4	.7519 %
2	5	.7519 %
2	6	.7519 %
2	7	.7519 %
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**EXHIBIT 2**

**Declaration of Covenants,  
Conditions and Restrictions  
for Mountain Creek**

**EXHIBIT 5A**

**Estimated Operating Budget  
for Black Creek Sanctuary Condominium Association, Inc.  
at full build-out**

## Black Creek Sanctuary Condominium Proposed Budget – Full Build-Out 133 Units

**Income:**

Assessments: \$1922. per unit/per year  
 \$160.17 per unit/per month \$255,626

**Total Income:** \$255,626

**Expenses:****Administrative:**

Management/Administrative Fee: \$27,000  
 Legal & Cost of Collection: \$9,000  
 Audit: \$1,700  
 Income Taxes: \$250  
 Administrative Miscellaneous: \$1,583  
 Insurance: \$26,000  
 Allowance for bad debt: \$3,192  
**Total Administrative:** **\$68,725**

**Operating:**

General Maintenance: \$8,097  
 Landscaping: \$60,000  
 Pool Maintenance: \$500  
 Pool Management: \$16,000  
 Shuttle/Van & Insurance: \$4,600  
 Shuttle/Van Driver: \$27,203  
 Exterminating: \$2,750  
 Phone: \$500  
 Electric: \$2,800  
 Water: \$1,500  
 Engineering Reports: \$3,000  
**Total Operating:** **\$126,950**

**Reserves:**

Replacement Reserves: \$41,910  
 Deferred Maintenance: \$18,000  
**Total Reserves:** **\$59,910**

**Total Expenses:** \$255,585

**EXHIBIT 6**

**Budget Letter of Adequacy**

## SUSSEX COMMUNITY MANAGEMENT

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November 3, 2000

Jeff Paterson  
For: Mountain Creek

Re: Projected Budget for Black Creek Sanctuary at Mountain Creek- Full build-out 133 units  
Projected Budget for Mountain Creek Association

Dear Jeff:

The projected budget for Black Creek Sanctuary at Mountain Creek and the Mountain Creek Association has been prepared using several building estimates provided by the sponsor; an overall average of present contracts of several vendors currently working for existing Associations managed by Sussex Community Management, Inc.; insurance quotes as well as operating expenses of Sussex Community Management, Inc. The budget covers the projected costs of operating, maintaining, and future replacement reserves for the common elements. Replacement reserve studies should be performed in the future at various intervals directed by the Board. Using current information, both operating and replacement reserves for the common elements are adequate.

Since the full build-out budgets are based upon assumptions and about events and circumstances that have not yet taken place, it is subject to variation that may arise as future events occur. Several assumptions are based on information provided and supplied by the sponsor. If changes and unanticipated events occur, a revision of this budget must be made.

If you have any questions regarding this matter, please do not hesitate to contact my office.

Sincerely,



David Mundhenk, CMCA  
President  
Sussex Community Management

**EXHIBIT 7**

**Insurance Letter of Adequacy**





**Community Association Underwriters of America, Inc.**

**Date: Monday, November 06, 2000**

**To: Dave Mundhenk  
Sussex Community Management  
P.O. Box 922  
Sparta, N.J. 07871**

**Subject: Insurance Estimates for Budget Adequacy on;  
- Black Creek Sanctuary at Mountain Creek  
Condominium  
- Mountain Creek Association.**

**Dear Dave;**

**With this cover please find our annual premium estimates for these associations. Please note that these are premium estimates and are subject to change due to project changes, market conditions, and levels of coverage purchased.**

**In my opinion the below presentation should be adequate and accurate for the Master and Condominium Associations' initial coverage needs and initial budgetary process. Additional coverages and higher limits should be considered at some point and time by the associations noted above for exposure changes and increased coverage needs.**

**BLACK CREEK SANCTUARY AT MOUNTAIN  
CREEK CONDOMINIUM, FULL BUILD OUT!**

**CAU/AAIC Package Policy at \$1,000,000 per Occurrence / No Aggregate General Liability Limits; \$1,000,000 per claim / aggregate Directors' & Officers' Liability Limits; Fidelity Limit of \$50,000; and Guaranteed Replacement Cost Coverage for all 133 units plus other association Buildings and Structures.**

**Workers Compensation - Legion Insurance - Employers Liability Limits of \$500,000/\$500,000/\$500,000 using estimated state minimum premium as basis.**

**Business Automobile - Legion Insurance - \$1,000,000 Liability Limit. State mandatory coverages on No Fault, Uninsured Motorists, and Underinsured Motorists. Comprehensive (\$250 deductible) and Collision (\$500 deductible) Coverages on proposed van.**

**Total Estimated Annual Premiums for above without Automobile Policy.**

**- Full Build Out Budgetary Estimate = \$26,000**

**To add the above mentioned Automobile Policy to any of these phases \$1,500 should be added to your Insurance Estimate.**

**EXHIBIT 9A**

**Management Contract  
for Black Creek Sanctuary Condominium Association**

**MANAGEMENT AGREEMENT**

THIS AGREEMENT, made and entered into this      day of                      , 200\_ , by and between:

BLACK CREEK SANCTUARY CONDOMINIUM ASSOCIATION, INC., a New Jersey 07462 not-for-profit corporation, with an office at 200 Route 94, Vernon, New Jersey (hereinafter referred to as "Association"),

AND

with an address of \_\_\_\_\_, New Jersey  
(hereinafter referred to as "Managing Agent" or "Agent").

**WHEREAS**, the Association is responsible for the administration, management and operation of that certain condominium known as BLACK CREEK SANCTUARY, A CONDOMINIUM, located in Vernon Township, Sussex County, New Jersey (hereinafter called the "Condominium"); and

**WHEREAS**, the Managing Agent possesses expertise in the management, operation and administration of condominiums and has all the necessary licenses and/or certifications required to perform its obligations and functions as set forth in this Agreement; and

**WHEREAS**, the Association desires to engage the Managing Agent to perform all the management services required for the efficient administration, operation and management of the Condominium, including but not limited to those authorized by the Master Deed of the Condominium, the By-Laws of the Association and those hereinafter expressly set forth.

**NOW, THEREFORE, WITNESSETH** that in consideration of the premises, conditions and covenants hereinafter set forth, the parties hereto covenant and agree as follows:

1. The Association herewith employs and appoints the Managing Agent as the exclusive agent for the management, operation and administration of the Condominium, and the Managing Agent herewith accepts said employment under and upon the terms and conditions hereinafter provided.

2. The responsibility of the Managing Agent for the administration, management and operation of the Condominium shall commence on the date hereof and shall continue for one (1) year thereafter, provided however, that either party shall have the right to terminate said Agreement with or without cause by affording the other party at least sixty (60) days prior written notice of said termination. Despite the foregoing reference to a one (1) year term, in accordance with the provisions of N.J.S.A. 46: 8B-12.2, any management contract or agreement shall terminate ninety (90) days after the first meeting of a governing board or other form of administration in which the unit owners of the Condominium constitute a majority of the members, unless the board or other form of administration ratifies the contract or agreement.

3. The Managing Agent agrees, despite the authority vested in the Managing Agent by terms of this Agreement, to confer fully and freely with the Board of Trustees of the Association (the "Board") in the performance of its duties as herein set forth and to attend general membership or Board meetings at any and all times requested by the Association.

4. It is further understood and agreed that the authority and duties conferred upon the Managing Agent hereunder are confined to the common elements and facilities as defined in the Master Deed creating the Condominium. Such authority and duties shall not include supervision or management of individual units except as directed by the Association.

5. The services to be rendered by the Managing Agent in connection with the operation, administration and management of the Condominium are to be performed with diligence and care and include the following:

(a) Subject to the approval of the Board, to cause to be selected, hired, paid and supervised, all persons necessary to be employed in order to properly manage, maintain and operate the Condominium. All managerial personnel necessary for the efficient discharge of the Managing Agent's duties hereunder shall be employees of the Managing Agent who shall be responsible for the payment of all of their wages, salaries and employee benefits. At least one of such managerial employees shall be a qualified condominium property manager who shall be employed and available on site at the Condominium as requested by the Board and at such other times as are required to attend Board meetings or deal with building emergencies. All employees involved in the operation and/or maintenance of the Condominium shall be employees of the Association or of an independent contractor and all wages, salaries and other compensation paid to such employees, including all items payable in respect to the payroll, such as, but not limited to, unemployment insurance and social security, workmen's compensation, disability benefits, medical and surgical plans now in existence or hereafter imposed or included in union agreements which Agent may enter into, shall be at the expense of the Association and considered as operating expenses of the Condominium. The Managing Agent will prepare and file all necessary reports and make required payments with respect to the unemployment insurance, disability and social security taxes. Despite anything to the contrary herein, the Association will be responsible for the payment of direct or indirect compensation to any such employee for services actually rendered on behalf of the Association and the Association shall have the right at all reasonable times to audit all records with respect to any and all payroll or other expenses for which payment has been made by or requested of the Association.

(b) Cause the Common Elements of the Condominium to be maintained and kept in a first-class condition, including interior and exterior cleaning, and cause necessary repairs and alterations to the common elements of the Condominium to be made, including but not limited to electrical, plumbing, carpentry, masonry, elevator, steamfitting, redecorating of public and common areas and such other incidental alterations or changes therein that may be proper, subject only to the limitations contained in this Agreement, or in the Master Deed for the Condominium, the Certificate of Incorporation, By-Laws and Rules and Regulations of the Association.

(c) Cause to be purchased, on behalf of and at the expense of the Association, all tools, equipment, supplies and materials as may be necessary and desirable for the maintenance and upkeep of the Common Elements of the Condominium. Such purchases shall be made in the name of the Association and all discounts or commissions obtained for such purchases shall be credited to the Association.

(d) Subject to the approval of the Board, solicit bids, recommend and arrange for contracts for utilities, water treatment, elevator maintenance, telephone service, window cleaning, refuse removal, fuel oil, security protection, valet service, vermin extermination, snow clearing, master television antenna or cable television service and other necessary services as shall be deemed advisable.

(e) Check all bills received by the Association for services, work and supplies ordered in connection with and for maintaining the common elements and cause to be paid by the Association all such bills, as and when same shall become due and payable.

(f) Bill and collect on behalf of the Association all common expense assessments, maintenance fees, charges, monies and debts which may become due to the Association and to take such action in the name of the Association as may be required for the collection of same. For such purposes, the Managing Agent may, with the prior approval of the Board, and at the expense of the Association, employ counsel designated by the Association for such purposes.

(g) Deposit all funds collected for the Association in a bank designated by the Association as agent for the Association, which funds shall not be commingled with any other funds of the Managing Agent or under its custody or control. Initially, \_\_\_\_\_ Bank is designated as the depository.

(h) Maintain businesslike relations with members of the Association whose service requests and complaints shall be received, considered, acted upon and recorded in a systematic fashion in order to show the action taken with respect to each. Requests that the Managing Agent deems outside of the scope of its responsibilities or of a serious nature or complaints or requests deemed by the Managing Agent to be unreasonable shall, after thorough investigation, be reported to the Association with appropriate recommendations.

(i) Cooperate with the Association's accountants with regard to the annual audit of the books and accounts of the Association, including the annual report of the operation of the Association, a copy of which shall be made available to each unit owner upon request of the Board.

(j) Cooperate with the Association's accountants with regard to the preparation and filing on behalf of the Association of any governmental forms or tax returns.

(k) Cause to be prepared and send out all letters, reports and notices as may be reasonably requested by the Board, including any newsletters or other publications which

the Board directs. Except in the case of emergency, any letter or notice to be distributed generally shall be approved in advance by the Board or its designated representative.

(l) Cause all insurance required by law or otherwise to be carried and maintained in full force and effect and cause all insurance proceeds to be promptly paid.

(m) Cause to be maintained and kept current, the Association minute book, Unit Owner/Membership list; prepare and give notice of the meetings to the Unit Owner/Members and Trustees of the Association; keep and maintain orderly files containing maintenance records, insurance policies, correspondence, receipted bills and vouchers, and all other documents and papers pertaining to the Condominium or the operation and administration thereof, all of which shall be the property of the Association and be made readily available to the Board and its duly authorized representatives.

