

**BY-LAWS**  
**OF**  
**THE COTTAGES**  
**HOMEOWNERS' ASSOCIATION, INC.**

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**BY-LAWS**  
**OF**  
**THE COTTAGES HOMEOWNERS' ASSOCIATION, INC.**

A New York Not-for-Profit Corporation

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

These are the By-Laws of The Cottages Homeowners' Association, Inc. hereinafter referred to as the "Association". The principal office of the Association shall be located in the City of Geneva, County of Ontario, and State of New York.

**ARTICLE II. DEFINITIONS**

The following words when used in these By-Laws shall, unless the context otherwise prohibits, have the meanings set forth below. All capitalized terms not otherwise defined herein shall have the same meaning as in the Declaration.

(a) "Association" shall mean and refer to The Cottages Homeowners' Association, Inc., a New York Not-for-Profit Corporation.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "By-Laws" shall mean and refer to these By-Laws which govern the operation of the Association.

(d) "Common Expense" shall mean and refer to those expenses (including reserves) which are incurred or assessed by the Association in fulfilling its lawful responsibilities (herein sometimes referred to as ("Assessment")).

(e) "Common Properties" or "Common Areas" shall mean and refer to certain areas of land as shown on the attached Site Plan which will be held in leasehold by the Association and any improvements on said areas of land which will be held in fee simple by the Association and which are intended to be devoted to the common use and enjoyment of the owners of The Properties and shall include, without limitation, water and sewer services, a Lakefront pavilion, a dock with up to 29 boat slips, kayak storage, a private road, trash storage, generator, community garden and dog run space.

(f) "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements, and Charges applicable to the Properties recorded among the land records in the Clerk of the County of Yates, New York as the same may, from time to time be amended.

(g) "Declarant" shall mean and refer to The Cottages at Plum Point, LLC, a New York Limited Liability Company and its successors and assigns, if such successors and assigns should acquire an undeveloped or developed but unsold portion of the Properties for the

purpose of development, including without limitation, any mortgagee which has foreclosed or acquired by other means the interest of the Declarant.

(h) “Cottage” shall mean and refer to each completed Cottage situated upon a Lot (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Milo). Unless the context clearly indicates otherwise, the term “Cottage” shall be deemed to include the term “Lot.”

(i) “Cottage Owner” or “Owner” shall mean and refer to the record owner of fee simple title to any Cottage (but not the Lot), including the Declarant with respect to any Unsold Cottage. Every Cottage Owner shall be treated for all purposes as a single owner for each Cottage held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, such collective ownership shall constitute one (1) Member.

(j) “Lakefront pavilion” shall mean and refer to the pavilion owned, operated and maintained by the Association as part of the Common Areas of the Association.

(k) “Lot” shall mean and refer to any portion of the Property (with the exception of the Common Properties) under the scope of this Declaration, as shown on the Site Plan prepared by Costich Engineering and identified as a separate parcel. Unless the context clearly indicates otherwise, the term “Lot” is included in the term “Cottage.”

(l) “Member” shall mean and refer to each holder of a membership interest in the Association as such interest is set forth in Article VI. Each Member shall be entitled to one (1) vote.

(m) “Permitted Mortgage” shall mean and refer to any first mortgage covering a Cottage or Cottages or a mortgage encumbering an Unsold Cottage then owned by Declarant or its designee.

(n) “Permitted Mortgagee” shall mean and refer to the holder of a Permitted Mortgage.

(o) “Properties” shall mean and refer to all those Properties described in Article II.

(p) “Statute” shall mean and refer the New York Not-for-Profit Corporation Law.

(q) “Unsold Cottage” shall mean and refer to any Cottages owned by the Declarant and any successors or assigns, until such time as the same have been sold for use, other than personal occupancy of the Declarant and any of its successors or assigns.

(r) “Unoccupied Lot” shall mean and refer to any Lots owned by Declarant until such time as the same have been subject to a Ground Lease and such leasehold interest conveyed to a bona fide purchaser.