(n) Maintain records with respect to services and materials and expenses on behalf of the Association, which records shall be sufficient to describe the services rendered and shall be kept in accordance with prevailing accounting procedures and shall identify the source and expenditure of all funds. Such records shall be freely available for inspection by the Association's Officers and Directors on a reasonable basis during normal business hours.

(o) Render to the Association a monthly statement of all collections and disbursements made, with vouchers therefor, at such time as requested by the Association, and at such other times, at the option of the Association, as shall be consistent with collections, expenditures and commitments for the Condominium. Such statements shall be prepared at the Managing Agent's expense.

(p) If requested by the Board, prepare an annual operating budget for submission to the Board prior to the end of each fiscal year of the Association for the next succeeding fiscal year.

(q) Generally do all things deemed reasonable, necessary or desirable by the Board to oversee the proper management of the Condominium.

(r) To notify the Association of any practice, procedure or activity or other matter connected with the Condominium, which, in the opinion of the Managing Agent, may constitute a violation of any ordinance, code, governmental regulation, provision of the Master Deed, provision of the By-Laws of the Association or rule of the Association.

6. The Association agrees to pay the Managing Agent for all services to be performed in connection with the management, administration and operation of the Condominium, an annual management fee of (i) \$ \_\_\_\_\_ payable in equal monthly installments of \$ \_\_\_\_\_.

The Managing Agent shall be entitled to reimbursement by the Association for all reasonable expenses incurred by the Managing Agent in connection with the performance of its duties including, but not limited to reproduction and delivery of reports and newsletters, postage, notices, and other communications to unit owners. The Managing Agent shall be responsible for all costs relating to its office salaries and payroll expenses including, but not limited to, overhead, general administration costs, the maintenance of any required licenses, and travel, lodging and meal expense.

7. Managing Agent is and shall have general authority and powers necessary to carry out the intent of this Agreement and to act therefore on behalf of the Association.

8. The Managing Agent shall, with the consent of the Association as to the insurance carrier(s) selected and at the expense of the Association, cause to be placed and kept in force all forms of insurance as required by the Master Deed for the Condominium, the By-Laws of the Association or the laws of the State of New Jersey, and as directed by the Board.

The Managing Agent shall promptly investigate and make a full written report as to all accidents or claims for damages relating to the management, operation and maintenance of the Condominium, including any damage or destruction to the Condominium, the estimated cost of repair and shall further cooperate and make any and all reports required by any insurance carrier in connection therewith.

9. The Managing Agent shall be liable to the Association for any loss or damage caused by the Managing Agent's gross negligence or willful misconduct or caused by the Managing Agent's own failure to comply with its obligations hereunder. The Association will indemnify the Managing Agent against and hold the Managing Agent harmless from:

(a) any liability, damage, costs or expenses (including reasonable attorney's fees) sustained or incurred for injury to any person or property in or about and in connection with the Condominium, from any cause except the gross negligence or willful misconduct of the Managing Agent; and

(b) any liability, damage, penalties, costs or expenses, statutory or otherwise, for any acts properly performed by the Managing Agent pursuant to this Agreement or the direct instructions of the Board or its duly authorized representative; provided however, in each of the foregoing instances, the Managing Agent promptly advises the Association of its receipt of information concerning any such injury and the amount of any such injury, such liability, damages, penalties, costs and expenses.

10. In the event a petition in bankruptcy is filed by or against the Association or the Managing Agent, or in the event that either shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party hereto may forthwith terminate this Agreement upon ten (10) days prior notice in writing to the other.

11. Notice which either party desires to give to the other or is required to give to the other under this Agreement, shall be given by U.S. Certified or Registered Mail, Return Receipt Requested,



or by recognized overnight carrier, and it shall be deemed given 72 hours after it shall have been deposited in the United States Mail or with the overnight carrier, addressed to the party for whom it is intended as follows or to such other address as either of the parties may designate in writing:

**FOR THE ASSOCIATION:**

Black Creek Sanctuary Condominium Association, Inc.  
200 Route 94  
Vernon, New Jersey 07642

**FOR THE MANAGING AGENT:**

\_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, New Jersey \_\_\_\_\_

Despite the foregoing, any notice of change of address or of an additional person to receive future notices shall not be effective until received.

12. The term "Managing Agent" or "Agent" as used in this Agreement shall include any corporate subsidiaries or affiliates of the Managing Agent who perform services, in, on, or about the Condominium arising out of or in connection with this Agreement.

13. This Agreement may not be transferred or assigned by either party without the written consent of the other and shall bind, apply to and run in the favor of the Association and the Managing Agent and their respective successors in interest.

14. Upon termination of this Agreement, the parties shall account to one another with respect to all matters outstanding as of the date of termination, and the Association shall furnish to the Managing Agent security satisfactory to the Managing Agent, against any outstanding obligations or liabilities which may have been incurred hereunder.

15. This Agreement shall constitute the entire understanding between the parties, and no variance or modifications thereof shall be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

16. In the event of any dispute between the parties hereto as to the terms of this Agreement, such dispute shall be submitted (i) to non-binding mediation and then (ii) to binding arbitration in Sussex County, New Jersey in accordance with the then current rules of the American Arbitration Association. In the event of arbitration, a panel of three (3) arbitrators shall be selected from the Panel of Arbitrators of and by the rules of the said American Arbitration Association. It is further agreed that a judgment on the award of the arbitrators may be entered by any court of competent jurisdiction.

17. The Managing Agent shall provide and maintain at all times that this Agreement is in effect, and thereafter for so long as it has custody of any Association funds, a fidelity bond

covering any of its employees or agents who either handles or is responsible for funds of the Association. The amount of the fidelity bond shall be at least \$1,000,000 or equivalent to the maximum amount of Association funds that will be in the custody of the managing agent at any time while the bond is in force, whichever is greater. Said bond shall hold the Association harmless from any loss of money or other personal property belonging to the Association or for which the Association is legally liable, caused by larceny, embezzlement, forgery, misappropriation, or any dishonest or fraudulent acts committed on or after the date hereof by the Agent, its directors, officers or employees. The premium for such fidelity bond shall be paid by the Managing Agent. The bond must include a provision requiring ten (10) days written notice to the Association before the bond can be cancelled or substantially modified for any reason.

18. In order to facilitate efficient operation, the Association shall furnish the Managing Agent with one copy each of the Master Deed, By-laws, Rules and Regulations and the Public Offering Statement for the Condominium, as well as of all building plans and existing guarantees and warranties in its possession. With the aid of these documents the Managing Agent will inform itself with respect to the layout, construction, location, character, plan, design and operation of the lighting, heating, air conditioning, plumbing and ventilating systems as well as of the elevators and other mechanical equipment. The Managing Agent will keep the Board advised at all times of the condition of said facilities and systems and make recommendations as to any extraordinary maintenance and repair of same that may be appropriate.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

ATTEST:

BLACK CREEK SANCTUARY CONDOMINIUM  
ASSOCIATION, INC.

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
, President

ATTEST:

\_\_\_\_\_  
Managing Agent

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
, President

**PURCHASE AND SALE AGREEMENT**  
**BLACK CREEK SANCTUARY CONDOMINIUM**  
Dated as of: \_\_\_\_\_, 200\_

This Purchase and Sale Agreement (this "Agreement") is between Mountain Creek Resort, Inc., a New Jersey corporation, having an address of 200 Route 94, Vernon, New Jersey 07462 ("Seller"), and \_\_\_\_\_ having an address as set forth below (check one of the following: \_\_an individual; \_\_as tenants in common; \_\_as joint tenants) ("Buyer").

1. THE UNIT.

Seller agrees to sell and convey and Buyer agrees to purchase and pay for the following unit (the "Unit"):

Condominium Unit No. \_\_\_\_\_, together with a .7519% interest in the common elements (the "Unit")  
Black Creek Sanctuary Condominium  
Vernon Township, Sussex County, New Jersey  
according and subject to the Master Deed as defined below.

2. THE PROJECT.

The Unit will be a part of a condominium community to be developed by Seller in Vernon Township, Sussex County, New Jersey, known as Black Creek Sanctuary Condominium (the "Project"). The Project will consist of (a) a maximum of 133 residential condominium units; and; (b) common elements, all as more particularly identified in the Master Deed for Black Creek Sanctuary, a Condominium, to be recorded in the office of the Clerk of Sussex County, New Jersey prior to the closing of the purchase and sale of the Unit under this Agreement (the "Closing").

3. PURCHASE PRICE.

The purchase price for the Unit shall be \$ \_\_\_\_\_ payable as follows:

(a) Buyer has paid \$ \_\_\_\_\_ (the "First Deposit") concurrently with its execution and delivery of this Agreement to Seller. Seller acknowledges receipt of the First Deposit, subject to collection. The First Deposit represents 10% of the Purchase Price.

(b) Buyer shall pay \$ \_\_\_\_\_ (the "Second Deposit") to Seller within 20 days after the date on which Buyer receives written notice from Seller that the framing of the Unit has commenced. If framing of the Unit has commenced or is completed at the time this Agreement is executed, then Buyer shall pay the Second Deposit to Seller no later than 30 days after the date of this Agreement. The total of the First Deposit and the Second Deposit represents 15% of the Purchase Price.

(c) The balance of the Purchase Price shall be paid by Buyer to Seller in cash, by certified or cashier's check, by wire transfer, or by attorney's trust account check at the Closing.

The First Deposit and the Second Deposit are collectively referred to herein as the "Deposit." The Deposit shall be held in an escrow account maintained by Dolan and Dolan, P.A., Esqs. at National Bank of Sussex County, 3 Broad Street, Branchville, New Jersey 07826. The Deposit shall be credited to Buyer at the Closing. If Buyer is a New York resident, Seller will hold the money as required by Section 352-h of the New York General Business Law. This means that the Seller receives all deposit monies in escrow after expiration of the

seven calendar day recession period (referred to in Section 19 of this Agreement) and will hold same until payment is authorized as provided in this Agreement and the Public Offering Statement for the Condominium.

4. MORTGAGE CONTINGENCY.

**>>Strike if Buyer does not intend to obtain a loan to purchase the Unit <<**

Buyer shall (i) file a mortgage application with Buyer's chosen lending source within fourteen days after the date of this Agreement; (ii) diligently pursue such mortgage application thereafter until the lender has received all of the requested information necessary to make a decision on the mortgage application; (iii) pay all fees and costs required to be paid by the lender in connection with such mortgage application; and (iv) otherwise fully and completely cooperate with the lender in all aspects of the mortgage application process. This Agreement is conditioned upon Buyer's receipt of a mortgage commitment on or before \_\_\_\_\_, 200 \_\_. If Buyer has not received a mortgage commitment by such date, Buyer may terminate this Agreement by delivering written notice thereof to Seller on or before such date. If Buyer so terminates this Agreement, Seller shall promptly thereafter return to Buyer all amounts previously paid by Buyer hereunder towards the Deposit. If Buyer does not terminate this Agreement on or before such date, Buyer shall be deemed to have waived its right to so terminate this Agreement. If Buyer receives a mortgage commitment, Buyer shall immediately deliver a copy thereof to Seller. If Buyer receives a mortgage commitment and, thereafter, Buyer is unable to secure the requisite financing sufficient to close the purchase of the Unit, then Buyer shall be in default hereunder and subject to remedies for default as further set forth herein.

5. DELIVERY OF FUNDS LETTER.

**>> Strike if inapplicable <<**

**(If Buyer is not obtaining a loan in connection with the purchase of the Unit)** Buyer shall deliver to Seller on or before \_\_\_\_\_, 200\_\_ a letter from a financial institution in form and substance acceptable to Seller, verifying that Buyer has sufficient funds to purchase the Unit (the "Funds Letter"). Buyer's failure to deliver the Funds Letter to Seller by such date shall constitute a default hereunder.

6. CLOSING AND POSSESSION.

(a) The estimated date for the closing of title ("Closing") is \_\_\_\_\_, 2000 (the "Estimated Completion Date"). In no event, however, shall the Closing take place more than two years from the date of this Agreement. The Seller and the Buyer agree that Closing of title to the Property shall take place upon the issuance of a Certificate of Occupancy for the Unit. Sometimes the Certificate of Occupancy is marked "Temporary" or "Conditional", which means that Seller is required to perform additional work after the Closing in order for the Certificate of Occupancy to become final. This may include work by Seller which is outside of the Unit or it may be as a result of work which cannot be completed during the time of year in which the Closing occurs. When a Certificate of Occupancy is issued, whether it be permanent, conditional or temporary, Seller shall so notify Buyer and shall schedule the Closing within 30 days thereafter. Alternatively, Seller may notify the Buyer of the exact date of Closing at least seven (7) business days before the scheduled Closing date, based upon the Seller's expectation of the issuance of a Certificate of Occupancy. The Seller may not schedule a Closing before the Estimated Completion Date unless the Buyer consents. Upon receiving notice of the exact date of Closing, Buyer may not postpone the Closing without the consent of the Seller. Buyer agrees to pay to Seller \$75.00 per day for every day Buyer fails to close, not to exceed 10% of the Purchase Price. No portion of the Purchase Price shall be held back or escrowed and the Closing shall not be delayed pending completion of

any items that Seller must complete or repair.

Seller shall not be responsible for delays in construction resulting from causes beyond Seller's reasonable control, such as weather, strikes, disputes or differences with workmen, delays in delivery of supplies and materials, inability of Seller to obtain utilities, water or sewer connections, war, riots and acts of God. If Seller is unable to complete construction of the Unit within 180 days after the Estimated Completion Date, other than for reasons beyond Seller's control, Buyer may terminate this Agreement by delivering written notice thereof to Seller. If this Agreement is terminated pursuant to the foregoing sentence, the Deposit shall be returned to Buyer, without interest, and, thereafter, neither party shall have any further rights or obligations under this Agreement. The return of the Deposit shall be Buyer's sole remedy for Seller's failure to complete the Unit on or before 180 after the Estimated Completion Date. If Seller fails to complete the Unit within two years from the date of this Agreement, other than for reasons beyond Seller's control, Seller shall be in default hereunder and Buyer shall be entitled to the remedies set forth in Section 14 of this Agreement.

(b) The Closing shall be held at the office of Seller or any other location designated by Seller, at the hour and place designated by Seller. If Buyer fails to close at the time and place designated by Seller, Buyer shall be deemed to be in default hereunder and Seller shall be entitled to seek the remedies and damages set forth in Section 14 of this Agreement. If the Closing is held other than at the location designated by Seller, Buyer shall pay Seller's attorney the sum of \$250 at Closing to compensate Seller's attorney for time and travel to closing.

(c) Possession of the Unit shall be delivered to Buyer upon Closing.

## 7. CLOSING OF TITLE.

At the Closing, the following shall occur, each being a condition precedent to the others and all being considered as occurring simultaneously:

(a) Buyer shall deliver to Seller the balance of the Purchase Price in cash or a cashier's check or other acceptable funds as provided in Section 3(c) of this Agreement.

(b) Seller shall deliver to Buyer an executed and acknowledged Bargain and Sale Deed with Covenants Against Grantor's Acts, subject to all matters of record, together with an Affidavit of Title and Corporate Resolution.

(c) If applicable, Seller shall deliver to Buyer an executed and acknowledged assignment of any warranties of personal property that may be unexpired and assignable.

(d) Seller shall deliver to Buyer an executed and acknowledged non-foreign person affidavit to assure compliance with § 1445 of the Internal Revenue Code of 1986, as amended.

(e) Buyer and Seller shall execute and deliver such other documents and shall take such other action as may be necessary to carry out their obligations under this Agreement.

8. ADJUSTMENTS AND CLOSING COSTS.

(a) Taxes and Assessments.

The following shall be adjusted and apportioned as of the date of Closing:

(i) Real property taxes and assessments for the year of Closing, based upon the most current assessment and levy. If real property taxes have not been assessed specifically to the Unit at the time of Closing, Seller may estimate the amount of such taxes attributable to the Unit, which estimate shall be apportioned to the date of Closing and shall be considered a final settlement.

(ii) All periodic assessments of the Association (as defined in Section 10(b) of this Agreement and Mountain Creek Association (as defined in Section 10(a) of this Agreement).

(b) Transfer Taxes and Assessments.

(i) Seller shall pay the Realty Transfer Tax at the time of Closing.

(ii) Buyer shall pay to the Association at the time of Closing a non-refundable and non-transferrable contribution to the working capital of Black Creek Sanctuary Condominium Association in an amount equal to ¼ of the annual General Assessment assessed to the Unit for the fiscal year in which the sale of the Unit occurs. In addition, Buyer shall pay to Mountain Creek Association at the time of Closing the sum of \$250 as a one-time non-refundable contribution to the working capital of Mountain Creek Association. Buyer shall also pay at the time of Closing the Real Estate Conveyance Assessment imposed by Mountain Creek Association pursuant to section 6.06 of the Mountain Creek Declaration (as defined in Section 10 of this Agreement), which assessment is in the amount of 2% of the Purchase Price.

(c) Closing Costs.

Buyer shall be responsible for all costs associated with Closing including, but not limited to, the costs of Buyer's mortgage loan, if any, Buyer's attorney, all title insurance costs and all recording fees applicable to Closing and transfer of title.

9. TITLE.

(a) Seller will transfer title to the Unit to Buyer. Said title shall be marketable and insurable at regular rates by a title company licensed to do business in the State of New Jersey, free and clear of all claims and right of others except the following:

(i) Zoning regulations and other ordinances of the Township of Vernon which now or hereafter affect the Unit, provided that they do not presently prohibit the existing residential use of the Unit and are not presently violated.

(ii) Any easements, covenants, restrictions, reservation or agreements contained in or referred to in the Public Offering Statement or the Master Deed for the Condominium or the Declaration for Mountain Creek Association.

(iii) Any exception to affirmative insurance stated in the sample Unit owner's title insurance policy contained in the Public Offering Statement for the Condominium.

(iv) Possible additional taxes and assessments for the year of sale imposed by the municipality under N.J.S. 54:4-63.1 because of the construction of the improvements which constitute the Unit.

(b) If title is not marketable and insurable for any reason not mentioned in paragraph (a) of this Section 9, Buyer shall give written notice of any such defects ("Defects of Title") to Seller within seven days after becoming aware of such Defects of Title. After its receipt of such notice, Seller may, but shall not be obligated to, remove or cure such Defects of Title. If Seller attempts to remove or cure such Defects of Title, Seller shall be entitled to an adjournment of the Closing for a period of 30 days in which to remove or cure such Defects of Title. Seller shall be entitled to provide Buyer with title insurance protection against any such Defects of Title and such title insurance protection shall be deemed to satisfy Seller's obligation to remove or cure any Defects of Title. If Seller is unable or unwilling to remove or cure all Defects of Title within such period, Buyer may elect either to waive such Defects of Title or to terminate this Agreement. In the event Buyer terminates this Agreement, Buyer shall be entitled to a return of the Deposit, without interest, as well as reimbursement for Buyer's actual costs for title search and survey, if any.

(c) The willingness of NIA/Lawyers Title Agency, LLC, 66 Route 17 North, Paramus, New Jersey 07652, as agent for Lawyers Title Insurance Corporation, to insure title to the Unit shall constitute marketable and insurable title. Buyer is not obligated to obtain title insurance from NIA/Lawyers Title Agency, LLC.

(d) Seller expressly reserves the right, and anticipates exercising such right prior to the first closing of title to a Unit in the Condominium, to place such other easements on the Common Elements that may be necessary in order to complete its development plan and/or to effect the integration of the Condominium with Mountain Creek. A copy of any such easement(s) will be provided to Buyer upon recording in the Sussex County Clerk's Office.

## 10. PROJECT LEGAL DOCUMENTATION.

(a) The legal documentation that creates the Project is the Master Deed for Black Creek Sanctuary, a Condominium (the "Master Deed"), recorded or to be recorded in the office of the Clerk of Sussex County, New Jersey prior to Closing, together with any and all amendments or modifications thereto. The Master Deed defines the character, duration, rights, obligations and limitations of ownership within the Project. In addition, the Unit is part of the Mountain Creek community ("Mountain Creek") and upon purchasing the Unit, Buyer shall become a member of the Mountain Creek Association, a New Jersey nonprofit corporation (the "Mountain Creek Association"). The legal documentation that creates Mountain Creek is the Declaration of Covenants, Conditions and Restrictions for Mountain Creek recorded or to be recorded in the office of the Clerk of Sussex County, New Jersey, together with any and all amendments or modifications thereto (the "Mountain Creek Declaration"). The Mountain Creek Declaration defines the character, duration, rights and obligations and limitations of ownership of a Unit within Mountain Creek.

(b) By virtue of ownership of the Unit, Buyer shall become (i) a member of Black Creek Sanctuary Condominium Association, Inc., a New Jersey nonprofit corporation (the "Association") and agrees to be subject to the Association's Articles of Incorporation, Bylaws and Rules and Regulations from time to time in effect, during the term of this Agreement and for so long as Buyer remains the owner of the Unit (the Master Deed, Articles of Incorporation, Bylaws, Rule and Regulations and any amendments or modifications thereto,

shall hereinafter collectively be referred to as the "Constituent Documents"), and (ii) a member of Mountain Creek Association and agrees to be subject to Mountain Creek Association's Articles of Incorporation, Bylaws and Rules and Regulations from time to time in effect, during the term of this Agreement and for so long as Buyer remains the owner of the Unit (the Mountain Creek Declaration, together with the Articles of Incorporation, Bylaws and Rules and Regulations of Mountain Creek Association, and any amendments or modifications thereto, shall hereinafter collectively be referred to as the "Mountain Creek Documents"). Upon Closing, Buyer shall have the rights and obligations of an owner as set forth in the Constituent Documents and the Mountain Creek Documents. Buyer shall abide by the provisions of the Constituent Documents and the Mountain Creek Documents and shall promptly pay all assessments levied by the Association and Mountain Creek Association.

(c) Buyer acknowledges receipt of a copy of the Constituent Documents and the Mountain Creek Documents. Seller reserves the right to make modifications to the Constituent Documents and the Mountain Creek Documents prior to the Closing in accordance with any amendment of the Public Offering Statement approved by the New Jersey Department of Community Affairs and provided to Buyer. Buyer may rescind this Agreement if any modification is so substantial in nature as to render title to the Unit unmarketable. If Buyer fails to give such notice to Seller on or before seven days after the delivery of such modifications to Buyer, then Buyer shall be deemed to have waived such right to rescind and accepted the Constituent Documents and the Mountain Creek Documents as satisfactory.

## 11. CONSTRUCTION OF THE UNIT.

### (a) General Construction.

Seller shall construct the Unit in substantial conformance with the Unit Plan attached hereto and made a part hereof as Exhibit A (the "Unit Plan"). Seller shall not be obligated to make any changes, modifications or upgrades to the Unit. **Buyer acknowledges that Buyer has reviewed the Unit Plan.**

### (b) Standard Features.

The standard features to be included with the Unit are set forth on the List of Standard Features for Black Creek Sanctuary Condominium on file with Seller. **Buyer acknowledges that Buyer has reviewed the List of Standard Features for Black Creek Sanctuary Condominium.**

### (c) Changes by Seller.

Seller shall have the right to make changes and substitutions with respect to the construction of the Unit without notice to Buyer whenever Seller shall find it necessary or expedient, in its sole discretion, provided that such changes and substitutions are of equal or better quality. Representations as to square footages contained within the Unit or other portions of the Project are approximate numbers only. Buyer acknowledges and agrees that square footage calculations may be made in a variety of manners and so long as the Unit is constructed substantially in accordance with the Unit Plan reviewed by Buyer, Buyer shall neither have any right to rescind this Agreement nor to claim any breach hereof on account of alleged discrepancies in square footage calculations.