### **ARTICLE III. PURPOSE**

This Association is formed to operate, manage, maintain and control the Common Areas and to perform certain maintenance and repairs to the Properties as a Homeowners Association for the benefit of the Members of the Association.

### **ARTICLE IV. APPLICABILITY**

All present and future Members, their family members, tenants, lessees, occupants, guests, licensees, agents, employees and any other person or persons that shall be permitted to use the Common Areas shall be subject to these By-Laws and to the Rules and Regulations issued by the Association to govern the conduct of its Members.

### **ARTICLE V. USE OF FACILITIES**

The Common Areas shall be limited to the use by the Members, their family members and their guests. In the event that a Member shall lease or permit another to occupy his Cottage, however, the lessee or occupant shall at the option of the Member, be permitted to enjoy the use of the Common Areas in lieu of and subject to the same restrictions and limitations as said Member. Any Member, lessee or occupant entitled to the use of the Association facilities may extend such privileges to members of his family residing in his household by notifying the Secretary in writing of the names of any such persons and of the relationship of such Member, lessee or occupant to such persons. The Board may establish a limitation on guest privileges and/or establish a guest fee for the use of the Common Areas by guests of Members or permitted lessees or occupants of Cottages and their respective family members.

Declarant shall have the right, on an equal basis with other Members to use all or any of the Common Areas or permit all or any of the Common Areas to be used by Declarant's designee or any prospective purchaser of a Cottage or any tenants of Unsold Cottages, without charge, in accordance with and subject to these By-Laws and any Rules and Regulations promulgated by the Board. In addition, Declarant shall have the right, so long as there are Unoccupied Lots on the Properties to use all or any of the Common Areas without charge, for exhibitions or other promotional functions with respect to Declarant's sales programs. This provision regarding Declarant may not be amended without the written consent of the Declarant.

### **ARTICLE VI. MEMBERSHIP AND VOTING RIGHTS**

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

The Owner of a Cottage or Unsold Cottage on the Properties then subject to the Declaration shall be a Member of the Association whether such ownership is joint, in common or tenancy by the entirety. Each Member is entitled to one vote irrespective of the number of Cottages or Unsold Cottages owned by a Member. When more than one person or entity holds such interest in such membership, the one vote attributable to such Member shall be exercised as such persons mutually determine but not more than one vote may be cast with respect to any such Member. Declarant shall remain a Member as long as Declarant has not executed Ground Leases for every Unoccupied Lot.

**Section 2. Suspension of Membership.** The rights of a Member or permitted lessee or occupant of a Cottage, and their respective family members, guests and invitees, to the use and enjoyment of the Common Areas are subject to the payment of periodic Common Expenses levied by the Board, the obligation of which Common Expenses is imposed against each Member as provided for by Article VI of the Declaration. If a Member shall be in default in the payment of the Common Expenses assessed against such Member's Cottage, and fails to cure such default within five (5) days after receipt of written notice from the Board, the Board, in its sole discretion, shall have the option to prohibit all privileges of the Association by such Member, permitted lessee or occupant, and the respective family Members, guests and invitees of the foregoing, and until such Member is reinstated in good standing in the Association, to take such other legal action as may be permitted by applicable law or these By-Laws. In addition to the foregoing, any Member so in default shall be ineligible to be considered for membership to the Board and if on the Board shall be suspended thereto until such time as all Common Expenses, together with late charges, interest and expenses, if any, are paid to the Association. In no event, however, shall a Member's voting rights be suspended for non-payment of Common Expenses.

**Section 3. Transfer of Membership.** Membership in the Association shall be appurtenant to, and may not be transferred except in conjunction with the lawful sale or conveyance of a Cottage. No Owner shall be permitted to sell or convey his or her Cottage unless and until he or she shall have paid in full to the Board all unpaid Common Expenses and other amounts required by the Board to be paid and assessed by the Board against such Cottage. Upon such sale or conveyance, the seller of such Cottage shall relinquish his or her membership in the Association and the purchaser of such Cottage shall automatically become a Member, subject to this Declaration, the By-Laws and the Rules and Regulations.