(d) Insulation.

(i) Subject to the terms and conditions of subparagraph (d)(ii) below, Seller shall install the following insulation in the Units:

<u>Location</u>		<u>Type</u>	<u>Thickness</u>	<u>R-Value</u>
Roof		Batt	10"	R-30
Exterior Walls		Batt	3"	R-13
Exterior Suspended Floor		Batt	10"	R-30
Foundation		Polystyrene	1"	R-5

(ii) "R-Value" means the resistance of insulation to heat flow. The higher the R-Value, the greater the insulating power. Seller shall not independently verify the R-Value of the building components that it installs in the Unit. Instead, Seller shall rely solely on the R-Value data provided to it by the manufacturer of such building components.

(e) Interim Inspections.

Buyer understands and agrees that during construction of the Unit, due to hazardous conditions and insurance and security requirements, neither Buyer nor his or her representatives shall go in the Project or onto the construction site unless accompanied by an authorized representative of Seller. Buyer may inspect the Unit during the construction of the Unit if, and only if, safe site conditions exist and Buyer is accompanied by an authorized representative of Seller.

(f) Construction Control.

Direction and supervision of the construction of the Unit rests exclusively with Seller. Buyer shall not issue any instructions to, or otherwise interfere with, Seller or Seller's contractors, subcontractors or suppliers. Buyer shall not contract for additional work with Seller's contractors or subcontractors. Buyer hereby agrees that no work will be permitted within the Unit by anyone other than Seller until title is transferred to Buyer. Buyer's obligations under this paragraph shall survive the Closing.

(g) Homeowner Orientation.

When construction of the Unit is substantially complete, Seller shall deliver written notice thereof to Buyer and schedule a tour of the Unit (the "Homeowner Orientation") by Buyer and a representative of Seller, at which time Buyer shall have the right to inspect the Unit. The inspection will be conducted in accordance with the preclosing inspection procedures established by Seller. Following the Homeowner Orientation and inspection, Buyer shall sign an acknowledgment in the form attached hereto as Addendum No. 1 on which shall be noted any incomplete or defective items that Seller agrees to complete or correct within a reasonable time after Closing, weather and circumstances beyond Seller's control permitting, subject to the Warranty provisions described in Section (h) below.

(h) Warranties.

Seller shall warrant the construction to buyer as provided in the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et seq. (the "Warranty Act"). Seller also warrants the construction of any common facilities for a period of two years from the date of completion of each facility and that they are fit for their intended use. Seller warrants the following to be free from material and workmanship defects for a period of one year from the date of possession or Closing: outbuildings, driveways, walkways, patios, retaining walls and fences, if any. Seller warrants that all drainage is proper and adequate and that all offsite improvements, if any, are free from defects for a period of one year from the date of construction. Buyer hereby expressly accepts the scope, nature and limitations of the warranties set forth in this Section (h) and understands that no other warranty is to be provided by Seller, including any other warranties, express or implied, or for fitness for a particular purpose, with regard to the Project, or the Unit, or appliances, fixtures or other items installed in the Units; each and all of which warranties are hereby disclaimed by Seller, and from which Buyer hereby expressly releases Seller.

12. DISCLOSURES, ACKNOWLEDGMENTS AND WAIVERS.

(a) RESPA Disclosure.

As required by the Real Estate Settlement Procedures Act of 1974, Buyer acknowledges that Seller has not directly or indirectly required Buyer, as a condition of sale, to purchase either an owner's or mortgagee's title insurance policy from any particular title company.

(b) Responsibility for Utilities.

Buyer acknowledges and agrees that all separately metered utilities to the Unit will be changed from Seller's name to Buyer's name no later than three days after the date of Closing, and that, thereafter, Buyer shall be obligated to pay the costs of such utilities.

(c) Construction Nuisances.

Buyer is purchasing the Unit during a period of construction within the Project and within Mountain Creek. Buyer acknowledges and agrees that, inasmuch as construction of the Unit may be completed prior to the completion of the construction of other units and streets in the Project and within Mountain Creek, there may be certain inconveniences to Buyer until all construction within the Project and Mountain Creek is complete. Inconveniences may include noise, dust, odors and debris associated with construction, interference with access to and from the Project, the remainder of Mountain Creek and the Mountain Creek Resort, and temporary interruptions of utility services. Buyer waives all claims against Seller with respect to any such inconveniences.

(d) Notification Regarding Off-Site Conditions.

Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act", Sellers of newly constructed residential real estate are required to notify Buyers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The

address and telephone number of the municipality relevant to the Project and the appropriate municipal offices where the lists are made available are listed below. Buyers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Buyers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

Buyer has five business days from the date this Agreement is executed by Buyer and Seller to send notice of cancellation of this Agreement to Seller, such time period to run simultaneously with the time periods set forth in Section 18 and Section 19 below. The notice of cancellation shall be sent by certified mail, return receipt requested. The cancellation will be effective upon the notice of cancellation being mailed. If Buyer does not send a notice of cancellation to Seller in the time or manner described above, Buyer will lose the right to cancel this Agreement as provided in this notice:

Municipality: Township of Vernon  
Address: Municipal Building  
21 Church Street  
PO Box 340  
Vernon, New Jersey 07462  
Telephone: (973) 764-4055

(e) Price and Agreement.

Buyer acknowledges and agrees that the Purchase Price is the result of an arm's-length negotiation with Seller and is not based on (i) any agreements, guaranties, promises, representations or warranties concerning property values, or (ii) the past, present or future prices paid or to be paid for other units in the Project and/or Mountain Creek. Buyer further acknowledges and agrees that Seller has no obligation to take any action or refrain from taking any action in connection with the development or marketing of units in the Project that would support or enhance the value of the Unit.

(f) Development.

Buyer acknowledges and agrees that Seller retains the right to develop the Project and Mountain Creek according to its plans, which may change from time to time, including the right to build units which may differ substantially from the models of units, if any, offered to Buyer or built elsewhere in the Project or Mountain Creek. Buyer further acknowledges and agrees that Seller retains the right at any time, and from time to time, without notice, for whatever reason Seller deems appropriate, in its sole and absolute discretion:

(i) to change the style, design, size, price or any other feature of any units that Seller may build in the Project;

(ii) to change the timing of its construction of any other units or to decide not to build at all any or all other units contemplated by Seller's development plan, as such plan may be amended from time to time; and

(iii) to use any method or marketing to sell, lease or otherwise dispose of any or all of its remaining or future inventory of units.

(g) Independent Investigation.

Buyer acknowledges and agrees that it must independently investigate the use and character of all property adjacent to the Project and may not rely on any statements of any sales agent or any broker or any brochures or displays in the sales office about the use or character of any property other than the Unit.

(h) Radon Gas and Carbonate Bedrock

The New Jersey Department of Environmental Protection and the United States Environmental Protection Agency (the "EPA") have detected elevated levels of naturally occurring radon gas in certain residential structures throughout the State of New Jersey. The EPA has voiced concerns about the possible adverse effects to human health from the long-term exposure to high levels of radon gas. Buyer is hereby advised that the Seller is not qualified and has not undertaken to evaluate all aspects of this issue and that, with respect to the Unit, Seller has made no representation or warranty, express or implied, concerning the presence or absence of radon in the soils at or adjacent to the Unit.

Seller further advises that a geological analysis of the Project property has disclosed the presence of carbonate bedrock subsurface. Carbonate bedrock has been known to cause sinkholes if proper construction techniques are not used. Seller intends to implement and follow all appropriate and required construction techniques to ensure that sinkholes will not develop.

Buyer hereby (i) acknowledges that it has read the foregoing disclosures and fully understands its content and (ii) for itself, its heirs, administrators, executors, successors and assigns, releases Seller from any and all liability with respect to the matters discussed in this Section (h).

(i) Disclaimer of Representations and Warranties.

Buyer acknowledges and agrees that except for representations and warranties expressly set forth in this Agreement, **ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE CREATED BY STATE OR FEDERAL LAW, ARE HEREBY SPECIFICALLY DISCLAIMED AND WAIVED. THE FOREGOING DISCLAIMER AND WAIVER SHALL ALSO APPLY TO ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY "CONSUMER PRODUCT" AS DEFINED IN THE MAGNUSON-MOSS WARRANTY ACT, WHICH CONSUMER PRODUCTS SHALL NOT BE WARRANTED BY SELLER; PROVIDED, HOWEVER, THAT SELLER SHALL ASSIGN TO BUYER ANY MANUFACTURER'S OR SUPPLIER'S WARRANTY WITH RESPECT TO SUCH CONSUMER PRODUCTS.**

Buyer further acknowledges and agrees that except for representations and warranties expressly set forth in this Agreement, **SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS AND SPECIFICALLY EXCLUDES GEOLOGICAL AND ENVIRONMENTAL WARRANTIES.**

(j) Legal Counsel.

Buyer acknowledges and agrees that Seller has advised Buyer to seek its own legal counsel in connection with the transaction contemplated by this Agreement.

(k) Survival.

The acknowledgments, agreements, waivers, disclaimers, and releases contained in this Section (k) shall survive the Closing.

(l) Investments.

Buyer acknowledges that neither Seller, Seller's broker nor any of their respective employees, agents or sales agents, have represented or offered the Unit as an investment opportunity for appreciation of value or as a means of obtaining income from the rental thereof.

(m) Rental Income.

Buyer acknowledges that neither Seller, Seller's broker nor any of their respective employees, agents or sales agents, have made any representations as to rental or other income from the Unit or as to any other economic benefit, including possible advantages from the ownership of the Unit under federal or state tax laws, to be derived from the purchase of the Unit.

(n) Ski Area.

(i) The Project is located in the vicinity of the Mountain Creek Resort. The Mountain Creek Resort is a four-season destination resort open to the public and generates an unpredictable amount of vehicular, pedestrian and other traffic with its attendant noise and odor nuisances, including those associated with snowmaking and grooming and the bus transportation of skiers and others around Mountain Creek Resort and between the recreational facilities and parking areas.

(ii) Buyer acknowledges that:

(A) neither Seller, Seller's broker nor any of their respective employees, agents or sales agents, have made any representations regarding opening or closing dates, the hours of operation or the use of skiing or other recreational facilities of the Mountain Creek Resort in any given year;

(B) views from the Unit may be affected by subsequent development of Mountain Creek and adjacent properties and Buyer has been so advised by Seller, Seller's broker or their respective employees, agents or sales agents; and

(C) there are certain risks and nuisances associated with the Mountain Creek Resort trails and facilities located adjacent to the Project, such as (I) risks to persons and property resulting from errant skiers, snowboarders and mountain bikers; (II) nuisances from skiers, snowboarders, hikers and cyclists who fail to confine themselves to Mountain Creek Resort trails; (III) nuisances from noises and odors related to ski lifts, the maintenance of ski trails and hiking and biking trails, including, without limitation, turf maintenance

equipment and snowmaking and snowgrooming equipment; and (IV) nuisances related to outdoor lighting and amplified sound for the ski area.

(iii) Buyer waives any and all claims that Buyer may at any time have or claim to have against Seller, Mountain Creek Association and the owners and operators of the Mountain Creek Resort and their respective affiliates, directors, officers, employees and agents as a result of or in any way connected with the Mountain Creek ski area or any of the Mountain Creek Resort facilities and activities described above and all risks and nuisances associated therewith.

(o) Access.

Buyer acknowledges that roads providing access to the Project will be public roads maintained by the Township of Vernon. However, all internal roads within the Project will be private and will be maintained by Mountain Creek Association.

(p) Parking.

Parking for the Unit will be available in outdoor spaces located within the Project, both adjacent to the Unit and in designated parking areas. Parking is, at all times, available on a first-come, first-serve basis. No more than two parking spaces may be used by an Owner at any time.

(q) Meghan's Law Statement.

Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Meghan's Law and are unable to obtain such information for Buyer. Upon Closing, the county prosecutor may be contacted for such further information as may be disclosable to Buyer.