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

**Section 1. Quorum.** So many Members as shall represent at least fifty-one (51%) percent of all Members whose Cottages are then subject to the Declaration present in person or represented by written proxy shall be requisite to and shall constitute a quorum at all meetings of the Association for the transaction of business, except as otherwise provided by Statute, by the Declaration, the Certificate of Incorporation of the Association or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting. At least 5 days written notice of such adjourned meeting shall be given to all Members. At such adjourned meeting any business may be transacted which might have been transacted at the meeting originally called. At such adjourned meeting, so many Members as shall represent at least thirty-three and one third (33-1/3%) percent of all Members whose Cottages are then subject to the Declaration shall constitute a quorum. If, however, such reduced quorum shall not be present or represented at such adjourned meeting of the Association, the Members entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting and such adjourned meeting shall require at least twenty-five (25%) percent. At least 5 days written notice of such adjourned meeting shall be given to all Members.

**Section 2. Vote Required to Transact Business.** When a quorum is present at any meeting, the vote of a majority of the Members present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be binding upon all

Members, unless the question is one upon which by express provision of the Statute, Declaration, Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

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

**Section 4. Number of Votes.** Each Member shall be entitled to one (1) vote irrespective of the number of Cottages owned by such Member. For the purposes of this section the Declarant shall have one (1) vote for each Unoccupied Lot.

**Section 5. Proxies.** All proxies shall be in writing signed by the Owner, and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

**Section 6. Waiver and Consent.** Wherever the vote of the membership at a meeting is required or permitted by Statute or by any provision of the Declaration, Certificate of Incorporation or by these By-Laws to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

**Section 7. Place of Meeting.** Meetings shall be held at any suitable place convenient to the Members as may be designated by the Board of Directors and designated in the notices of such meetings.

**Section 8. Annual Meetings.** The first annual meeting of the membership of the Association shall be held within one (1) year of the execution of the first Ground Lease for a Lot. Thereafter the annual meeting of the membership of the Association shall be held on such date as is fixed by the Board of Directors but at least on an annual basis. At such meetings there shall be elected by ballot of the membership a Board of Directors in accordance with the requirements of Article VIII of these By-Laws. The Members may also transact such other business as may properly come before the meeting.

**Section 9. Special Meetings.** It shall be the duty of the President to call a special meeting of the Association, if so directed by the Board of Directors, or upon the presentation to the Secretary of a petition signed by at least five (5) of the Members.

**Section 10. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held. Notice of the annual meeting shall be mailed to each Member at least ten (10) but not more than thirty (30) days prior to such meeting. Notice of any special meeting shall be mailed to each Member not less than forty-five (45) days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**Section 11. Order of Business.** The order of business at all meetings shall be as follows:



- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of committees
- (f) Appointment of inspectors of election (in the event there is an election)
- (g) Election of Directors (in the event there is an election)
- (h) Unfinished business
- (i) New business

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

**Section 1. Number and Term.** The number of Directors which shall constitute the whole Board shall be three (3) elected or sponsor-designated members. The initial Board, consisting of three (3) Directors, shall be designated by the Declarant to serve until the first annual meeting of the Association. At the first annual meeting and at all subsequent annual meetings, a total of three (3) Directors shall be elected or designated. All Directors, other than those designated by the Sponsor, shall be elected by the Members. The term of office of one of the Directors shall be fixed for three (3) years, the term of office of one of the Directors shall be fixed at two (2) years, and the term of office of one of the Directors shall be fixed at one (1) year. Separate ballots shall be conducted for each of the three terms of office. Each Member shall be entitled to cast one vote on each ballot. The, three, two or one nominee(s) on each of the ballots, as the case may be, receiving the highest number of votes on their ballot shall constitute the duly executed Board of Directors. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of three (3) years. The Directors shall hold office until their successors have been elected and hold their first meeting. All Directors, other than those the Declarant shall have the right to designate, must be Members of the Association. As required by law, each Director shall be at least nineteen years of age. In no event shall any Member be eligible for election to the Board if such Member is then in default, beyond any applicable grace period, in the payment of Common Expenses or any other amounts required by the Board to be paid.

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

The Declarant shall have the right to designate a majority of the total Directors, until the earlier of: (i) ten years from the first annual meeting of the Association; or (ii) such time that there are no Unoccupied Lots remaining in the Properties. The provisions of Article VIII Sections 1 and 2 may not be amended without the written consent of the Declarant.

**Section 3. Vacancy and Replacement.** If the office of any Director becomes vacant by reasons of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, at a special meeting of Directors duly called for this purpose, shall choose a successor, who shall hold office for the unexpired term in respect of which such vacancy occurred and until his successor is duly elected and qualified. In the event a Director appointed by Declarant resigns, the Declarant shall have the sole right to appoint another Director in his place.

**Section 4. Removal.** Directors may be removed for cause by an affirmative vote sixty-seven (67%) percent of the Members. No Director, other than a designee of the Declarant, shall continue to serve on the Board if, during his term of office, he shall cease to be a Member or no longer reside in the Member's Cottage as part of the immediate family. In the event a Declarant-designated member is removed for cause, the Declarant shall have the sole right to appoint another Director in his place.

**Section 5. Powers.**

(a) The property of the Association shall be managed by its Board of Directors, which may exercise all such powers of the Association and do all such lawful acts and things as are not by Statute, Declaration, Certificate of Incorporation or by these By-Laws, directed or required to be exercised or done by the Members personally. These powers shall specifically include, but not be limited to the following items:

(1) To determine and levy monthly assessments ("Assessments") to cover the cost of operating and maintaining the Common Areas and other maintenance requirements of the Association payable in advance. The Board of Directors may increase the monthly Assessments or vote a special assessment in excess of that amount, if required, to meet any additional necessary expenses.

(2) To collect, use and expend the Assessments collected to maintain, care for and preserve the Common Areas on the Properties and other maintenance requirements of the Association.

(3) To make repairs, restore or alter the Common Areas after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(4) To open bank accounts and borrow money on behalf of the Association and to designate the signatories to such bank accounts.

(5) To collect delinquent Assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the house rules or Rules and Regulations herein referred to.

(6) To make reasonable Rules and Regulations and to amend the same from time to time. Such Rules and Regulations and amendments thereto shall be binding upon the Members when the Board has approved them in writing and delivered a copy of such rules and all amendments to each Member. Such Rules and Regulations may without

limiting the foregoing, include reasonable limitations on the use of the Common Areas by guests of the Members as well as reasonable admission and other fees for such use.

(7) To impose fines or penalties upon any Member who violates the Declaration, its Rules and Regulations or By-Laws as per Article IX of the Declaration.

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

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

(10) To hire a managing agent to perform and exercise the powers of the Board of Directors in the management of the Properties.

(11) To execute, acknowledge and deliver (i) any declaration or other instrument affecting the Properties, which the Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of any public authority, applicable to the occupancy, maintenance, demolition, construction, alteration, repair or restoration of the Properties (ii) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Properties which the Board deems necessary or appropriate.

(12) To obtain and review insurance for the Association.

(b) The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, in addition to any committee required by these By-Laws, each of such committees to include at least one (1) Director, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Association and may have power to sign all papers which may be required, provided the said resolution or resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Committees established by resolution of the Board of Directors shall keep regular minutes of their proceedings and shall report the same to the Board as required.