13. RISK OF LOSS; CASUALTY.

(a) Allocation of Risk.

Seller shall bear the risk of loss to the Unit until Closing. After Closing, Buyer shall bear all such risk of loss.

(b) Termination Following Casualty.

If casualty by fire or otherwise occurring prior to Closing damages more than thirty percent of the Unit and/or the Project, then Seller shall have the right to terminate this Agreement by giving notice to Buyer within thirty days after the date of the casualty damage. With any such notice, Seller shall cause the Deposit to be returned to Buyer, without interest. Buyer acknowledges that Buyer shall have no other remedy because of such damage, and the parties shall be released from all other obligations under this Agreement.

If (i) the casualty damage does not exceed the percentage limitation set forth above, or (ii) the casualty damage exceeds the percentage limitation set forth above but Seller does not elect to terminate this Agreement, then in either case, Seller shall so notify Buyer in writing within thirty days after the date of the casualty

damage that the Closing will be postponed for a period reasonably necessary to make repairs. However, if the Seller estimates that the repairs cannot be completed within 180 days of the date of the casualty, Buyer may choose to terminate this Agreement whereupon Seller shall cause the Deposit to be returned to Buyer, without interest. Buyer acknowledges that Buyer shall have no other remedy because of such damage, and the parties shall be released from all other obligations under this Agreement.

#### 14. DEFAULT AND TERMINATION.

Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) In the event of Buyer's default, Seller, at its option, may (i) terminate this Agreement and retain the Deposit as liquidated damages, which amount shall in no event exceed 10 percent of the Purchase Price plus the cost of extras installed, if any; (ii) specifically enforce this Agreement, and/or (iii) pursue any other remedy available to Seller at law or in equity. Buyer's default shall mean a failure by Buyer to perform or observe any covenant or condition to be performed or observed by Buyer under this Agreement, including, without limitation, Buyer's obligation to pay to Seller Deposits when due, Buyer's obligation to deliver to Seller the Funds Letter, and Buyer's obligation to close hereunder.

(b) In the event of Seller's default, Buyer, at his or her option, may (i) terminate this Agreement and have the Deposit returned, (ii) specifically enforce this Agreement, or (iii) pursue any other remedy available to Buyer at law or in equity. Upon termination of this Agreement by Buyer, Seller shall be released from all further obligations hereunder, except as set forth in this Section. Seller's default shall mean a failure by Seller to perform or observe any covenant or condition to be performed or observed by Seller under this Agreement.

#### 15. BROKERS

Buyer acknowledges that \_\_\_\_\_, and its respective sales agents, have been engaged by Seller as Seller's agents, and do not represent Buyer as Buyer's agents.

Other than the sales agent named in this paragraph and any broker indicated on the signature page of this Agreement (collectively "Broker"), each party affirms to the other that no other person or entity is entitled to a commission as a result of the transaction contemplated by this Agreement. Each party hereby agrees to indemnify and hold the other harmless from and against any liability for any claims of any broker claiming by, through or under it.

#### 16. PRESALE REQUIREMENT.

Seller intends, for construction purposes, to complete the Project in phases. Construction Phase 1 will consist of 42 units; Construction Phase 2 will consist of 42 units; and Construction Phase 3 will consist of 49 units. Seller's obligations under this Agreement are subject to the condition precedent that, on or before \_\_\_\_\_ [this date cannot be more than 90 days after signing of the first Purchase and Sale Agreement for the Construction Phase in which the Unit is located], Seller has entered into Purchase and Sale Agreements for at least 50% of the aggregate sales prices of the units in the Construction Phase in which the Unit is located and Seller has received both a First Deposit and a Funds Letter (for those Buyers not obtaining financing) for the purchase of each of such units. If the foregoing condition is not satisfied, Seller may terminate this Agreement by delivering written notice thereof to Buyer on or before \_\_\_\_\_ . If

Seller so terminates this Agreement, Seller shall within 14 calendar days thereafter return to Buyer all amounts previously paid by Buyer hereunder towards the Deposit, without interest.

17. SUBDIVISION CONTINGENCY.

Seller has not obtained subdivision approval from Vernon Township for the land on which the Unit will be located. Seller does not believe that subdivision approval is necessary. However, the New Jersey Department of Community Affairs believes subdivision approval is required. If Seller has not obtain subdivision approval from Vernon Township within 90 days of the date of registration of Seller's Public Offering Statement, by the New Jersey Department of Community Affairs, Seller shall give written notice thereof to Buyer. Within 14 days after receipt of such notice, Buyer shall have the right to terminate this Agreement by delivering written notice thereof to Seller. If Buyer so terminates this Agreement, Seller shall within 14 calendar days thereafter return to Buyer all amounts previously paid by Buyer hereunder towards the Deposit. If Buyer does not terminate this Agreement within said 14 days time period, Buyer shall be deemed to have waived its right to so terminate this Agreement.

18. MISCELLANEOUS.

(a) Notices.

Any notices permitted or required to be given in connection with this Agreement shall be in writing, signed by the party giving the same and delivered by hand delivery, reputable overnight courier or registered or certified United States Mail, postage prepaid, addressed to the party to receive the notice at the address set forth below or at such other address as the party may specify by notice to the other party:

Mountain Creek Resort, Inc.  
200 Route 94  
Vernon, New Jersey 07462  
Attention: Vice President, Real Estate  
Telephone: (973) 827-3900

Seller's Broker:  
Address:  
  
Attention:  
Telephone:

Buyer and Buyer's Broker at the address  
set forth below each such parties signature  
on page 15 of the Agreement.

Notices shall be deemed properly given and received (i) when actually given and received, if delivered by hand; (ii) one business day following delivery to a reputable overnight carrier, if delivered by overnight courier; or (iii) three business days after mailed, if sent by registered or certified United States Mail.

(b) Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Despite the foregoing, Buyer shall not assign its rights under this Agreement without Seller's prior written consent, which consent Seller may withhold in its sole and absolute discretion.

(c) Legal Costs.



If either party institutes legal proceedings with respect to this Agreement, the prevailing party shall be entitled to court costs and reasonable attorneys' fees and disbursements incurred by such party in connection with such legal proceedings.

(d) Entire Agreement.

This Agreement and the Application for Registration represent the entire agreement between the parties hereto with respect to the subject matter hereof and all prior agreements, understandings and negotiations shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the parties except as stated herein.

(e) Modifications.

No amendments or modifications to this Agreement or to the parties' rights and obligations hereunder shall be made or deemed to have been made, unless in a writing executed and delivered by the party to be bound thereby.

(f) Time of the Essence.

All provisions of this Agreement regarding time for performance are of the essence.

(g) Governing Law.

This Agreement shall be interpreted and enforced according to the laws of the State of New Jersey.

(h) Headings and Captions for Convenience.

The headings and captions contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

(i) Exhibits.

All exhibits referred to in this Agreement shall be deemed incorporated in this Agreement by reference.

(j) Pronouns.

As used in this Agreement, the singular pronouns shall include the plural, masculine pronouns shall include the feminine and neutral genders and vice-versa, as appropriate.

(k) Counterparts and Facsimile Delivery.

This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one and the same document. Either party may deliver an executed copy or counterpart of this Agreement by facsimile. If a party delivers an executed copy or counterpart of this Agreement by facsimile it will promptly thereafter deliver the original copy or counterpart of this Agreement to the other party by hand, overnight courier or registered or certified mail.

(l) License.

Buyer does hereby authorize and grant to Seller the irrevocable right to enter into, upon, over or under the Unit for a period of two years after Closing on prior notice to Buyer and at reasonable hours (except in cases of emergency) for the completion of construction, repair, emergency matters or pursuant to governmental order or requirement. This provision shall survive Closing.

19. ATTORNEY REVIEW.

Buyer's right to cancel this Agreement pursuant to this Section 18 is not intended to conflict with Buyer's right to cancel this Agreement pursuant to Section 19 below. The time periods set forth in Section 18 and Section 19 shall run simultaneously.

(a) Study by Attorney. Buyer or Seller may choose to have an attorney study this Agreement. If an attorney is consulted, the attorney must complete his or her review of the Agreement within a 3 day period. This Agreement will be legally binding at the end of this 3 day period unless an attorney for Buyer or Seller reviews and disapproves of the Agreement.

(b) Counting the Time. You count the 3 days from the date of delivery of the signed Agreement to Buyer and Seller. You do not count Saturdays, Sundays or legal holidays. Buyer and Seller may agree in writing to extend the 3 day period for review.

(c) Notice of Disapproval. If an attorney for Buyer or Seller reviews and disapproves of this Agreement, the attorney must notify the Broker(s) and the other party named in this Agreement within the 3 day period. Otherwise this Agreement will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail, by telegram or by delivering it personally. The certified mail letter or telegram will be effective upon sending. Personal delivery will be effective upon delivery to the Broker's office. The attorneys should also inform the Broker(s) of any suggested revisions in the Agreement which would make it satisfactory. Buyer has other rights as set forth in Paragraph 19 of this Agreement.

20. PUBLIC OFFERING STATEMENT.

Buyer acknowledges that prior to signing this Agreement, Seller provided Buyer with a copy of the Public Offering Statement for the Condominium as currently registered with the New Jersey Department of Community Affairs.

YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE SELLER BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL MONIES PAID SHALL BE PROMPTLY REFUNDED IN THEIR ENTIRETY.

BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THE PUBLIC OFFERING STATEMENT.

**This Agreement is subject to Addendum No. 1 and Exhibit A attached to and made a part of this Agreement. Buyer, by signing below, acknowledges receipt of such Addendum and Exhibit and agrees to be bound by the terms thereof.**

EXECUTED on the dates set forth below to be effective as of the date set forth above.

**SELLER:**  
MOUNTAIN CREEK RESORT, INC.

**BUYER:**

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

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Sales Representative

Telephone: \_\_\_\_\_

SS/Tax I.D. No: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER'S BROKER:**

\_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

AEA/#438591

ADDENDUM NO. 1

Buyer: \_\_\_\_\_  
Seller: Mountain Creek Resort, Inc.  
Project: Black Creek Sanctuary Condominium  
Unit No.: \_\_\_\_\_

Buyer acknowledges that:

- (i) Buyer has inspected the Unit;
- (ii) The Unit has been constructed in substantial conformance with the Unit Plan for the Unit described in the Purchase and Sale Agreement for the Unit between Buyer and Seller, dated \_\_\_\_\_, 200\_\_ (the "Agreement"); and
- (iii) Buyer finds the Unit to be acceptable subject to the following incomplete or defective items to be completed by Seller within a reasonable time after Closing:

Buyer: \_\_\_\_\_ SAMPLE ONLY \_\_\_\_\_

Buyer: \_\_\_\_\_ SAMPLE ONLY \_\_\_\_\_

Acknowledged on behalf of  
Mountain Creek Resort, Inc., Seller,

By: \_\_\_\_\_ SAMPLE ONLY \_\_\_\_\_

) )  
) )  
**EXHIBIT A**

Buyer: \_\_\_\_\_  
Seller: Mountain Creek Resort, Inc.  
Project: Black Creek Sanctuary Condominium  
Unit No.: \_\_\_\_

) )  
) )  
**UNIT PLAN**

) )

) )

**EXHIBIT 12**

**Sample Title Policy**

# Lawyers Title Insurance Corporation

A LANDAMERICA COMPANY

NATIONAL HEADQUARTERS

RICHMOND, VIRGINIA

## RESIDENTIAL TITLE INSURANCE POLICY

ONE-TO-FOUR FAMILY RESIDENCES

POLICY NUMBER                      PRO FORMA

### OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and LAWYERS TITLE INSURANCE CORPORATION.

It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page one of the Policy.

The Policy is limited by:

- Exclusions on page 1
- Exceptions on Schedule B
- Conditions on page 2

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 2.