(c) Notwithstanding anything to the contrary contained in these By-Laws so long as there are any Unoccupied Lots in the Properties, the Board of Directors may not, without the Declarant's prior written consent (i) make any addition, alteration or improvement to the Common Areas, or (ii) assess any Common Expense for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund or, (iii) charge any special assessment for a non-budgeted item unless required by law, emergency, municipal agency or for the health and safety of the Association and its Members, (iv) hire any additional employees or enter into any service or maintenance contract for work not covered by contracts in existence on the date of the closing of the first Cottage or, (v) borrow money or otherwise create a security interest on behalf



of the Association or on any portion of the Association property or, (vi) increase or decrease the services or maintenance of the Association as set forth in the proposed first year budget of the Association, the Declaration of Covenants and Restrictions or the By-Laws or otherwise provide services in excess of those contemplated by the proposed first year budget or elsewhere in the CPS-7 Application or any amendments thereto, or, (vii) purchase any materials, equipment or other goods costing in excess of \$1,000 or (viii) increase the maintenance charges of the Association more than ten (10%) percent from the prior year's budget, unless required by law, emergency, municipal agency, the health and safety of the Association and its Members or if documentation is provided to the Declarant in the nature of a financial statement, bids from contractors or verified increases in utility rates evidencing the need for an increase greater than ten (10%) percent or (ix) utilize Association funds to commence a law suit against the Sponsor or any of its principals. In addition, so long as there are any Unoccupied Lots in the Properties, the Board and the Cottage Owners shall not take any action that will interfere, impair or adversely affect the rights of the Declarant to sell and construct any Unsold Cottages and lease any Unoccupied Lots. Declarant shall not use its veto power or control of the Board of Directors to reduce the level of services described in the CPS-7 Application or any amendments thereto or prevents required capital repairs or prevents expenditures required to comply with applicable laws or regulations. While Declarant is in control of the Board of Directors, no mortgage liens will be placed on the Common Areas without the consent of at least fifty-one (51%) percent of the Cottage Owners other than the Directors or Declarants' nominees. This subparagraph (c) may not be amended without the written consent of the Declarant.

**Section 6. Compensation.** Directors and officers, as such, shall receive no compensation for their services.

**Section 7. Meetings.**

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

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

(c) Special meetings of the Board may be called by the President on two (2) days notice to each Director either personally or by mail. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

(d) At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by Statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meeting of Directors, the Directors present

thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

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

(f) Members of the Board may participate in a meeting by means of a conference telephone call or similar communications equipment by means of which all persons participating in such meeting can hear each other and such participation shall constitute presence at such meeting.

**Section 8. Annual Statement.** The Board of Directors shall furnish to all Members and shall present annually (at the annual meeting) and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business conditions and affairs of the Association, including a balance sheet and profit and loss statement verified by an independent public accountant and a statement regarding any taxable income attributable to the Members and a notice of the holding of the annual meeting of Association members.

**Section 9. Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association (except Declarant or Declarant's representatives) handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be a Common Expense of the Association.

## **ARTICLE IX. OFFICERS**

**Section 1. Elective Officers.** The officers of the Association shall be chosen by the Board and shall consist of a President, a Vice President, a Secretary, and a Treasurer. The Board of Directors may also choose one or more Assistant Secretaries and Assistant Treasurers and such other officers as in their judgment may be necessary. All officers must be either members of the Board of Directors or Members of the Association. The President may not hold more than one office.

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

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

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

on the agenda for such meeting. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

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

**Section 6. The Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act and shall have such other powers and duties as are usually vested in the office of Vice President of a corporation organized under the Not-for-Profit Corporation Law of the State of New York.

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

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

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

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

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

## **ARTICLE X. NOTICES**

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

addressed to the Board of Directors, such Director, or Member, at such address as appears on the books of the Association.

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

## **ARTICLE XI. COMMON EXPENSES**

**Section 1. Personal Obligation of Assessments.** The personal obligation of Common Expenses is governed by Section 1 of Article VI of the Declaration.

**Section 2. Purpose of Common Expenses.** The purpose of Common Expenses is as specified in Section 2 of Article VI of the Declaration.

**Section 3. Basis of Common Expenses.** The basis of the Common Expenses is as specified in Section 3 of Article VI of the Declaration.

**Section 4. Date of Commencement of Common Expenses: Due Dates.** The date of commencement and the due dates of Common Expenses are as specified in Section 4 of Article VI of the Declaration.

**Section 5. Effect of Non-Payment of Common Expenses: Remedies of the Association.** The effect of non-payment of Common Expenses and the remedies of the Association shall be as specified in Section 5 of Article VI of the Declaration.

**Section 6. Intentionally Omitted.**

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

**Section 8. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all monthly and special Assessments as fixed and determined for all Members. Disbursements from said account shall be for the general needs of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the community.

**Section 9. Reserve Account.** There shall be established and maintained a cash deposit account to be known as the "Reserve Account" into which shall be deposited the fifty dollar (\$50) monthly maintenance fee, any special assessments and any charges associated with the rental of the Lakefront pavilion.

**Section 10. Other Accounts.** The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

## **ARTICLE XII. INSURANCE**

The insurance the Board of Directors is required to obtain and maintain on behalf of the Association shall be as provided for in Section 1, Article VIII of the Declaration. The procedure and requirements for repair or reconstruction of the Common Area shall be as provided for in Section 2 of Article VIII of the Declaration.

## **ARTICLE XIII. CONFLICTS OF INTEREST**

The Board of Directors shall establish, and modify from time to time, a comprehensive policy with respect to conflicts of interest of Directors and Officers in compliance with the applicable requirement of the New York Business Corporation Law and New York Not for Profit Corporation Law, as amended. The Board of Directors may also establish, and modify from time to time, a conflicts of interest policy applicable to Members. Each such policy, as amended from time to time, is deemed incorporated by reference into these By-Laws.

## **ARTICLE XIV. AMENDMENTS**

Except as otherwise provided, these By-Laws may be altered, amended or added to at any duly called meeting of Members provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment and (2) that the amendment shall be approved by vote of at least sixty-seven (67%) percent of the total Members whose Cottages are then subject to the Declaration. No amendment, however, shall affect or impair the validity or priority of the Members' interests and the interests of Permitted Mortgagees. Any amendment of a material adverse nature to Permitted Mortgagees must be agreed to by such mortgagees representing at least fifty-one percent (51%) of the votes of Cottages subject to mortgages. The Association shall provide timely written notice of any such amendment. Nor shall any amendment have the effect of infringing upon the Declarant's right to build and make membership in or use of the Association available to purchasers or lessees of no more than 29 Cottages on the Properties.

Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition or deletion of, to or from these By-Laws shall be effective in any way against Declarant or its designee or any Unsold Cottage or Unoccupied Lot, as long as there are any Unoccupied Lots on the Properties, unless Declarant has given its prior written consent thereto.

## **ARTICLE XV. SELLING, LEASING AND GIFTS OF COTTAGES**

**Section 1. Selling and Leasing Cottages.** Any Cottage may be conveyed or leased by a Member, subject in all respects to the Ground Lease, but otherwise free of any restrictions except that (i) no Cottage Owner of a Cottage may lease the same for a period of more than 270 days in any calendar year and (ii) no Member shall convey, mortgage, pledge, hypothecate, sell or lease his Cottage unless and until all violations against the Cottage are removed and all unpaid Assessments assessed against the Cottage shall have been paid as directed by the Board of Directors. Such unpaid Assessments, however, may be paid out of the proceeds from the sale of a Cottage, or by the Grantee. Any sale or lease of a Cottage in violation of this section or the applicable Article of the Declaration shall be voidable at the election of the Board of Directors. Upon the written request of a Member or his mortgagee, the Board or its designee shall furnish a written statement of the status of any violation and the unpaid charges due from such Member

which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this section as they apply to unpaid Assessments shall not apply to the acquisition of a Cottage by a mortgagee who shall acquire such Cottage by foreclosure. In such event the unpaid Assessments against the Cottage which were assessed and became due prior to the acquisition of such Cottage by such mortgagee shall be collected from the buyer of the Cottage and paid to the Association if and when the Cottage is resold by such mortgagee. Such provisions shall, however, apply to any Assessments which are assessed and become due after the acquisition of such Cottage by the mortgagee and to any purchaser from such mortgagee.