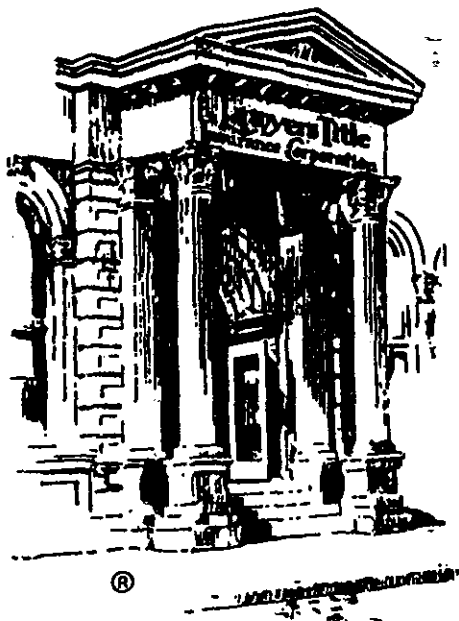
You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy — and not this sheet — is the legal document,

**YOU SHOULD READ THE POLICY VERY CAREFULLY.**

If you have any questions about your Policy, contact the office that issued this policy or:

Consumer Affairs Dept.  
Lawyers Title Insurance Corporation  
P. O. Box 27567  
Richmond Virginia 23261



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# OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A — if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A. Your insurance is limited by the following:

- Exclusions on page 1
- Exceptions in Schedule B
- Conditions on page 2

We insure you against actual loss resulting from:

- any title risks covered by this Policy — up to the Policy Amount and
- any costs, attorneys' fees and expenses we have to pay under this Policy

## COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
  - a mortgage or deed of trust
  - a judgment, tax, or special assessment
  - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date — unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure — other than a boundary wall or fence — because:
  - it extends on to adjoining land or on to any easement
  - it violates a restriction shown in Schedule B
  - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

## COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

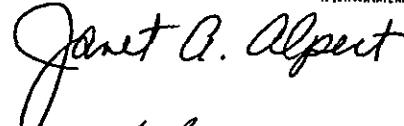
We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

This Policy is not complete without Schedules A and B.

## Lawyers Title Insurance Corporation

A LANDAMERICA COMPANY

By:  President

Attest:  Secretary.



## EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - improvements on the land
  - land division
  - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - that are created, allowed, or agreed to by you
  - that are known to you, but not to us, on the Policy Date — unless they appeared in the public records
  - that result in no loss to you
  - that first affect your title after the Policy Date — this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - to any land outside the area specifically described and referred to in Item 3 of Schedule A or
  - in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.



# RESIDENTIAL TITLE INSURANCE POLICY CONDITIONS

## 1. DEFINITIONS

- a. **Easement** — the right of someone else to use your land for a special purpose.
- b. **Land** — the land or condominium unit described in Schedule A and any improvements on the land which are real property.
- c. **Mortgage** — a mortgage, deed of trust, trust deed or other security instrument.
- d. **Public Records** — title records that give constructive notice of matters affecting your title — according to the state statutes where your land is located.
- e. **Title** — the ownership of your interest in the land, as shown in Schedule A.

## 2. CONTINUATION OF COVERAGE

This Policy protects you as long as you:

- own your title
- or
- own a mortgage from anyone who buys your land
- or
- are liable for any title warranties you make

This Policy protects anyone who receives your title because of your death.

## 3. HOW TO MAKE A CLAIM

### a. You Must Give The Company Notice Of Your Claim

If anyone claims a right against your insured title, you must notify us promptly in writing.

Send the notice to Lawyers Title Insurance Corporation, P.O. Box 27567, Richmond, Virginia 23261. Please include the Policy number shown in Schedule A, and the county and state where the land is located.

Our obligation to you could be reduced if:

- you fail to give prompt notice
- and
- your failure affects our ability to dispose of or to defend you against the claim

### b. Proof Of Your Loss Must Be Given To The Company

You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.

The statement must have the following facts:

- the Covered Title Risks which resulted in your loss
- the dollar amount of your loss
- the method you used to compute the amount of your loss

You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.

We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.

We may require you to answer questions under oath.

Our obligation to you could be reduced if you fail or refuse to:

- provide a statement of loss
- or
- answer our questions under oath
- or
- show us the papers we request,
- and
- your failure or refusal affects our ability to dispose of or to defend you against the claim.

## 4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

- a. Pay the claim against your title.
- b. Negotiate a settlement.
- c. Prosecute or defend a court case related to the claim.
- d. Pay you the amount required by this Policy.

e. Take other action which will protect you.

f. Cancel this policy by paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

## 5. HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all relevant information.

We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.

When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court.

We do not have to pay your claim until your case is finally decided.

## 6. LIMITATION OF THE COMPANY'S LIABILITY

a. We will pay up to your actual loss or the Policy Amount in force when the claim is made — whichever is less.

b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.

If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:

- the cause of the claim is removed
- or
- we settle your claim

c. The Policy Amount will be reduced by all payments made under this policy — except for costs, attorneys' fees and expenses.

d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.

e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

## 7. TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.

We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.

With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

## 8. ARBITRATION

If it is permitted in your state, you or the Company may demand arbitration.

The arbitration shall be binding on both you and the Company.

The arbitration shall decide any matter in dispute between you and the Company.

The arbitration award may:

- include attorneys' fees if allowed by state law
- be entered as a judgment in the proper court.

The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

The law used in the arbitration is the law of the place where the property is located.

You can get a copy of the Rules from the Company.

## 9. OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

# LAWYERS TITLE INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

## RESIDENTIAL TITLE INSURANCE POLICY

FILE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	POLICY NUMBER
A00-10906	TBD	TBD	PRO FORMA

### SCHEDULE A

**1. Name of Insured:**

TBD

Title is vested in TBD by deed from Mountain Creek Resort, Inc., formerly known as Great Gorge Resort, Inc., a corporation of the State of New Jersey, dated TBD, recorded TBD, in the Sussex County Clerk's Office, in Deed Book TBD, Page TBD.

**2. Your interest in the land covered by this Policy is:**

Fee Simple

**3. The land referred to in this Policy is in the Township of Vernon, County of Sussex, State of New Jersey and is described as follows:**

SEE SCHEDULE A, LEGAL DESCRIPTION, ATTACHED HERETO.

**Issued by:**

NIA/Lawyers Title Agency, LLC

PO Box 1768

Paramus, NJ 07653-1768

Telephone: 201-368-1141 Fax: 201-368-9589

  
\_\_\_\_\_  
Louis C. Meyer, Jr., President

The Policy Amount will automatically increase by 10% of the amount shown above on each of the first five anniversaries of the Policy Date.

The number must be the same as the Policy Number on the Owner's Information Sheet.

This Schedule is valid only when attached to the Residential Title Insurance Policy and Schedule B.

Residential Owner's Title Insurance Policy

**LAWYERS TITLE INSURANCE CORPORATION**

**RICHMOND, VIRGINIA**

**File Number A00-10906**

**Policy Number PRO FORMA**

**SCHEDULE A-- DESCRIPTION**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Vernon, County of Sussex State of New Jersey.

Unit TBD, in Black Creek Sanctuary Condominium, a Condominium, together with an aggregate TBD percent undivided interest in the Common Elements of said Condominium appurtenant to the aforesaid Unit, in accordance with and subject to the terms, limitations, conditions, covenants, restrictions, easements, agreements and other provisions set forth in the Master Deed of Black Creek Sanctuary Condominium, dated TBD, recorded TBD, in the Sussex County Clerk's Office in Deed Book TBD, Page TBD, and any amendments thereto.

**LAWYER TITLE INSURANCE CORPORATION**

**RICHMOND, VIRGINIA**

**File Number A00-10908**

**Policy Number PRO FORMA**

**SCHEDULE B -- EXCEPTIONS**

**In addition to the exclusions, you are not insured against loss, costs, attorneys fees and expenses resulting from:**

1. Such state of facts as would be disclosed by an accurate survey and inspection of premises in question.
2. Subsurface conditions and/or encroachments not disclosed by an instrument of record.
3. Lien for unpaid taxes for the year 2000.
4. Possible additional taxes assessed or levied under N.J.S.A. 54:4-63.1, et seq.
5. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers-of-attorney and limitations on title created by the New Jersey Condominium Act (N.J.S.A. 46:8B-1, et seq.); as set forth in the Master Deed of Black Creek Sanctuary Condominium, dated TBD, recorded TBD, in Deed Book TBD, Page TBD, in the related By-Laws, in any instrument creating the estate or interest to be insured, and in any other allied instruments referred to in any of the instruments aforesaid.
6. Utility Grant as contained in Deed Book 876, Page 177.
7. Slope and drainage rights as set forth in Deed Book 443, Page 189.
8. Declaration of Covenants, Conditions and Restrictions for Mountain Creek as contained in Deed Book TBD, Page TBD.

The Policy Amount will automatically increase by 10% of the amount shown above on each of the first five anniversaries of the Policy Date  
The number must be the same as the Policy Number on the Owner's Information Sheet  
This Schedule is valid only when attached to the Residential Title Insurance Policy and Schedule B.

Residential Owner's Title Insurance Policy

# LAWYERS TITLE INSURANCE CORPORATION

## ALTA 4.1 CONDOMINIUM ENDORSEMENT

File No. A00-10906

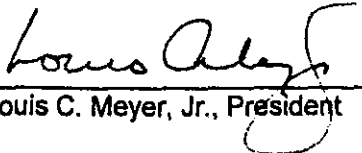
Attached to and made a part of Policy Number PRO FORMA

The Company insures the insured against loss or damage sustained by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the title to the unit and its common elements.
3. Present violations of any restrictive covenants which restrict the use of the unit and its common elements and which are contained in the condominium documents, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at the Date of Policy.
5. The failure of the unit and its common element to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements which exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement, when countersigned by an authorized signatory, is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

LAWYERS TITLE INSURANCE CORPORATION

By   
Louis C. Meyer, Jr., President

**A WORD OF THANKS...**

As we make your policy a part of our permanent records, we want to express our appreciation of this evidence of your faith in Lawyers Title Insurance Corporation.

There is no recurring premium.

This policy provides valuable title protection and we suggest you keep it in a safe place where it will be readily available for future reference.

If you have any questions about the protection provided by this policy contact the office that issued your policy or you may write to:

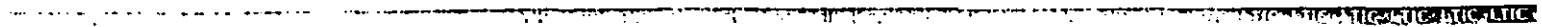
Consumer Affairs Department  
**Lawyers Title Insurance Corporation**  
A LANDAMERICA COMPANY