Whenever the term "Cottage" is referred to in this Section, it shall include the Cottage, the Member's interest in the Association and the Member's interest in any Cottages acquired by the Association.

**Section 2. Gifts, etc.** Any Member may convey or transfer his Cottage by gift during his lifetime or devise his Cottage by will or pass the same by intestacy, subject in all respects to the Ground Lease, but otherwise without restriction.

## **ARTICLE XVI. INDEMNIFICATION**

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

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



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

**Section 4. Other Rights.** The right to be indemnified and to the reimbursement or advancement of expenses incurred in defending a proceeding in advance of its final disposition authorized by this Article XVI shall not be exclusive of nor limit any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of incorporation, By-Laws, agreement, vote of Members or disinterested Directors or otherwise.

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

**Section 5. Proceedings Initiated by Indemnified Representatives.** Notwithstanding any other provision of this Article, the Association shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counterclaims or affirmative defenses) or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Directors. This section does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending an arbitration under Section 8 of this Article or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

**Section 6. Advancing Expenses.** The Association shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 1 of this Article or the initiation of or participation in which is authorized pursuant to Section 5 of this Article upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined pursuant to Section 8 of this Article that such person is not entitled to be indemnified by the Association pursuant to this Article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

**Section 7. Securing of Indemnification Obligations.** To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the Association may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Association, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and directors and shall not be subject to voidability.

Indemnified representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the Secretary of the Association.

**Section 8. Arbitration.** Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article, except with respect to indemnification for liabilities arising under the Securities Act of 1933 that the Association has undertaken to submit to a court for adjudication, shall be decided only by arbitration in the closest metropolitan area to the location of the principal executive offices of the Association at the time, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the Association, the second of whom shall be selected by the indemnified representative and third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, or if one of the parties fails or refuses to select an arbitrator or if the arbitrators selected by the Association and the indemnified representative cannot agree on the selection of the third arbitrator within 30 days after such time as the Association and the indemnified representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area.

The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof.

The Association shall reimburse an indemnified representative for the expenses (including attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration.

Any award entered by the arbitrators shall be final, binding and non-appealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction, except that the Association shall be entitled to interpose as a defense in any such judicial enforcement proceeding any prior final judicial determination adverse to the indemnified representative in a proceeding not directly involving indemnification under this Article. This arbitration provision shall be specifically enforceable.

**Section 9. Contribution.** If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the Association shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

**Section 10. Contract Rights; Amendment or Repeal.** All rights under this Article shall be deemed a contract between the Association and the indemnified representative pursuant to which the corporation and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.



**Section 11. Reliance of Provisions.** Each person who shall act as an indemnified representative of the Association shall be deemed to be doing so in reliance upon the rights provided in this Article.

## **ARTICLE XVII. GENERAL PROVISIONS**

**Section 1. Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors and unless otherwise specified shall be based on the calendar year.

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

**Section 3. Architectural Control.** No improvement shall be made on any Lot that is ground leased by the Declarant to a third party without the prior written approval of the Board of Directors or any Architectural Committee. Each Lot ground leased by the Declarant to a third party must include a Cottage, attached garage and approved landscaping. Only one outbuilding will be allowed on each Lot ground leased by the Declarant to a third party. However, on larger Lots (equal to or larger than six thousand square feet), the Board or Committee may permit a second outbuilding as long as such additional outbuilding will not be detrimental to the maintenance of the Properties. As used herein, the term "outbuilding" means and refers to any permanent structure in excess of two feet tall, other than an approved stairway, deck or garage. No temporary structures shall be permitted. No building, deck, patio, fence, sign, statuary, wall or other structure, or change or alteration to the exterior of the Cottages or color of the Cottages or in the landscaping shall be commenced, erected, replaced, repaired or maintained upon the Properties, nor shall any exterior addition to, or change or alteration thereto, be made until the plans and specifications showing the nature, kind, shape; height, materials, color, means of implementation and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural or landscaping committee composed of three or more representatives appointed by the Board and/or Declarant. The provisions of this paragraph shall not apply to the Declarant. A two-thirds majority of a quorum of the Board or Architectural Committee shall be required for approval of all of the above items.

The make-up and procedures applicable to an Architectural Committee is as follows:

(a) **Members of Architectural Committee.** The Architectural Committee shall consist of three (3) members; provided, however that such number may be increased or decreased by resolution of the Board. The Architectural Committee shall be initially composed of three (3) persons, each of whom shall be a representative of Declarant. After the first annual meeting of the Association at least one (1) member of the Architectural Committee shall be a Cottage Owner in the Properties (other than a representative of Declarant).

(b) **Rights of Appointment.**

(1) **By Declarant.** Declarant shall have the right to appoint a majority of the members of the Architectural Committee until the earlier of of: (i) ten years from the

first annual meeting of the Association; or (ii) such time that there are no Unoccupied Lots remaining in the Properties.

(2) By the Board. The Board shall have the right to appoint those members of the Architectural Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment have expired, and thereafter the Board shall have the right to appoint and remove all members of the Architectural Committee. Architectural Committee members appointed by the Board shall serve for a term of one (1) year or until their respective successors are appointed.

(3) Notice of Appointment. Whenever an Architectural Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal shall be given by the appointing party to the other party.

(c) Plans and Specifications. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and description or samples of exterior material and colors prepared by a licensed professional engineer or registered architect. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. The Architectural Committee shall provide, in addition to the reasons for any denial, a list of corrective changes that could lead to approval, where approval is deemed to be ultimately possible.

(d) Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(1) The Architectural Committee or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Section 3. However, the Architectural Committee's right of inspection of the work for which plans have been submitted and approved shall terminate sixty (60) days after the work has been completed and the respective Owner has given written notice to the Architectural Committee of its completion. The Architectural Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work have not previously been submitted to and approved by the Architectural Committee or if waiting to the next season to inspect and item is required. If, as a result of such inspection, the Architectural Committee finds that the work was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of his failure to comply with this Section within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Architectural Committee shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(2) If upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy the noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon notice and a hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Cottage Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Cottage Owner. If the Cottage Owner does not comply with the Board ruling within that period, the Board, at its option, may take whatever action it may have at law, in equity or in the Declaration or By-Laws including, without limitation, correcting or removing the non-compliance and charging the cost of all necessary work to correct or remove the noncompliance to the Cottage Owner as an additional Common Expense.

**Section 4. Examination of Books and Records.** Each Member, or their respective representatives and first mortgagees, shall be entitled to a reasonable examination of the books and records of the Association at any time during normal business hours upon reasonable notice to its Board of Directors. The Declaration, Certification of Incorporation and the By-Laws of the Association shall be available for inspection by any Member or first mortgagee at the principal office of the Association.

**Section 5. Annual Report.** The Board of Directors shall present annually to the members a report, verified by the President and Treasurer or by a majority of the directors, showing in appropriate detail the following:

(a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year immediately preceding the date of the report.

(b) The principal changes in assets and liabilities including trust funds, during the year immediately pre-ceding the date of the report.

(c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(d) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(e) The number of Members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current Members may be found. This report shall be filed with the minutes of the meeting of Members.

**Section 6. Membership Certificates.** Membership in the corporation may be evidenced by Certificates of Membership, in which case they shall be in such form and style as the Board of Directors may determine. The fact that the corporation is a nonprofit corporation shall be

noted conspicuously on the face of each certificate. They shall be signed by the President or a Vice President and by the Secretary or an Assistant Secretary, and shall bear the corporate seal.

**Section 7. Construction.** Whenever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires.

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

**Section 8. Severability.** Should any of the covenants, terms or provisions herein imposed be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.