P.O. Box 27567  
Richmond, Virginia 23261  
1-800-446-7086



**Lawyers Title  
Insurance Corporation**  
A LANDAMERICA COMPANY

**POLICY OF TITLE INSURANCE**



**EXHIBIT 14**

**List of Sites in Vernon Township**

II SITES WITH ON-SITE SOURCES OF CONTAMINATION  
SUSSEX COUNTY

<u>SITE NAME</u>	<u>STREET ADDRESS</u>	<u>IDENTIFIER</u>
VERNON TOWNSHIP		
1 LAKE STREET STATUS: ACTIVE - 09/16/1993	1 LAKE ST	NJL000070177 CONTACT: BFO-N - 9304061526N
109 BUSHWICK LANE STATUS: ACTIVE - 01/10/1994	109 BUSHWICK LN	NJL000066464 CONTACT: BFO-N - 9306030937
11 RIDGE ROAD EAST STATUS: ACTIVE - 09/15/1995	11 RIDGE RD E	NJL800162349 CONTACT: BFO-N - 950731111134
11 TALLAHATCHIE DRIVE STATUS: PENDING - 02/24/1993	11 TALLAHATCHIE DR	NJL820001295 CONTACT: BFO-N - 930261
1103 LAKESIDE DRIVE EAST STATUS: ACTIVE - 05/08/1996	1103 LAKESIDE DR E	NJL800203770 CONTACT: BFO-N - 960209121654
188 HIGHLAND LAKES ROAD STATUS: ACTIVE - 06/20/1996	188 HIGHLAND LAKES RD	NJL800077356 CONTACT: BFO-N - 940726155204
21 HILLSDALE DRIVE STATUS: ACTIVE - 05/21/1996	21 HILLSDALE DR	NJL800208787 CONTACT: BFO-N - 960312165150
340 LAKESHORE DRIVE WEST STATUS: ACTIVE - 10/25/1995	340 LAKESHORE DR W	NJL800166126 CONTACT: BFO-N - 950824160218
491 BUSHWICK LANE STATUS: ACTIVE - 04/17/1996	491 BUSHWICK LN	NJL800200073 CONTACT: BFO-N - 930603093756
515 TANGLEWOOD DRIVE STATUS: PENDING - 07/06/1993	515 TANGLEWOOD DR	NJL000068817 CONTACT: BFO-N - 930744
52 EDSALL DRIVE STATUS: ACTIVE - 05/21/1996	52 EDSALL DR	NJL800209728 CONTACT: BFO-N - 960318093249
9 PARADISE TRAIL STATUS: ACTIVE - 09/22/1993	9 PARADISE TRL	NJL800012346 CONTACT: BFO-N - 930922175057
BARRIER CHEMICAL INDUSTRIES STATUS: ACTIVE - 12/01/1993	RTE 515 (PRICES SWITCH RD)	NJD980206130 CONTACT: BSM - 930957
DOROTHY HENRY MEMORIAL LIBRARY STATUS: ACTIVE - 04/23/1996	66 RTE 94	NJL600246979 CONTACT: BUST - 0302096
EXXON SERVICE STATION VERNON (FORMER) STATUS: ACTIVE - 04/14/1994	RTES 515 & 94	NJL600238877 CONTACT: BUST - 0079905
MOBIL SERVICE STATION VERNON TOWNSHIP STATUS: ACTIVE - 07/02/1984	RTES 515 & 94	NJD986604734 CONTACT: BUST - 0092919
ROUTE 515 ISLAND TRANSPORTATION STATUS: ACTIVE - 07/21/1992	RTE 515 & BREAK NECK RD	NJL820003226 CONTACT: BFO-N - 9207161845N
TEXACO SERVICE STATION VERNON TOWNSHIP STATUS: PENDING - 12/08/1992	RTE 515 (STOCKHOLM RD)	NJL000051557 CONTACT: BFCM-6 - 921121
VERNON TOWNSHIP MUNICIPAL GARAGE STATUS: ACTIVE - 12/08/1995	CHURCH ST	NJD982533614 CONTACT: BFCM-6 - 0260183

19 known contaminated site(s) in VERNON TOWNSHIP



**II. KNOWN CONTAMINATED SITES IN NEW JERSEY  
SUSSEX COUNTY**

<u>SITE NAME</u>	<u>STREET ADDRESS</u>	<u>IDENTIFIER</u>
<b>VERNON TOWNSHIP</b>		
1 LAKE STREET STATUS: ACTIVE - 09/16/1993	1 LAKE ST LEAD/CONTACT: BFO-N	NJL000070177 - 9304061526N
109 BUSHWICK LANE STATUS: ACTIVE - 01/10/1994	109 BUSHWICK LN LEAD/CONTACT: BFO-N	NJL000066464 - 9306030937
27 HIGHCREST ROAD STATUS: ACTIVE - 07/05/1995	27 HIGHCREST RD LEAD/CONTACT: BSM	NJL800135584 - 950707-1
9 PARADISE TRAIL STATUS: ACTIVE - 09/22/1993	9 PARADISE TRL LEAD/CONTACT: BFO-N	NJL800012346 - 930922175057
AMERICAN SATELLITE COMPANY STATUS: ACTIVE - 05/28/1993	SAMMIS RD LEAD/CONTACT: BUST	NJL600074736 - 0118776
BARRIER CHEMICAL INDUSTRIES STATUS: ACTIVE - 12/01/1993	RTE 515 (PRICES SWITCH RD) LEAD/CONTACT: BSM	NJD980206130 - 930957
MOBIL SERVICE STATION VERNON TOWNSHIP STATUS: ACTIVE - 07/02/1984 STATUS: ACTIVE - 06/09/1990	RTES 515 & 94 LEAD/CONTACT: BUST LEAD/CONTACT: BUST	NJD986604734 - NJL600192801-001 - NJL600193940-001
ROUTE 515 ISLAND TRANSPORTATION STATUS: ACTIVE - 07/21/1992	RTE 515 & BREAK NECK RD LEAD/CONTACT: BFO-N	NJL820003226 - 9207161845N
VERNON GARAGE STATUS: ACTIVE - 04/14/1994	RTE 94 LEAD/CONTACT: BUST	NJL600238877 - 0079905
VERNON TOWNSHIP MUNICIPAL GARAGE STATUS: ACTIVE - 10/26/1994	CHURCH ST LEAD/CONTACT: BUST	NJD982533614 - 0260183

10 known contaminated site(s) in VERNON TOWNSHIP

Jersey Residential Construction Off-Site Conditions Disclosure Act Listing of Off-Site Conditions

This form is filed with the municipal clerk of the municipality by the owner and is used to list the following off-site conditions required by N.J.S.A. 46:3C-2: overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines as defined in 49 C.F.R. 192.3; sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter; and public wastewater treatment facilities.

This list identifies Electrical Transformer Substation off-site conditions owned, leased, or maintained  
(insert type of conditions)  
 by GPU Energy (Formerly Jersey Central Power & Light Company) as defined in the  
(insert name and address of provider)

"New Residential Construction Off-Site Conditions Disclosure Act," P.L. 1995, c.253 (C.46:3C-1 et seq.), which as of 8/15/96  
(insert date)  
 have been identified as existing within VERNON TOWNSHIP Date of Filing: 8/15/96  
(insert name of municipality)

Submitted on behalf of the owner: Donald J. Olivo Donald J. Olivo  
(signature) (printed name)

Name of person to contact for additional information on the off-site condition(s):

Name: GPU Energy Title: Supervisor - Real Estate

Address: 300 Madison Ave. - Morristown, NJ 07962-1911 - Real Estate Telephone number: (201) 455-8504

Check here if the list of off-site conditions reported herein includes maps filed in accordance with the instructions:

List of Conditions in VERNON TOWNSHIP, County of SUSSEX Page 1 of 1  
(name of municipality) (name of county)

Ref. #	Description of Site	Block and Lot #	Street Address or location reference	DEP ID Num...
1	Electrical Transformer Substation ( VERNON )	141/12.02	13 VANDERHOOF CT.	
2				
3				
4				

## New Jersey Residential Construction Off-Site Conditions Disclosure Act Listing of Off-Site Conditions

This form is filed with the municipal clerk of the municipality by the owner and is used to list the following off-site conditions required by **N.J.S.A. 46:3C-2**: overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines as defined in 49 C.F.R. 192.3; sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter; and public wastewater treatment facilities.

This list identifies underground natural gas pipeline and its facilities off-site conditions owned, leased, or maintained  
(insert type of conditions)  
 by Tennessee Gas Pipeline Company as defined in the  
(insert name and address of provider)

New Residential Construction Off-Site Conditions Disclosure Act," P.L. 1995, c.253 (C.46:3C-1 et seq.), which as of 1954  
(insert date)  
 have been identified as existing within Vernon Date of Filing: September 26, 1996  
(insert name of municipality)

Submitted on behalf of the owner: *W.B. Arcese, Jr.* W.B. Arcese, Jr.  
(signature) (printed name)

Name of person to contact for additional information on the off-site condition(s):  
 Name: W. B. Arcese, Jr. Title: Division Right of Way Supervisor

Address: 8 Anngina Drive, Enfield, Connecticut 06082 Telephone number: (860) 763-6037

Check here if the list of off-site conditions reported herein includes maps filed in accordance with the instructions:  Please see maps filed with Vernon in December, 1994 (no change to same).

List of Conditions in \_\_\_\_\_, County of \_\_\_\_\_ Page \_\_\_ of \_\_\_  
(name of municipality) (name of county)

Ref. #	Description of Site	Block and Lot #	Street Address or location reference	DEP ID Number
1				
2				
3				
4				

RECEIVED  
 SEP 30 1996  
 DEPT. OF ENVIRONMENTAL PROTECTION

# Off-Site Disclosure and Landfill Report

09/06/96

County: SUSSEX

Landfill Name	Street	Municipality	NPL Status	Solid Waste ID (New)	Solid Waste ID (Old)
- HARDYSTOWN TOWNSHIP SANITARY LANDFILL AKA: HARDYSTOWN SLF	RTE 513	HARDYSTOWN TOWNSHIP	NO	1911000792	1911A
- HOPATCONG SANITARY LANDFILL AKA: HOPATCONG SLF	DURBAN & FLORA AVES	HOPATCONG BOROUGH	NO	1912000794	1912AB
- HANTS SANITARY LANDFILL AKA: HAMMS	OLD BEAVER RUN RD	LAFAYETTE TOWNSHIP	NO	1913000796	1913A
- SUSSEX COUNTY 1E LANDFILL AKA: SUSSEX COUNTY 1-E	RTE 94 & 15	LAFAYETTE TOWNSHIP	NO	1913000798	1913C
- SUSSEX CO COMPLEX SLF	RTE 655	NEWTON BORO	NO	1905001286	
- NEWTON TOWN SANITARY LANDFILL AKA: NEWTON BORO LF	SOUTH PACK DRIVE (DUMP RD)	NEWTON TOWN	NO		1915A
BEVANS PIT SANITARY LANDFILL AKA: TOCKS ISLAND	COUNTY RTE 615	SANDYSTON TOWNSHIP	NO	1917000805	1917C
FLATBROOK WILDLIFE MGMT SANITARY LANDFILL AKA: FLATBROOK WILDLIFE	BEVANS LAYTON RD	SANDYSTON TOWNSHIP	NO	1917000804	1917B
LAYTON SANITARY LANDFILL AKA: TOCKS ISLAND	RTE 321	SANDYSTON TOWNSHIP	NO	1917000806	1917D
SPARTA TOWNSHIP SANITARY LANDFILL AKA: SPARTA TOWNSHIP LF	PRICES LN	SPARTA TOWNSHIP	NO	1918000807	1918A
STILLWATER TOWNSHIP SANITARY LANDFILL AKA: STILLWATER TWP LF	RTE 617	STILLWATER TOWNSHIP	NO	1920000812	1920A
VERNON TOWNSHIP SANITARY LANDFILL AKA: VERNON TWP SLF	RTE 94 & VERNON CROSSING RD	VERNON TOWNSHIP	NO		NONE

# Off-Site Disclosure Act Landfill Report

09/06/96

Landfill Name

WANTAGE TOWNSHIP LANDFILL

AKA: WANTAGE TOWNSHIP SLF

County: SUSSEX

Street

LOTT RD

Municipality

WANTAGE TOWNSHIP

NPL Status

NO

Solid Waste ID (New)

1924000115

Solid Waste ID (Old)

1924A

## New Jersey Residential Construction Off-Site Conditions Disclosure Act Listing of Off-Site Conditions

This form is filed with the municipal clerk of the municipality by the owner and is used to list the following off-site conditions required by N.J.A.C. 17:27:2: overhead electric utility transmission lines conducting 240,000 volts or more; electrical transformer substations; underground gas transmission lines as defined in 49 C.F.R. 192.3; sewer pump stations designed for 0.5 million gallons per day and sewer trunk lines in excess of 15 inches diameter; and public wastewater treatment facilities.

This list identifies Sewer Pump Station off-site conditions owned, leased, or maintained  
(insert type of conditions)

United Water Vernon Sewerage as defined in the  
(insert name and address of provider)

New Jersey Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c.253 (C.46:3C-1 et seq.), which as of Aug. 30 1996  
(insert date)

have been identified as existing within Vernon Township Date of Filing: Sept 23 1996  
(insert name of municipality)

Submitted on behalf of the owner: [Signature] Vito Spadavecchia  
(signature) (printed name)

Name of person to contact for additional information on the off-site condition(s):

Name: Vito Spadavecchia Title: Operations Assistant

Address: 111 Howard Blvd, Suite 203, Mt. Arlington NJ 07056 Telephone number: 201-770-6500

Check here if the list of off-site conditions reported herein includes maps filed in accordance with the instructions:

List of Conditions in Vernon Township, County of Sussex Page 1 of 1  
(name of municipality) (name of county)

Ref. #	Description of Site	Block and Lot #	Street Address or location reference	DEP ID Number
1	Sewage Pump Station #1	B 2 1801 14	Sandhill Rd between Rt 94 and Railroad Tracks	S-85-5364-4
2	Sewage Pump Station #2	B 2 11701 ?	Rt 94 North of Entrance to Great Forge Village	S-85-5364-4
3	Sewage Pump Station #3	B 2 231 12	Rt 94 North of Rt 517	S-85-5364-4
4				

**EXHIBIT 15**

**Informational Guide  
to New Home Warranty**

**New Home Warranty Program**

**An  
Informational Guide  
for Builders  
to the  
New Home Warranty  
and  
Builders' Registration Act  
(N.J.S.A. 46:3B-1 et seq)**



**State of New Jersey**  
Christine Todd Whitman, Governor

**Department of Community Affairs**  
Jane M. Kenny, Commissioner



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## Overview

**T**he New Home Warranty and Builders' Registration Act (NJSA 46:3B-1 et seq) was enacted in 1977 to provide a broad scope for the warranty of a new home and standards for construction and quality of the structural elements and components of a new home. Basically, the law requires a builder to register with the State of New Jersey before starting construction of any new home and before offering a warranty on any new home bought and sold in the State. The law and regulations provide limited ten-year warranty coverage against defects of materials, workmanship, and systems in a new home. **The law requires a builder to warrant each new home and to provide warranty followup services: the builder is the warrantor of the home.** In the event the builder does not make repairs on claims for which the builder has been found responsible, then the State New Home Warranty Security Fund covers the cost of these repairs. The law and regulations also provide a process through which the builder and the homeowner can resolve disputes over corrections of such defects. If a builder is found negligent and/or does not participate in this dispute settlement process, the builder's registration can be suspended or revoked, thus preventing the builder from building new homes in New Jersey.

### ■ WHO MUST REGISTER

All builders of owner-occupied new homes, including single family, townhouse, duplex (two-family), cooperative, condominium, factory-built, and modular residences are required to register with the New Home Warranty Program. A builder is any individual or organization in the business of constructing new homes, including anyone who constructs a new home for sale, acts as prime contractor to construct a new home for himself/herself or for another person, contracts with a general contractor for construction of a new home, or sells or transfers title to land and then participates in the construction of a new home. It does not include a person who constructs a new home for his/her own personal use, a licensed architect, engineer, or attorney, or someone who contracts with a licensed architect, engineer, or attorney to provide professional services related to the construction of a new home.

Each new home building business is required to register separately. The name of the company which is transferring title to the new home is the entity which must register and warrant the new home.



## ■ REGISTRATION PROCESS

All builders must submit a registration application, along with a nonrefundable registration fee of \$200, to the Program. Corporations, limited partnerships, general partnerships, and joint ventures must submit a copy of their certificate of incorporation, certificate of limited partnership, general partnership agreement, or joint venture agreement, as appropriate. The fee is in the form of a check from the new home building business or from a principal in the new home building business, or, when required by the Program, a certified check.

If approved, a builder is issued a registration card, which must be shown to the local construction official when construction permits for the new home are obtained. Registration is valid for two years from the approval date.

Builders who fail to register or maintain a current registration are subject to fines up to \$2,000. Each home sold during the time the builder remains unregistered is considered a separate offense.

## ■ REGISTRATION RENEWAL

Registration must be renewed every two years. Renewal requirements are the same as for new registrations. A nonrefundable registration fee of \$200 must accompany the renewal application. If a builder has provided warranty coverage to a home which is in the first two (2) years of warranty coverage, the registration must be renewed.

## ■ REGISTRATION, SUSPENSION OR REVOCATION

A builder's registration can be revoked or denied for fraud, misrepresentation in the registration application, or substantially violating the New Jersey Uniform Construction Code.

A builder's registration can be suspended or denied if the builder fails to enroll, warrant, or continue to participate in the State Plan or an approved private plan; fails to correct or settle

a claim after responsibility was established through the dispute settlement process, has officers, partners, stockholders, or directors

who were involved in unregistered, suspended,

or revoked new home building businesses, in-

currred or was responsible for incurring an

award against the New Home Warranty Security Fund

and the Fund has not been compensated, or failed to participate in the dispute settlement process. A builder's registration can also be revoked for repeating any of the above violations set forth in this paragraph.

## ■ WARRANTY COVERAGE

The liability of a builder under a warranty is limited by law to the purchase price of the home in the first good faith sale or the fair market value of the home on its completion date, if there is no good faith sale.

During the first year of a new home's warranty, warranty coverage extends to defective systems, workmanship, materials, plumbing, electrical and mechanical systems, appliances, fix-



tures, and equipment, and major structural defects. From the commencement date of the warranty up to two (2) years from that date, the mechanical, electrical, and plumbing systems and major structural defects are covered. The builder is responsible for warranty coverage during the first two years. During the third through tenth years of coverage, only major structural defects are covered.

#### ■ WARRANTY SECURITY PLANS

A registered builder is also required by law to enroll in a warranty plan. A builder may participate in the State Plan offered by the New Home Warranty Program or one of the private warranty plans approved by the New Home Warranty Program.

#### ■ PRIVATE WARRANTY PLANS

Basically, these plans must offer the same warranty coverage as is required by law. Performance standards that are specified in the New Home Warranty and Builders' Registration Act regulations apply for all approved plans. The New Home Warranty Program can provide builders with a current list of approved private warranty plans.

#### ■ STATE WARRANTY PLAN

The State Warranty Plan is open to all registered builders. Any builder not participating in an approved private warranty plan is automatically enrolled in the State Plan. The rate for each new home enrolled is based upon a builder's warranty enrollment and dispute settlement records. The contribution percentage to be paid for each new home

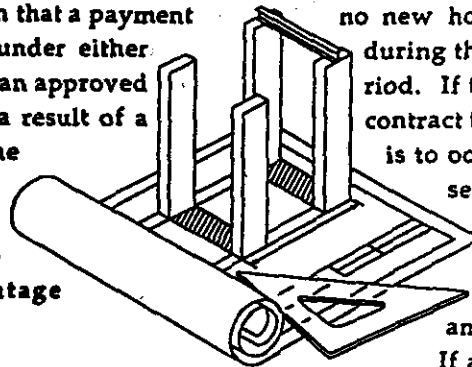
by a builder not participating in an approved private plan is as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.2;
2. If, for at least seven years but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.25;
3. If, for at least five years but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.3;



4. If, for at least two years but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.35;

5. If a builder has not previously been registered or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.375;



6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.5;

7. If, at any time while a builder's contribution percentage is 0.5 by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment

made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.7.

These rates are not applicable if no new homes were enrolled during the specified time period. If the builder is under contract to a land owner who is to occupy the house, the selling price is calculated at 1.25 percent multiplied by the contract amount.

If any principal in the new home building business is involved in any other new home building business with a less favorable rate, the less favorable rate applies to all new home building businesses.

The rate assigned to the new home building business will be used to compute the warranty premiums for each new home enrolled in the State Plan. This rate will be adjusted upon renewal of the builder's registration, when it will be revised based on the new home building business' claims record, or at any time the builder defaults on a claim.

## ■ WARRANTY RESPONSIBILITIES

The builder or the warranty plan of which the builder is a member is responsible for providing the homeowner with a full statement of warranty coverage and warranty claims procedures, on forms preapproved by the Program. This transmittal should take place at closing. No certificate of occupancy is issued unless the builder presents proof to the local construction official that the new home is covered by a warranty. The warranty is effective when the title is first transferred from builder to owner or when possession or occupancy is first given by the builder to the owner.

## ■ CLAIMS RESOLUTION PROCESS FOR PRIVATE PLANS

According to the New Home Warranty regulations, each private plan must provide a complaint, claims, and payment procedure that provides for an attempt at informal settlement between the builder and the homeowner of any claim and requires that any homeowner making a claim provide written notice to the builder.

The regulations also require conciliation and/or arbitration of any warranty claim dispute by an independent third party. The homeowner has the opportunity to accept or reject a con-

ciliation decision and may appeal the decision in court. The private plan must also provide fixed periods of time for action by the builder or homeowner pursuant to the arbitration/conciliation decision. For detailed information on this process, the private warranty plan should be contacted.

## ■ CLAIMS RESOLUTION PROCESS FOR THE STATE PLAN

Unless an emergency situation arises or a major structural defect exists, a homeowner must wait 120 days from the commencement date of the warranty before the homeowner can file a claim (Notice of Claim and Demand). The homeowner must notify the builder in writing with a list of defects found in the home. The builder has the choice to repair, replace, or pay for the correction of the defect, if the defect is covered by the warranty. The builder is also responsible for actual reasonable shelter expenses during any repair that has rendered the home uninhabitable.

The builder must inspect and repair the defect(s) covered by the warranty within 30 days of the homeowner's notice. If the builder does not, the homeowner may file a formal Notice of Claim and Demand with the New Home Warranty Program. The New Home Warranty Program is then responsible for providing a means of claims resolution.

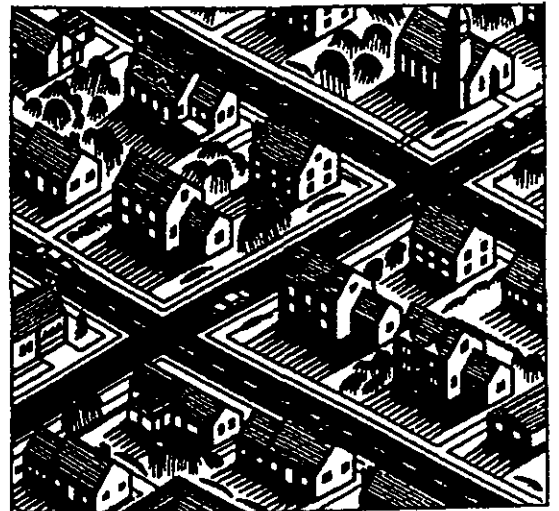
This process begins with conciliation, in which a skilled, impartial, neutral third party meets with the builder and the homeowner at the new home to attempt to resolve the conflicts. This



neutral third party is a conciliator/ arbitrator appointed by the American Arbitration Association or the Office of Dispute Settlement of the New Jersey Department of the Public Advocate. If successful, the conciliator/ arbitrator will make an arbitration award, with the permission of both parties. If there is no agreement reached, or if any part of the dispute remains unresolved after the conciliation meeting, the conciliator/ arbitrator may then proceed into an arbitration meeting, if the homeowner and builder both agree. As a result of the meeting, the arbitrator will render judgement within a few weeks. This award is legally binding on both parties. The award is limited to a determination of the existence of an eligible defect under the New Home Warranty regulations, whether the builder will repair or replace the defect(s), and the time within which the builder will perform the corrective action. The arbitrator cannot make a monetary award: he can only require repair or replacement, if necessary, except in the case of reimbursement for emergency or temporary repairs. There is no cost to the homeowner or builder for conciliation or arbitration under the State Plan. The arbitration award is not appealable through the Program.

If, after the conciliation process, either the homeowner or builder do not agree to arbitration, the process of a Bureau (of Homeowner Protection, New Home Warranty Program) Decision begins. A Program staff member conducts a hearing to review the defects in the home and renders a written decision. The decision is binding on all parties, but can be appealed within 15 days of the decision. An administrative hearing through the New Jersey Office of Administrative Law is then provided.

If a builder refuses to repair or replace defects as directed in the written arbitration award or the Bureau Decision, the State Plan then assumes financial responsibility for correction of the defects in the home. However, the Program will take administrative action against the builder, such as revocation or suspension of the builder's registration.



**FOR ADDITIONAL INFORMATION, CONTACT:**

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**Bureau of Homeowner Protection**  
***New Home Warranty Program***  
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**609-530-8800**

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